

**AL – AMEEN COLLEGE OF LAW**  
**LABOUR LAW – MODEL QUESTION PAPER 2019**  
**(VII sem LL.B 5 yrs course)**

**Q1. Explain the development of Trade Union Laws in India.**

**Answer:**

After the independence democratic spirit is gradually developing among the Indian citizens & the workmen in industry are not an exception to it. It was in the year 1920 that the High Court of Madras in a suit filed against the officials of Madras Textile Labour Union by Binny & Co. Granted an injunction restraining the union officials to induce certain workers to break their contracts of employment by refusing to return to work. The leaders of the trade union found themselves liable for prosecution & imprisonment even for bona fide trade union was necessary. Mr. N.M Joshi the then general Secretary successfully moved the resolution in the central legislative assembly seeking some measures by the govt of protection of Trade Union .The employers were so much opposed to any such legislation measure being adopted that the passing of the Indian Trade Union Act could only be possible in 1926. But this Act was only enforced from 1<sup>st</sup> of June 1927.

The contribution of the capital & the labour in any industry is equally important. Therefore, the property of an industry depends upon the co-operation of its two components the Capital & the Labour are inevitable so the object of any industrial relation is to ensure smooth relations between the two & to strive for settlement of any dispute by resorting to negotiation & conciliation.

The original Trade Union Act of 1926 made provisions in respect of, conditions governing the registration of the act, obligations imposed upon the registration of the trade union, rights & privileges of the registered trade union.

The Trade Union Act has been amended in the year 1947, the royal commission pleaded for recognition of representative trade union in spirit as well as in letter. The matter was discussed before labour ministers conferences & the standing committee, consequently the act was amended in the year 1947 which required for compulsory recognition by employers of the representative's trade Union.

The Trade Union bill of 1950, on the basis of the decision held in standing labour committee a Trade Union Bill, seeking to make some new provisions was introduced in parliament in February 1950. This Bill lapsed with the dissolution of parliament. The desirability of enacting suitable legislation was considered by the Indian Labour conferences held in October 1952. The Indian Trade Union Amendment Act of 1960 made some changes in section 2(f), 3,4,6,14,16, &28 of the act.

**Q 2. Explain the law relating to recognition of the registered Trade Union under the Act.**

**Answer:**

The law relating to recognition of the Trade Unions in India was incorporated from the amendment of the 1926 Act in the Year 1947, with the insertion of section 28-C to I of the provisions. The union for recognition must make an application to the prescribed employer for seeking recognition, u/sec 28-C of the Act the employer agreeing to recognize the Trade Union the, such Union through its office must enter with an agreement with the employer for recognition or its authorized representatives, this may be presented to the registrar who shall record the memorandum in the prescribed manner. This agreement may be revoked by either party on the application made to the registrar in a prescribed manner. Once the union is recognized it shall with whomsoever the application is made & agreed upon shall have all the rights of a recognized Trade Union under the Act & it shall be deemed to be a recognized trade union , apart from this there is another mode of recognition of trade union by the employer under sec 28-E of the Act , through this provision when a registered trade union has applied for recognition & the same is not granted by the employer within the period of 3 months from the date of making such application such trade union may apply to the Labour Court in writing with all prescribed particulars for seeking recognition from the employer through the labour court , single application may be made under sub sec (1) of this provision for recognition by one or more than one employer , or by the association of employers .

The Labour Court may call for further information, for the purpose of ascertaining whether the trade union is entitled for recognition by the employer under this provision, if the trade union fails to provide the required information within the time granted, the Labour Court may dismiss the application .The trade union shall also fulfill certain conditions in the prescribed manner to the labour Court for seeking recognition through it under sec 28-D of the Act.

Also the union is not entitled for recognition by the order of the Labour Court under sec 28 E of the Act, unless it fulfils certain conditions ; that all the members are workmen employed in the same industry or in industry closely

connected with one another , the representatives of all the workmen employed by the employer in that industry or those industries , that its rules do not provide for the exclusion from membership of any class of the workmen referred under the provision , & its rules provides for declaring of strikes , that its rules provide that a meeting of its executive shall be held in at least once in six months , it should be a registered trade union & has complied with all the provisions of the act , all these references shall be recognized by the association of the trade union .

In the year 2005 the Karnataka HC passed its decision, **in Karnataka State Road Transport Corporation (KSRTC) , Bangalore & others V/S Workmen , KSRTC staff & federation , Bangalore & others** , in this case the employer had issued a notification regarding a notification for recognition by the employer stipulating the 33.3 percent votes in referendum would be a precondition for recognition . This notification was challenged by the federation before the HC. The HC refused to interfere holding that any interference in policy decision was not justified.

The recognized trade union can process some rights like negotiation with the employers in matters connected with matters of employment, non- employment or terms or conditions of employment, under sec 28-F of the act .The withdrawal of recognition of the trade union could be done by the employer or the registrar in writing to the labour court on any of the grounds mentioned under sec 28-G of the act.

**In Reserve Bank of India Employees Association ,Nagpur V/s A.P Aiyar Manager Reserve Bank Of India** , Nagpur & other , the court was asked to determine whether refusal to grant recognition & derecognition stands on the same footing this issue came before the Bombay HC in the year 1984 the court in this court held that refusal to grant recognition & withdrawal of recognition once granted cannot be placed on the same footing , as the primary purpose of the trade union is collective bargaining & only the recognized unions can authoritatively perform . Recognition once obtained by union its sole & gives it status to a new height.

**In the year 1995 in Workmen of Kampil co-operative sugar factory Ltd v/s management of Kampli co-operative sugar factory Ltd & others.**

That where there is no provision in the statute regarding recognition, the right cannot be enforced by a writ petition, where there is nether statutory provision nor an agreement between the employer & the union regarding recognition, no legal right is created simply because the union has been recognized by the management & when such recognition is withdrawn the rights are not violated.

On the expiry of not less than 6 months from the date of withdrawal of recognition of trade union under sub-sec (3) of sec 28 G , the trade union continues to be a registered trade union may again apply for recognition & the procedure laid down in this act applies in respect of such applications of registration .

### **Q3. Trade Union enjoys immunities under Civil & Criminal law Discuss.**

#### **Answer:**

**Sec 17** confers immunity from liability in cases of criminal liability in cases of criminal conspiracy u/sec 120-B, of IPC committed by the office bearers of a registered TU. The protection provided to members or office bearers of the reg TU. The protection provided to members or office bearers or members of the registered trade union is partial in the sense that the immunity is available only in respect of agreements made b/w the members for the purpose of furthering any legitimate object of the Trade Union as given under sec 15 of the Act.

If an agreement is an agreement to do an act which is an offence no immunity can be claimed. The effect of sec 17 is that, an agreement or combination of two or more members of the registered trade union to do or cause to be done any act in furtherance of the trade dispute shall not be punishable as a conspiracy unless such an act if committed by the individual constitutes an offence . Registered trade unions have certain rights to do in furtherance of their trade disputes, such as to declare strikes & for that purpose to pursue their members to abstain from their work.

**In West Indies Steel Company Ltd V/S Azeez**, in this case a trade union leader obstructed work in the factory for five hours protesting against deputation of workmen to work in another section. It was held that a worker inside the factory is bound to obey the reasonable instructions given by his superiors & carry out the duties assigned by him . The mere fact that such worker is the leader of the trade union does not confer on him any immunity in this regard.

Immunity from civil suits in certain is provided to the workmen, sec 18 of the act deals with the immunity from the civil proceedings to the trade union or any office bearer or members thereof in respect of any act done in contemplation or furtherance of trade dispute to which a member of the trade union is a party on the ground only that such act includes some other persons to break the contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour.

Trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of or contrary to express instruction given by the executive of the trade union.

It was held in **Ram Singh & others V/S M/s Ashok Iron Foundation & others**. The suit for perpetual injunction restraining the workmen from indulging in unfair labour practices is deemed as one of the civil nature & hence cognizable u/sec9 of CPC. therefore were the court has barred the workmen from holding meeting dharna & interfering in the rights of the company such restrain does not curtail the rights of the trade union activities of the workers . This act cannot be construed as unjust & the workmen are at liberty to carry on legitimate union actives peacefully.

**In P.Mukundan & others V/S Mohan Kanady Pavithram** , in this case it was stated that a strike per se would not be an actionable wrong. Further the office bearers & the members of the registered trade union are immune against the legal proceeding linked with strike of the workmen by the provision of sec 18 of the act.

#### **Q4. Discuss briefly the impact of Industrial Revolution of India upon labour.**

##### **Answer:**

Industrialization in India as in any other country implies the growth of a factory system with employers & wage earners in varying circumstances & with varying characteristics , yet having some common features & it is the common features that are of common interest . As a constitution of the introduction of the factory system production became concentrated in few selected places, resulting in the increase of the labour population at all such places. The village workers migrated to the industrial towns because of the difficulties of the finding adequate livelihood in their native places .This resulted in disappearance of the popular village handicraft system because they could not compete with the machine made goods. The goods produced on the large scale with the help of the machines in the industries were cheaper than the goods produced by handicraft method. But the development of the industry in India brought with it great evil inasmuch as it changed the status of a craftsmen into wage earner. Therefore the craftsmen had to migrate from village to industrial cities in search of employment in the factories.

The factory system had some inherent evils to which the factory workers were exposed in the beginning. These may be divided into two heads, like Economic & the Social. The artisan who in the handicraft system had the psychological satisfaction of the producing the goods himself became in the factory system only a tender of the machine. He had to produce the goods with the help of the tools & the raw materials supplied by his employer & the workshop of the employer .In the factory system of the production only a part of goods were produced by a certain category of workers . Different categories of workmen produced different parts of the same goods .Thus the goods came in the final shape by the composite labour of many categories of workers .The workmen did not get full satisfaction

psychologically of manufacturing a product by himself & this indirectly arrested his mental development & creative talents .

The wages paid to the factory workers were inadequate to meet their barest needs in the new environment which was different from their rural life.

The employment of factory workers was not secure in the beginning they had to suffer from periodic unemployment & under-employment as a consequence of over production or trade cycle. A worker could be discharged by his employer at any time without assigning any reason. Factories were not only sick not only due to economic evil but also due to social evil , overcrowding of cities with insanitary slums , & acute housing shortage because of large scale migration of village population to industrial towns has its natural effect on the health , morality & social of the worker . Work in the factories was very hazardous & strenuous with long hours of duty, no rest & no facility for recreation. Machines were taken care by the factory owners who had little regards for the safety of the employees' .Workers were exposed to serious accidents because the machines were not properly screened. Accidents were considered as normal risk incidental to employment in a factory & the workers who were unfortunate victims of the accident lost his employment & did not have any right to claim compensation .The wages paid to the workers were very low, wages were the only source of income of the workers, they found it extremely difficult to live with the wages so earned by them. Therefore they had to find ways & means to supplement their earnings. Consequently their wives & children started to seek employment. The factory owners began to take advantage of the situation & employed them in large numbers at extremely low wages without any regards to their physical conditions. The workers found it very difficult to adjust with these conditions. These evils of the industrialization & lack of adjustment & harmonious relationship b/w the employer & the labour created problems in the industry, which is called as labour problems.

#### **Q5. Explain the definition of Industry with support of leading case.**

Sec 2(j) of the act defines Industry, Industry means any business, trade, undertaking , manufacturing, or calling of employers & includes any calling of services, employment handicraft or industrial occupation or avocation of workmen.

The SC has interpreted the definition of the term industry in various cases ,

**In State of Bombay V/S Hospital Mazdoor Sabha** , in this case the SC held that the hospitals are industries.

**University of Delhi V/S Ram Nath**, in this case this case the SC held that the workmen of imparting education is more a mission an avocation than business or therefore university is not an industry.

**Madras Gymkhana Club Employees Union V/S Management** , madras Gymkhana club was a member club with the membership of about 1200 its main object was to provide for a venue for sports & games & facilities of recreation & entertainment .it was running a catering department which provided food & refreshment . the court held that the club is not an Industry. .

**The Cricket Club of India V/S Bombay Labour Union**

This club is a company under the Companies Act 1964 the club had membership of about 4800. It employed 397 employees. The court said it provides catering facilities to its members or to their guests. The court held that the club is a self service institution & not an Industry.

**Safdarjung Hospital V/S KS Seithi** , in this case the SC over-ruled its decision in Hospital Mazdoor Sabha & held that Hospitals were not Industry .

**Dhanrajgiri Hospital V/S Its Workmen**, in this case the court held that Dhanrajgiri Hospital is not an Industry because it was not carrying on any economic activity in the nature of trade or business. The main activity of the hospital was to imparting of training in nursing & the beds in the hospital was ment for their practical purposes.

**Bangalore Water Supply & sewerage Board V/S A Rajappa in this case the SC**, in this lead case on this provision the SC gave a wide amplitude to bring within its scope hospitals, clubs, & educational , reaserch & chariatable institutions .

The SC in this case held that,

1. if in an enterprise there is systematic activity
2. Organized by the co-operation b/w the employer & the employee
3. For production or distribution of goods & services calculated to satisfy human wants & wishes, then that is an industry.

And this is known as the triple test.

An establishment can be taken out of the review of industry only if it exercises sovereign functions .Even in discharging sovereign functions if there are units which are industries & there are substantially severable, and then they can come under the meaning of Industry.

This definition widening the coverage of industry did not receive the approval of the parliament & by the Industrial disputes amendment act 1982.

This definition has been amended in 1982. Though the definition is amended it has not been notified by the central govt, hence the amended definition has not come into force.

**Q6. Explain the provision relating to recovery of money due from the employer under the ID Act 1947.**

**Answer:**

section 33-C of the ID Act 1948 deals with the provision relating to recovery of money due from the employer .sub sec (1) of the provision deals with the procedure of recovery, the application may be made to the appropriate govt & if the govt is satisfied that the claim is genuine, it shall issue a certificate for that amount to the collector. The collector shall recover the amount as shown in the recovery certificate as an arrier of land revenue. The application of money due may be made to the appropriate govt by the workmen or any other person authorized to him in writing, or in case of the death of the workmen by his assignee or heirs . Every such application shall be made within one year from the date on which the money falls due to the workmen form his employer. The applications can be entertainable after the expiry of the said period of one year if the appropriate govt finds satisfied that the applicant had sufficient reasons for not making the application within the prescribed time. section 33-C (2) sub sec deals with the jurisdiction of labour laws, which is subject to the fulfillment of the following two requisites; a) a workmen must be entitled to receive from the employer any money and b) a question should have arisen about the amount of money due, or as to the amount at which such benefit should be computed. These questions may be decided by the labour court as may be specified by the appropriate govt within the period not exceeding 3 months , provided that where the presiding officer of the labour court considers it necessary or expedient so to do , he may for reasons to be recorded in writing , extend such period by such period as he may think fit .Hence the labour court has got the jurisdiction to decide not only the right of the workmen , to receive from the employer any money or benefit capable of being computed in terms of money but also the exact amount of it . However the provisions of this sub-sec are subject to any rules made under the act .This sub-sec should be construed so as to take within its fold a workmen who was employed during the period in respect of which he claims relief , even though he is no longer employed at the time of the application , it means that all persons whose claim, required compensation under this sub-sec ,is in respect of an existing right arising from his relationship as an industrial workmen with his employer .this concept was delth by various courts of the land ,

In Management of English Electronic Co. Of India v. V/S Manohar Rao & others. In this case the Supreme Court of India held that the just reading of the provisions of Sections 33 & 33-A of Industrial Disputes Act 1947 makes it very clear that it is only during the pendency of any proceeding in respect of the Industrial Dispute that the provisions of sec 33-A would be attracted & not otherwise . That the Labour Court lost the sight of the aspect that there were no Industrial Disputes but only a claim petition under sec 33-C(2) of the Act was pending . & they was hence no illegal termination of services . Therefore the orders passed by the Labour Court was set aside

In *M/s R.L Kalithaya & Co V/S State of Gujarat* . In this case the Gujarat HC held that the recovery applications under sec 33-C(2) for dues under the Minimum Wages Act are maintainable . Even though Minimum Wages Act has a separate machinery for settlement, but for any expressed or implied jurisdiction of the Labour Court under sec 33-C(2) of the Act , application for recovery of dues under the act are maintainable under sec33-C(2) of the Act .Hence all matters relating to recovery of money due under Minimum Wages Act application is maintainable under the provision of sec33-C(2).  
Sec33-C(3) The labour court while acting under this provision may if it thinks fit appoint a commissioner for the purpose of computing the money value of benefit ,Sec 33-C(4) the labour court shall forward the decision regarding the money due or the amount at which the money should be computed to the appropriate govt and any amount due from the labour court may be recovered in the manner provided in sub sec (1) as the arrears of land revenue . the sub sec (5) of this provision enables the workmen to receive from the employer any money or any benefit capable of being computed in terms of money .

**Q7. What is Lay-off? Explain the circumstances in which the laid-off workmen are not entitled lay-off compensation?**

**Answer:**

Lay-off means putting aside workmen temporarily .the duration of Lay-off should not be for a period longer than the period of emergency. The employer & employee relationship does not come to an end but is merely suspended during the period of emergency.

The Bombay HC in the year 1959 in **Central India Spinning , Weaving & Manufacturing Co. Ltd Nagpur V/S State Industrial Court** , in this case the Bombay HC held that the key to the definition is to be found in the words “the failure , refusal or inability to of the employer”. These words make it clear that the unemployment has to be on the account of the cause which is independent of any action or inaction on the part of the workers themselves.

Sec 2(kkk), defines a Lay-Off, it means an employer who is willing to employ, fails or refuses or is unable to provide employment for reasons beyond his control, any such refusal, or failure to employ a workmen may be on the account of, shortage of coal, power or raw materials or the accumulation of stock,or the breakdown of machinery or natural calamity or any other connected reasons. A workman who is so deprived must be of such whose name is borne on the master rolls of his industrial establishment, & the workmen must not have been retrenched .the common feature of all these reasons is that the workmen are Laid-off for reasons beyond the control of the employer.

E.g. , If a workmen instead of being given employment at the commencement of any shift for any day he is asked to present himself for the

purpose for the second half of the shift of the day & is given employment than he shall be termed to be laid-off only for one half of that day further if he has not been given any employment even after so presenting himself he should have been deemed to have been laid-off for the second half of the shift for the day , such an employee should be entitled for full basic wages & dearness allowances for that part of the day. Lay-Off compensation is laid down u/sec 25-C according to this sec two provisions must be fulfilled they are; the workmen must have been laid – off for the reasons contemplated by sec 2(kkk) of the Act & requirements as provided u/sec 25-C must be fulfilled.

The workmen is not entitled for compensation in certain cases for Lay-off u/sec 25-E of the Act;

- a. If he refuses to accept alternative employment , provided such alternative employment is provided to the worker , in the same establishment , or in any other establishment belonging to the same employer situated in the same town or village or situate within the radius of 5miles from the establishment to which he belongs & if in the opinion of the employer , the alternative employment does not call for any special skill or previous experience & can be done by the Laid-off workmen & if the wages which would normally have been paid to the workmen in his previous employment are offered for the alternative employment also .
- b. If he does not present himself to work at the establishment at the appointed time normal working hours at least once a day.
- c. If the Lay-Off is due to strike or slowing down of production on the part of the workmen in another part of the same establishment.

### **Q8. Define Strikes & explain the provisions relating to prohibition of Strikes & Lock outs.**

A strike is defined, according to sec 2 (q) of the ID Act, it means a cessation of work by the employees for any length of time under a common understanding to put pressure on an employer to accept their demand .

1. Cessation of work by a body of persons employed in any industry acting in combination or
2. A concerted refusal of any number of persons who have been employed to continue to work to accept employment.
3. A refusal under a common understanding of any number of such persons to continue to work or to accept employment.

**In Farrer V/S Close**, the court defines strike as a simultaneous cessation of work on the part of the workmen.

**In Uden V/S schaeffer** , the court defined that a “strike, is the act of quitting work by a body of workmen for the purpose of coercing their employer to

accede to some demands they have made upon him, & which he has refused, but it is not a strike for workmen to quit work either singly or in a body when they quitted without intention to return to work whatever may be the reason that moves them to do so.

**In Indian Humpe pipe Co Ltd V/S Rashtraya Indian Humpe pipe Mazdoor Sangh** , it was held that staying away from work under a common understanding as a protest to the introduction of card system for marking attendance for the workmen amounts to strike.

**In National Textile Works Ltd V/S Shree Meenakshi Mills**, the court held that the refusal of workers to resume work on account of sudden death of the worker acting in concert would amount to strike.

### **Lock-out**

Lock –out is a temporary closure of a place of business by the employer to bring pressure on his workmen to accept his terms .it is antithesis of strike  
Acc to sec 2 of the Act Lock – out means the temporary closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.

Just as strike is a weapon available to the employer to persuade by a coercive process the employee to accept his demand.

**In jaya Bharath Textiles Works V/S State of Madras**, it was held that a permanent discountenance of business is not a lock-out because a lock-out is a temporary closure of a place of business.

**Prohibition of strikes & lock – outs : strikes & lock-out** are useful & powerful weapons in the armoury of the workmen & employers . They are available when a dispute or a struggle arises b/w them skilful use of these weapons may help one party to force the other to accept its demand. But reckless use of the creates a risk of unnecessary stoppages. Stoppages hurt both the parties badly.

## **Q9. Explain the provisions relating to prohibitions of strikes & lock-outs**

Definition of strike,

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### **Sec 22&23 of the ID Act 1947 deals with the prohibition of strikes & Lock-outs.**

Sec 22 bans the commencement of strike & lock –outs in public utility services. But sec 23 bans strikes & lock –outs generally in Industrial establishment. Though every industry is not a public utility service. Every public utility service is an Industrial establishment.

Sec 22 (1) the employee of a public utility services shall not commence a strike unless the following conditions are satisfied;

1. A notice of strike should be given to the employer in advance.
2. The notice should be given at least 14 days before the strike.

3. The strike shall not commence before the expiry of the date specified in the notice.
4. The strike shall not be commenced during the pendency of any conciliation proceeding before a conciliation officer & seven days after the conclusion of such proceedings.

**In premier Automobile Ltd V/S G.R Sapre**, it was held that the main object of notice of 14 days before lock-out or strike is to avoid possible dislocation to the employers & their workmen & give some grading time to adjust. Notice of strike is not necessary where there is already a lock-out in existence. Notice may be given by the trade union or representatives of workmen elected to do so, the strike must be commenced within that period.

Sec 22 (2) the employers of a public utility services shall not commence a lock – out unless the following conditions are satisfied;

1. A notice of lock –out should be given to the employees in advance.
2. The notice should be given at least 14 days before the lock –out.
3. The lock- out shall not commence before the expiry of the date specified in the notice.
4. The lock –out shall not be commenced during the pendency of any conciliation proceeding before a conciliation officer & seven days after the conclusion of such proceedings.

Notice of lock-out shall not be necessary if there is already in existence a strike in public utility services.

If the employer receives a strike notice he shall within 5 days report to the appropriate govt or to such authority as the govt may prescribe.

**In Minerals Miners Union V/S Kuderamukh Iron ore Co Ltd** in this case it was held that the provision of sec 22 are mandatory & the date on which the workmen proposed to go on strike should be specified in the Notice , if meanwhile the date of strike specified in the notice of strike expires. Workmen have to give a fresh notice & all other statutory consequences following out of the said notice would follow.

**In Buchingham & Carnatic Co Ltd V/S Ram Swaroop**, it was held that concerted stoppage of work or refusal to work by a body of workmen without due notice to the employer in a public utility service estbnt amounts to an illegal strike.

### **General strikes & lock –outs:**

sec 23 of the Act imposes general restrictions on declaring strikes & Lock –outs in both public utility & as well as non public utility establishments , in the following circumstances,

1. During the pendency of conciliation proceeding before a Board & seven days after the conclusion of such proceeding.

2. During the pendency of proceeding before the labour Court, Industrial Tribunal, or National Tribunal & two months after the conclusion of such proceeding.
3. During the pendency of arbitration proceedings before an arbitrator & two months after the conclusion of such proceeding.
4. During any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award.

These provisions enable the peaceful atmosphere for conducting conciliation, adjudication or arbitration proceeding.

**Q10. What is personal injury? Explain the liability for compensation under Workmen's Compensation Act 1923.**

**Answer:**

Personal injury ordinarily refers to the psychological injury. Personal injury does not mean only physical or bodily injury, it also includes nervous shock a mental injury or strain which causes a chill .It is a term broader than bodily injury. In the year 1961 Punjab HC defined personal injury.

**In Indian News Chronicle V/S Mrs. Lazarus**, a workman employed as an electrician had frequently to go to the heating room from a cooling plant, was attacked by pneumonia & died after a short illness of 5 days. The Punjab HC held that injury caused by an accident is not confined to physical injury & the injury in the instance case was due to his working & going from a heating room to a cooling plant as it was his indispensable duty .In case of personal injury caused to a workmen by an accident arising out of & in the course of employment unless the right to compensation is taken away u/sec 3(5) , the employer becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workmen .

Employers liability for compensation u/sec 3 of the act , to pay compensation is limited & is subject to the provision of the Act .u/sub sec(1) of sec 3 the liability of the employer to pay compensation is dependent upon the following conditions ;

- Personal injury must have caused to the workmen.
- Such injury must have been caused by an accident.
- Such accident must have arisen out of & in the course of employment &
- The injury must have resulted in death of the workmen or partial disablement for a period exceeding 3 days.

The employer shall not be liable to pay compensation in the following cases

- If the injury did not result in total or partial disablement of the workmen for a period exceeding 3 days.
- For a period not exceeding 3 days in respect of injury not resulting in death , or permanent total disablement the employer can plead ;

- a. That the workman was at the time of accident in the influence of drugs or drinks.
- b. The workmen wilfully disobeyed an order expressly given, or a rule expressly framed for the purpose of securing the safety of workmen &
- c. That the workmen having known that certain safety guards or safety devices are provided for the purpose of providing safety of workmen wilfully disregarded or removed the same.

The employer can succeed only if he is attributable to any one of the following factors. The employer is also liable to compensate in cases of occupational decease, u/sub sec (2) of sec 3 of the Act. The list of Occupational deceases is contained in the Sch III of the Act; the decease must be contracted due to employment, specified u/schIII. To support any claim for compensation in case of occupational deceases in part A no specified period of employment is necessary for deceases in part B, the employees must be in continuous service of the same employer for a period of 6 months. In the employment specified in that part & for the decrease in part C, the period of employment would be such as is specified by the central govt for each such employment whether in the service of one or more employers. The contracting of the deceases must & should be deemed to be injury by accidents arising out of & in the course of employment.

**Q11. “All workmen are employees but all employees are not workmen” explain with decided cases.**

**Answer:**

Section 2 (s) of Industrial Disputes Act 1947 defines a workmen means any person including an apprentice employed in any industry to do any manual skilled, unskilled, technical, operational, clerical, or supervisory work for hire or for reward, whether the terms of employment be expressed or implied and for the proceeding under this act, in relation to the industrial dispute which includes any such person who has been dismissed, discharged, or retrenched in connection with or in connection with or as a consequence of that dispute, or whose dismissal, discharged or retrenchment has led to that dispute.

Under the provision of the legislation certain persons are not included in workmen, persons belonging to the armed forces, persons employed in the police services & who is mainly appointed in managerial & administrative capacity or who is being appointed in the supervisory capacity.

The expression employed used in the definition is a relationship brought by the express or implied contract of service in which the employee renders service for which he is employed and the employer agrees to pay him cash or kind as

agreed upon or statutorily prescribed this act discloses an act of command & obedience .

The essential condition that a person is an employee or a workmen within the terms of the respective definitions is that he should be employed to do work in the industry & there should be an employment of his by the employer & that there should be a relationship between the employer & him .

**In Punjab National Bank V/S Gulam Dastagir**, in this case the respondent was the personal driver of the area manager of the appellant bank , the area manager was given personal allowances by the bank to enable him to employ a personal driver of his own vehicle . All the maintenance of the vehicle was maintained by the bank & there was no document to show that the driver was appointed by the bank, his salary was paid by the bank, & was included in the list of the employees of the bank it was held by the court that the driver was not employed by the bank & was not a workmen within the meaning of sec 2 (s) of the act.

**H.S .Chauhan V/S Life Insurance Corporation of India** a development officer was held to be a workmen he had to perform routine , manual, mechanical & clerical duties & was drawing wages exceeding Rs 500 /- He could neither appointed any person nor remove anybody he had no power to assign or distribute work to any employee .

An employee according to sec 2 (1) (dd) of Employees Compensation Act 1923 means a person who is , a railway servant as defined under the railway act , a master or a sea man or other member of the crew of a ship, a person recruited as a driver helper , mechanic , cleaner or in any other capacity in connection with the motor vehicle , a person recruited for work abroad by a company & is appointed outside India in any such capacity as is specified under schedule II of the act or employed in any such capacity as is specified in scheduled II in & whether the contract of employment was made before or after the passing of this act & whether this contract is expressed or implied oral or in writing but does not include any person working in the capacity of member of Army or Air force.

For the purpose of determination whether an employee is a workmen or not within the meaning of the law regard must be not to the designation but to the nature of the work & duties performed or allocated to the person concerned . If he was discharging supervisory duties it must be proved that there were at least some persons working under him, whose work he was required to supervise.

**Q12. 'Accidents arising out of & in the course of employment is deemed to have occurred in the course of employment'. Discuss with reference to decided cases.**

**Answer:**

The expression 'arising out of', suggest the cause of accident and the expression 'in the course of' points out to the place & circumstances under which the accident takes place & the time when it occurred. A casual connection or association b/w the injury by the accident arise out of & in the course of employment. The employment should have given rise to the circumstances of injury by accident. But a direct connection b/w the injury caused by an accident & the employment of the employee is not always essential. Arising out of employment does not mean that personal injury must have resulted from mere nature of employment; also it is not limited to the cases where the personal injury is preferable to the duties which the employee has to discharge. The word 'arising out of employment' means that during the course of employment, injury has resulted from some risk incidental to the duties of the service which unless engaged in the duty owing to the master it is reasonable to believe the employee would not have otherwise suffered. There must be casual relation b/w the accident & employment. If the accident had occurred on a/c of a risk which is an incident of the employment, the claim of compensation must succeed unless of course the employee has exposed himself to an added danger from his own side.

The employee must show that he was at the time of accident engaged in the employers business or in furthering that business, done by him was not of his own benefit. In the course of employment refers to the period of employment & the place of work. It is neither limited to the period of actual labour nor includes the acts necessitated by the employees employment. An injury received within the reasonable limits of time & space such as while satisfying thirst or bodily needs, taking food, or drinking is to be regarded as injury received in the course of employment.

**In Savithri Devi V/S Bharathi Filling Station & others**, the appellant's son worked as a driver with the respondent, the owner of the tanker & he died while on duty. Appellant filed petition for compensation but was denied by the respondent on the ground that there was no connection b/w the work death of the deceased. The commissioner dismissed the application for compensation. The HC held that the commissioner wrongfully concluded that there is no connection b/w the work & death of the deceased.

**In state of Rajasthan V/S Ram Prasad & others**, the employee died due to natural lightning while working at site place. It was held by the SC that in order that an employee may succeed in his claim for compensation it is no doubt true that the accident must have casual connection with the employment & arise out

of it but if the employee is injured as a result of natural force of lighting though it in itself is has no connection with the employment of the decease, the employer can still be held responsible & liable if the clamant shows that the employment exposed the deceased was working on the site & would not have been exposed to such hazard of lighting had she not be working so .Therefore the appellatant was held liable to pay compensation.

**In Trustees port of Bombay V/S Yamunabai,**

A bomb was placed in the premises of a workshop by some unknown person; it exploded & caused injury to the employee. it was held that the employee was not held responsible for placing of the bomb. & the injury due to its explosion was caused at the time & place at which he was employed, therefore the injury was the result of an accident arising out of & in the course of employment.

The rule is that if a particular accident would not have happened to an employee had he not been employed to work in a particular place & condition, it would be an accident arising out of & in the course of employment.

**Q13. Explain the provisions relating to adjudication of disputes & claims under the Employees State Insurance Act 1948.**

**Answer:**

The ESI claims & adjudication of disputes is dealt u/sec 74 ,75 ,76,77of the ESI Act 1948 the State govt establishes the ESI Courts u/sec 74 of the Act by the notification of the official gazette the presiding officer of the court is specified by the state govt , his qualification being 5 yrs .

The ESI court's jurisdiction as specified u/sec 75;

- Whether any person is an employee or is liable to pay employees contribution or
  - Rate of wages or average daily wages for the purpose of this act.
  - Or the rate of contribution payable by the principal employer in respect of any of the employee. or
  - The person who is or was the principal employer in respect of any employee , or
  - The directions issued by the corporation u/sec 55-A on the review of any payments of the dependents benefits or
  - Right of any person to any benefit & the amount & the duration of that benefit or
  - Any other matter which is in dispute b/w
    - a. A principal employer & the corporation or
    - b. A principal employer & the immediate employer or
    - c. A person & corporation or
    - d. An employee & a principal employer.
- The dispute b/w these parties may be in respect of,
- Any contribution, benefits or other dues payable or recoverable u/this act.

- Any other matter required being or which may be decided by the employees insurance court under this act.
- Subjected to the provisions of sub-sec (2-A) the following claims shall be decided by the employees insurance court;
- Any claims for the recovery of contributions from the principal employer ,
  - Any claims by a principal employer to recover contributions from any immediate employer ,
  - Any claim against the a principal employer u/sec 68 ,
  - Any claim u/sec 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto , &
  - Any claims for the recovery of the benefits admissible u/the act.

The proceedings of the ESI should be instituted at the ESI court appointed for the local area in which the insured person was working at the time the question or dispute arose. The state govt has power to transfer any proceedings suo moto or on the motion of the Employees Insurance Court from one court to another court. If the ESC court is satisfied that any matter pending for decision before it can be more conveniently decided by any other ESI court in the same state, it may transfer that matter for the disposal to the court. Where any matter is so transferred that transferring court shall be regulated by the rules made by the state govt .The govt may transfer any of the matters pending before any ESI courts to any such courts in other states with the consent of the govt of that state. Any court to which the matter is transferred either by the ESI court or by the State govt, shall deal with it in the same manner as if it has been originally instituted in it. Any proceeding before the ESI Court shall commence by an application. Such applications must be made within 3months from the date on which the cause of action arose .The claim has to be made to the ESI Court within 12 months after it becomes due .u/sec 77(1-A) of the Act .

**Q14. Define Factory u/sec 2(m) of Factories Act 1948, & explain the Health measure under the Factories Act 1948.**

**Answer:**

Factory means any premises including precincts thereof;

Where 10 or more workers are working, or were working, on any day of the preceding 12 months & in any part of which a manufacturing process is carried out

Or where 20 or more workmen are working or were working on any of the preceding 12 months & in part of which the manufacturing process is carried out without the aid of power is called as a factory.

**In state of Bombay V/S Ardesjri Harnosji Bhiwandiwala**, the question in this case was whether salt manufacturing is a factory, there was a salt quarry

extending over a large open space about 300 acres. The work was carried out in the open air, she was the only building. In the quarry more than 50 persons were employed for splitting the rock into slates & shaping them for sale.

It was held that the quarry was not a factory for if a place in which a manufacturing process is carried on in an open space, it cannot constitute a factory.

**Pragnarain V/S Crown**, in this case it was held that factory means premises wherein anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or is in a suitable condition to be put in the market. A place solely used for some purpose other than the manufacturing process carried on in a factory or a workshop does not constitute a factory.

**In re K.Chockalingam** the factory was manufacturing a cigars, 20 persons were employed in that concerns, out of the 20 workers one was the supervisor of the manufacturing process, & he was a graduate, the other one was an apprentice & the eighteen were employed not in the time wages system but in the piece work system. It was held that the concerns is a factory , & the persons employed in the manufacturing of cigars on piece work system were workers within the meaning of clause I of sec 2 & the fact that they were not paid time – wages does not take them out of the term of the workmen .

In another decided case of Allahabad HC,

**In Hatharas Municipality V/S Union of India**, in this case the municipal board Hathras was running a water works for the supply was for the supply of water for the town. It was held that, the pumping of water is a manufacturing process according to the definition given in the act. For premises to be held as a factory certain conditions must be fulfilled.

A manufacturing process must be carried out in any part of the premises of the establishment.

Where manufacturing process is carried on with the aid of power 10 or more workers are working in that establishment is carried on without the aid of power 20 or more workers must be working in the establishment.

But mere power is used in the establishment is not sufficient, but the power must be used in the manufacturing process.

### **Health measures:**

The health measures under the factories act are dealt u/sec 11-20;

**Cleanliness sec/11:** It lays down that every factory shall be kept clean free from effluvia arising from any drain, privy or other nuisance. The following precautions must be taken into consideration, that accumulation of dirt shall be removed daily, the floor or work place shall be cleansed at least once in every week with disinfectants, effective means of drainages should be provided, all doors windows frames & other wooden or metallic frame works & shutters shall be painted varnished at least once in period of 5 yrs.

**Sec 12, disposal of waste & effluents :** under this act effective arrangement has to be made in every factory for the disposal of waste & effluents due to manufacturing process.

**Sec 13 ventilation & temperature:** according to this section 13(1) effective & suitable provision should be made in every factory for securing & maintaining in every work room , adequate ventilation by circulation of fresh air & such temperature as well secured to the workers therein reasonable conditions of comfort & prevent injury to health .According to 13(2) empowers the state govt to prescribe a standard of adequate temperature & reasonable temperature for any factory or class of description of factories or part thereof .Sec 13(3) , the chief inspector that excessive temperature in any factory can be reduced by the adoption of suitable measures he may without prejudice to the rules made under sub sec(2) serve on the occupier an order in writing specifying the measures which in his opinion should be adopted .

**Sec 14 of this act deals with dust & fumes:** according to this provision every employer should adopt to keep work rooms free from the dust & fumes .According to sub-sec (2) in any factory no statutory combustion engine shall be operated unless the exhaust is conducted into the open air , & no other internal combustion engine shall be operated until the exhaust is conducted into the open air & no internal combustion engine shall be operated in any room unless effective measures have been taken to prevent the accumulation of fumes .

**Sec 15 , deals with the artificial humidification:** , sec 15 (1) lays down that in respect of all factories in which the humidity of the air is artificially increased the state govt may make rules , prescribing the rules for standards of humidification , regulating the methods used for artificial increasing the humidity of the air , directing prescribed tests for determining the test for humidification of the air to be correctly carried out and recorded , prescribing methods to be adopted for securing adequate ventilation & cooling of the air to work room .sec 15(2) lays down that in any factory in any factory in humidity of the air artificial increase the water used for the purpose shall be taken from a public supply or other source of drinking water or shall be effectively purified before it is so used .

**Sec16, relates to overcrowding:** according to sub-sec (1) no room in any factory shall be overcrowded to an extent injurious to health of the workers employed .Sec 16(2) lays down provision that every work room of a factory in existence on the date of commencement of this act the measurement or space for every worker employed should be maintained by the employer at every work place for every employee employed. Sec16(3) of the act has the power to specify the number of employees or workers prescribed to work in a room , sub sec (4) provides for the power of the inspectors to exempt such conditions for imposing for any provisions specified of health aspects under the act .

**Sec17, lighting facilities:** 17(1) provides for the maintenance of lighting facility, natural artificial or both .sec 17(2) specifies for the cleansing of the lightings of the factory or work rooms. 17(3) provides for every factory to

prevent glare either directly from the sources of light or reflection from the polished or smooth surface, also the formation of shadows to such an extent which may strain the eyes or risk of accident to any worker. Sec 17(4) provides the state govt to prescribe the standards of sufficient & suitable lighting for factories or any class of description of factories.

**Sec 18 provides for drinking facility :** in the factory sub sec (1) provides for drinking water facility in the factory , this provision provides for proper maintenance & effective arrangements of water supply in suitable points in the factories to be maintained .Further sub sec (2) provides that all the points to be properly marked & in the language best understood by the majority of the employees .sub sec (3) of the act provides for the cooling drinking water during hot weather , where they are more than 250 workmen working .

**Sec 19 , latrines & urinals :** in every factory sub sec (1) of this provision provides for the sufficient latrines & urinals accommodation of the prescribed type shall be provided , separate closed enclosures should be provided for the male & the female workers , such facility must be properly lighted & ventilated , these shall be maintained in a neat & hygienic conditions by cleaning periodically .sub sec (3) provides that the appropriate govt has the power to prescribe the number of urinals & latrines to be provided in the factory .

**Sec 20 provides for the provision of providing of spittoons:** in the factories in the consecutive places of work sub sec (1) of this provision provides for the sufficient nu of spittoons to be provided in convenient places ,they shall be maintained in a clean & in a hygienic condition .sub sec (2) provides the state to provide with they locations in the factory & to provide for such further matters relating to they maintenance .Sub sec (3) provides with the punishment to be granted for contravening of this provision by any of the persons so employed .

### **Q15. What is the time & mode of payment of wages? Who is responsible for payment of wages under the payment of wages act 1936?**

#### **Answer:**

wages means all remuneration whether by of salaries allowances or otherwise expressed in terms of money, which would if the terms expressed or implied were fulfilled, be payable to a person employed in respect of his employment or work done in such employment . sec 6 of the act deals with regards to payment of wages in current coins or in currency notes, but the payment of wages amendment act 1976 provides that the employer after obtaining the written authorization of the employed person, pay him the wages either by chequed or by crediting the wages in his bank account.

**In SRT Corporation V/S Industrial Court the MP,** high court held that anything agreed to be paid in kind in the circumstances contemplated by the definition of wages, is capable of being expressed in terms of money, but as

required u/sec 6, it has to be converted into money according to its value & then paid in coins or currency notes. If this course is adopted there would be no contravention of sec 6, & sec 23 of the Act would not apply unless the contract or agreement expressly forbids such conversion into cash.

The responsibility for payment of wages u/sec3, of the act every employer shall be responsible for payment of all wages required to be paid under this act to persons employed by him.

1. In factories if named as managers,
2. Person responsible to the employer for supervision & control of Industry & other estbnts.
3. In railways if a person is a railway administrator as employer
4. A contractor.
5. In other cases person designated by the employer as a person responsible for complying the provision of the act.

The persons so named the persons responsible to the employer, the person so nominated or persons so designated shall be responsible for such Payments.

**In Comnico Binani Zinc Ltd V/S Pappachan**, the appellant co was obliged to provide & maintain a canteen for its employees. The company entrusted the running of the canteen to the contractor. It was held that the responsibility to provide & maintain the canteen u/sec 46 of Factories Act cannot make the management the ultimate employer for the worker engaged in the canteen for all purpose. They are not workmen of the management .Hence the liability of the employer is restricted only to pay wages if the contractor fails to pay the same by the virtue of contract labour Act 1970.

According o sec 3, it is the responsibility of the employer to pay wages Cl(1)of the the act every employer shall be responsible for payment of all wages to the person employed by him .

In cases persons employed in factories it is the manager named by the employer In Industries & or other establishments, if there is a person responsible to the employer for the supervision & control of the industrial or other establishment.

In railways if a person is a railway administrator as employer

In case of contractor a person designated by the contractor who is directly in his control.

In other cases a person appointed by the employer.

The person so named or designated are the persons responsible for payment of wages.

The payment of wages should be in current coins or currency notes or both . under the amendment of the payment of wages act 1976 the employer can pay wages either by cheque or credit wages in the account of the employee . this was also held in **SP Corporation V/S Industrial Court**

The fixation of wages period u/sec 4, the person responsible for payment of wages u/sec3 shall fix wage periods in respect of which wages shall be payable such wage period shall not exceed one month.

Sec 5, time of payment of wages, if the number of persons employed upon in any railway, factory, industry, or other establishment is less than 1000 persons wages shall be paid before the expiry of seventh day after the last day of wage period.

The wages of every person employed in railways, factory, or industry or any other establishment shall be paid before the expiry of tenth day of the last day of wage period in respect of which the wage is paid.

Provided that in the case of persons employed in dock, wharf or jetty or in mines, the balance of wages founded due to completion of the final tonnage, loading unloading of ships & wagons, such shall be paid with wages before the expiry of seventh day of such completion.

In case of termination of services of an employee the wages earned by him shall be paid before the expiry of second working day from the day on which the employment is terminated. In case of termination of services due to closure of estbnt the wages should be paid before the expiry of second day from the day on which his employment is terminated.

All payments shall be paid on the working days.

Sec5 (3) exemptions by the state govt, conditionally with the consent of the central govt.

**Q16. What is Lay-off? Explain the circumstances in which the laid-off workmen are not entitled lay-off compensation.**

Lay-off means putting aside workmen temporarily .the duration of Lay-off should not be for a period longer than the period of emergency. The employer & employee relationship does not come to an end but is merely suspended during the period of emergency.

The Bombay HC in the year 1959 **in Central India Spinning , Weaving & Manufacturing Co. Ltd Nagpur V/S State Industrial Court** , in this case the Bombay HC held that the key to the definition is to be found in the words “the failure , refusal or inability to of the employer”. These words make it clear that the unemployment has to be on the account of the cause which is independent of any action or inaction on the part of the workers themselves.

Sec 2(kkk), defines a Lay-Off, it means an employer who is willing to employ, fails or refuses or is unable to provide employment for reasons beyond his control, any such refusal, or failure to employ a workmen may be on the account of, shortage of coal, power or raw materials or the accumulation of

stock, or the breakdown of machinery or natural calamity or any other connected reasons. A workman who is so deprived must be of such whose name is borne on the master rolls of his industrial establishment, & the workman must not have been retrenched. The common feature of all these reasons is that the workman is laid-off for reasons beyond the control of the employer.

E.g. , If a workman instead of being given employment at the commencement of any shift for any day he is asked to present himself for the purpose for the second half of the shift of the day & is given employment then he shall be termed to be laid-off only for one half of that day further if he has not been given any employment even after so presenting himself he should have been deemed to have been laid-off for the second half of the shift for the day , such an employee should be entitled for full basic wages & dearness allowances for that part of the day. Lay-Off compensation is laid down u/sec 25-C according to this sec two provisions must be fulfilled they are; the workman must have been laid – off for the reasons contemplated by sec 2(kkk) of the Act & requirements as provided u/sec 25-C must be fulfilled.

The workman is not entitled for compensation in certain cases for Lay-off u/sec 25-E of the Act;

- d. If he refuses to accept alternative employment , provided such alternative employment is provided to the worker , in the same establishment , or in any other establishment belonging to the same employer situated in the same town or village or situate within the radius of 5 miles from the establishment to which he belongs & if in the opinion of the employer , the alternative employment does not call for any special skill or previous experience & can be done by the Laid-off workman & if the wages which would normally have been paid to the workman in his previous employment are offered for the alternative employment also .
- e. If he does not present himself to work at the establishment at the appointed time normal working hours at least once a day.
- f. If the Lay-Off is due to strike or slowing down of production on the part of the workman in another part of the same establishment.

**Q17. Explain the different Authorities under the Industrial Disputes Act 1947.**

**AUTHORITIES UNDER THE LEGISLATION**

The authorities under this legislation can be categorized into various types ,  
Workers committee sec 3  
Conciliation officers sec 4  
Board of conciliation sec 5  
Court of inquiry sec 6  
Labour court sec 7  
Industrial Tribunal sec 7A  
National tribunal sec 7B

## **WORKERS COMMITTEE**

Sec 3 of the Act provides for constitution of the workers committee in case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the proceeding twelve months. The appropriate govt may by general or special order require the employer to constitute a works committee.

Constitution of works committee, the committee shall consist of representatives of employers & workmen engaged in the establishment. The number of representatives of workmen should not be less than the number of representatives of the employer. The representatives of the employer should be chosen in the prescribed manner from among the workmen engaged in the establishment & in consultation with the trade union.

### **Duties of the workers committee:**

1. To promote measures for securing & preserving amity & good relation b/w the employers & the workmen.
2. To comment matters of they common interest.
3. To endivour to compose any material difference of opinion in respect of such matters.

**In North Brook Company V/Their Workmen (1960)**, the company proposes to introduce rationalizing scheme. The Union did not agree with the scheme. On the basis of the acceptance of works committee the company gave notice under sec 9-A of the Act of changes in the service condition. The Industrial Tribunal held that the company implementing the rationalization scheme in reliance on the decision of the workers committee while a dispute was pending it was in contravention of sec 22 of the Act. Hence Lock-Out declared by the company was illegal.

Further the court held that the duties & functions of the workers committee do not include the decision on such an important matters as the alterations in the conditions of service by rationalization.

The fact that the representatives of the workmen in the works committee agree to the introduction of rationalization scheme is in no way binding on the workmen or their union.

**CONCILIATION OFFICER:** section 4 empowers the appropriate govt to appoint such number of persons as it thinks fit to be conciliation officers. The duty of the conciliation officer shall be to mediate in & promote the settlement of industrial dispute. A conciliation officer may be appointed for one a specified area or for one or more specified industries & either permanently or for a limited period.

The presiding officer shall be deemed to be a public servant within the meaning of sec 21 of IPC.

Powers of conciliation officer sec 11:

1. A conciliation officer may for the purpose of inquiry enter into the premises of the establishment to which the dispute relates.
2. He may enforce attendance of a purpose for examination of such persons or call for inspections.

Duties of the conciliation officer sec 12:

1. Where industrial dispute exists or is apprehended the conciliation officer may or where the dispute relates to a public utility service & a notice under sec 22 has to be given, shall hold conciliation.
2. The conciliation officer for the purpose of bringing about a settlement of the dispute. Investigate the dispute & all matters affecting merits & the right for settlement of dispute. He may do such other acts as he thinks fit for the purpose of inducing the parties to come to a fair & amicable settlement of the dispute. But he has no authority to make a final decision.
3. If a settlement of the dispute is arrived at in the course of the conciliation proceedings he shall send the report to the appropriate govt or an officer authorized in his behalf by the appropriate govt . He shall also send a memorandum of the settlement signed by the parties to the dispute to the appropriate govt.
4. If no such settlement is arrived at he shall send to the appropriate govt a full report setting forth the steps taken by him for assessing the facts & circumstances relating to the dispute & for bringing about the settlement of the dispute. It shall be submitted within 14 days of the commencement of conciliation proceeding.

**Board of Conciliation sec 5:**

Sec 5 of the Act empowers the appropriate Govt to constitute a Board of Conciliation to promote settlement of Industrial dispute. The board consists of a chairman & two or four other members as the appropriate govt may think fit.

Chairman shall be an independent person. Other members may be persons appointed in equal numbers to represent the parties to the dispute & any person appointed to represent a party shall be appointed on the recommendation of the party (one or two representatives in equal representation). If any party fails to make recommendation Within the prescribed time the appropriate govt is

vested with the power to appoint such person as it thinks fit to represent that party.

Quorum : three or five members including chairman quorum is complete, in case of inavailability of chairman or any member, the board shall not act until they have been appointed.

Duties: sec 13

To bring settlement to industrial dispute, to investigate, do all acts as it thinks fit for the purpose to bring fair & amicable settlement of the dispute.

If settlement is arrived in the course of conciliation proceeding, the board shall send a report to the appropriate govt with memorandum of settlement signed by the parties to the dispute. If settlement is not arrived, then full statement of memorandum reasons & recommendations for settlement not to be settled.

If on the receipt of report in respect of a dispute relating to public utility services, the appropriate govt does not make reference to the Labour Court, industrial tribunal or national tribunal u/sec10 of the act, it shall record & communicate to the parties concerned & its reasons for the same.

The board shall submit its report under this section within 2 months of the date on which the dispute was referred. Or if not submitted within time the time for the submission of the report within two months of the date, as fixed by the appropriate govt.

Powers: sec 11

Conducting inquiry into any existing or apprehended Industrial Dispute.

To enter into premises after giving reasonable notices.

It shall have the same powers as vested in a civil court.

Enforce attendance, of any person & examining him on oath.

Compelling attendance of any person & examining him on oath & material objects.

The Board, like conciliation officer has the power to grant or withhold approval or permission u/sec33 to the action of the employer during the pendency of the conciliation proceeding.

All questions arising for decision before the board shall be decided by the majority of the vote of members including the chairman present at the Meeting.

Rights of the representatives, to represent, examination, cross examination, of addressing the board when evidence has been called.

### **COURT OF INQUIRY sec 6:**

Sec/6 court of inquiry, the appropriate govt constitutes a court of inquiry, for inquiring any matter appearing to be connected with or relevant to Industrial disputes. The court of inquiry may constitute of, one independent person, who may be appointed by the appropriate govt, & when the court of inquiry

consists of two or more members one of them shall be appointed as a chairman.

### **Powers of the court of inquiry Sec 11:**

Power to enter the premises after giving reasonable notification.

Every court of inquiry shall have the same powers as are vested on a Civil Court under the code of CPC, when trying the suit in the respect of the following matters.

Enforcing the attendance of any person & examining him on oath.

Compelling the production of documents & material objects.

Issuing commissions on examination of witness &

Such other matters prescribed.

### **Duties:**

A court of inquiry is entitled to enquire into the matters referred to it & report to the appropriate govt within 6 months from the commencement of its inquiry. The report shall be in writing & shall be signed by all the members of the court.

Such reports may be published within the period of 30 days from the date of its receipt by the appropriate govt in such manner as it thinks fit.

A court of inquiry may if so think fit; appoint one or more persons having special knowledge of matter under consideration as assessor or assessors to advise it in the proceeding before it. During the pendency of proceeding before the court of inquiry, there is no bar for the strikers or employers to declare a lock out. Or inflict punishment on the workers. This makes a difference from the other kind of settlement machineries. The court of inquiry is only to give a report to the govt. This cannot be said to be settlement machinery in a proper sense.

(Punishment for Interruption to any public servant sitting at any stage of judicial proceeding)

All members of the court shall be deemed to be public servant u/sec21 IPC.

It may inquire into the matters referred to it & report thereon to the appropriate govt within the period of 6 months from the commencement of inquiry.

### **LABOUR COURTS SEC 7:**

Sec 7 of the act deals with labour courts, The act empowers the appropriate govt to constitute one or more Labour Courts for adjudication of Industrial Disputes relating to any matters specified in the second schedule. Labour must consists of one person as per the appointment of the appropriate govt .

### **QUALIFICATION OF THE PRESIDING OFFICERS**

He has been the judge of the HC or

He for not less than 3yrs has been a dist court judge or additional dist court judge.

He has held office of judiciary in India for not less than 7 yrs .

He has been the presiding officer of a labour court constituted under any provisional Act not less than 5 yrs.

### **DISQUALIFICATION OF THE PRESIDING OFFICERS**

No person shall be appointed to, or continued in the office of the presiding officer of a Labour Court if,

He is not an independent person.

That he has attained the age of 65 yrs.

### **POWERS OF THE LABOUR COURT (SEC 11)**

The presiding officer of the labour court , may for the purpose of inquiry in any existing or apprehended industrial dispute, after giving reasonable notice enter the premises occupied the establishment to which the dispute relates .

Every labour court has the same powers as that of the civil court under CPC.

The labour court has the power to appoint one or more person having special knowledge to advice it in proceeding before it.

### **DUTIES**

When an Industrial dispute has been referred to a labour court for adjudication, it shall hold its proceeding expeditiously & shall within the period specified

### **INDUSTRIAL TRIBUNAL SEC 7A:**

Sec 7A of the Act empowers the appropriate govt to constitute one or more Industrial Tribunals for the adjudication of Industrial dispute relating to any matter whether specified in the second or the third schedule.

By the virtue of sec 79A (2) an Industrial Tribunal shall consists of one person only to be appointed by the appropriate govt. by virtue of sec 7A(4) the appropriate govt may appoint two persons as an assessors to advise the tribunal in the proceedings before it.

Qualification, of the presiding officers by the virtue of sec 7A(3) a person shall not be qualified to be appointed as the presiding officer of the Tribunal, unless

1. He is or has been a judge of a HC or
2. He has for a period of not less than 3yrs been a district judge or an additional dist judge.

### **Powers of the Industrial Tribunal:**

The proceeding officer of an Industrial Tribunal may for the purpose of enquiry into an existing or apprehended Industrial Dispute after giving a reasonable notice enter the premises occupied by the establishment to which the dispute relates.

Every Industrial Tribunal shall have the same powers as are vested in the civil court under the code of CPC , while trying suit in respect of the following matters namely;

1. Enforcing the attendance of any person & examining him on oath .
2. Compelling the production of documents & material objects.
3. Issuing commission for the examination of witnesses &
4. In respect of such other matters as may be prescribed.

Industrial Tribunal may if it so thinks fit appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

### **NATIONAL TRIBUNAL**

Section 7B, of the Act empowers the central Govt to constitute one or more national tribunal for the adjudication of Industrial Dispute which in the opinion of the central govt involve the question of National Importance or are of such a nature that industrial establishment situated in more than one state are likely to be affected by such dispte. National tribunal shall constitute of one person only to be appointed by the central govt as a presiding officer.

Qualification of the presiding officer of a National Tribunal, unless he is or has been a judge of the HC he cannot be appointed as the presiding officer.

The central govt may if it so thinks fit appoint 2 persons as assessors to advise the National Tribunal in the proceeding before it.

### **Disqualification**

No person shall be appointed to continue in the office of the presiding officer of National Tribunal if,

1. He is not an independent person, or
2. He has attained the age of sixty five years.

Powers of the National Tribunal:

The presiding officer of a National Tribunal may for the purpose of enquiry into an existing or apprehended industrial dispute after giving reasonable notice either the premises occupied by the establishment to which the dispute relates. Every National Tribunal shall have the same powers as are vested in the CPC under the code of civil procedure 1908 while trying a suit in the following matters.

### **Q18 explain the provisions relating to references of Industrial disputes by the appropriate govt.**

DISCRETIONARY REFERENCES, sec 10 of the Act provides that the appropriate govt is of the opinion that any industrial dispute exists or is apprehended; it may by order in writing,

- a. Refer the dispute to the Board of Conciliation for promoting a settlement of dispute or

- b. Refer any matter connected with or relevant to a dispute to a court of Inquiry or
- c. Refer the dispute or any matter connected with or relevant to the dispute to Industrial Tribunal for adjudication. . if it relates to matters connected to the 3rd & 4th schedule.

Sec 10 is conferred to the govt & this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended.

COMPULSORY REFERENCES, when the dispute relates to public utility services & a notice u/sec 22 for strike or lock-out has been given , the appropriate govt may make a reference.

1. If the appropriate govt feel that the notice has been frivolously given it may not make references.

Government cannot be compelled to make references:

Making references is an administrative act u/sec 10(1) of the act & neither it is not judicial nor it is Quazi Judicial.

If the appropriate govt decides that no reference is necessary than the govt cannot be compelled to make references by issuing any writ against it.

A settled dispute cannot again be referred, **in Management of Bangalore Wollen Cotton & Silk Mills co V/S workmen**; it was observed that the dispute is once settled by an adjudicatory authority it cannot be revised again & referred during the pendency of previous award.

**Q19 Explain the Restriction to change of conditions of service, dismissal or other punishment during the pendency of proceedings before authorities under the act,**

sec 33 of the act prescribes the restriction as to the change of condition of services during the pendency of proceedings before the conciliation officer or a board or conciliation officer or a board of any proceeding before an arbitrator or a Labour Court or Industrial Tribunal or National Tribunal. By the virtue of sec 33(1)(a), of the Act during the pendency of any type of authority of the act in respect of an Industrial dispute , an employer shall not in regard to the matter connected with the dispute , alter to the prejudice of the workmen concerned in such dispute the conditions of services applicable to them immediately before the commencement of such proceeding.

By virtue of sec 33(1)(b), of the Act , the employer shall not discharge or punish whether by dismissal or otherwise any workmen concerned in such dispute for any misconduct connected with the dispute without express permission in writing of the authority before which the proceeding is pending. By virtue of sec 33(2)(a), of the Act during the pendency of any such proceeding in respect of an Industrial dispute, the employer may alter in regards to any matter not conconnected with the dispute , the condition of

service applicable to that workmen immediately before the commencement of such proceeding . However by virtue of sec 33(3)(a) of the Act the employer has to obtain written permission of the authority before which the proceeding is pending.

By virtue of sec 33(2)(b) of the Act during the pendency of such proceeding of an industrial dispute the employer may discharge or punish, whether by dismissal or otherwise a workmen for any misconduct not connected with the dispute . However by the virtue of sec 33(3)(b) of the Act the employer should have to obtain written permission on the authority before which th proceeding is pending.

**In Muslim Painting & Publishing co Ltd V/S Secretary to the Govt**, it was held that the authority has to consider the genuiness & adequacy of the reasons stated by the employer, the interest of the workmen & all other relevant factors in writing while granting or refusing the permission for dismissal of a workman under sec 33 of the Act.

Remedy in case of violation of sec 33, in case of contraventions of this section during the pendency of proceedings before the arbitrators, a Labour court, Tribunal or National Tribunal & shall adjudicate upon the complaint as if it were a dispute referred to or in pending before it , in accordance with the provisions of this act shall apply accordingly.

## **Q20 Explain the provisions regarding to notices of change in condition of services.**

Section 9-A provides for notice of change in condition of services.

By virtue of this provision no employer who processes to effect any change in the condition of service applicable to any workmen in respect of any matter specified in fourth schedule.

This section provides for two conditions to be fulfilled before the employer can affect any change,the conditions being,

1. Without giving to the workmen likely to be affected by such change proposed to be effected or
2. Within 21 days of giving such notice

The condition of services for change of which notice is to be given as enumerated in the IV schedule.

## **In Tamil Nadu Electricity Workers Federation V/S Madras Electricity Board.**

In this case it was held that the object of this section is to prevent a unilateral action on the part of the employer changing the conditions of service to the prejudice of the workmen.

In regard to this provision no notice is to be given in the following case.

1. Where the change is effected in pursuance of any change settlement or award.

2. Where the workmen likely to be effected by the change are the persons to whom the following rules, regulations, or code , as the case may be apply.
- Where fundamental rules & supplementary rules apply.
  - Civil services rules
  - Civil services (temporary services) rules
  - Revised leave rules
  - Civil services regulations
  - Civilians in defence services rules
  - The Indian Railway Establishment Code
  - Any other rules or regulations in this behalf by any appropriate Govt in the official Gazette.

The object of this section 9-A, is to afford an opportunity to the workmen to consider the effect of a proposed change & if necessary to present their view on the proposal. In case of change in date by the request of majority of workmen even if it is assumed that it is change in condition of services this provision is not contravened.

Fixing Sunday as weekly rest day, is a usage practiced changing it to some other day of rest would fall under the fourth schedule. Hence for changing it for some other day without notification would be ineffective.

When a workman is retrenched it cannot be said that change in his condition of services are set out in fourth schedule & no item in that schedule would cover the case of retrenchment. Where adjudication has not previously taken place & terms & conditions of services have not been fixed by award the right of the employer to alter the terms & conditions of services may be exercised in accordance with the provision of sec 9-A & 33(1)(a). Where conditions of services are once settled by an award they cannot be altered by contract , settlement or award made under the reference under the act.

**Q21. What is personal injury? Explain the labiality for compensation under Workmen’s Compensation Act 1923.**

Personal injury ordinarily refers to the psychological injury. Personal injury does not mean only physical or bodily injury, it also includes nervous shock a mental injury or strain which causes a chill .It is a term broader than bodily injury. In the year 1961 Punjab HC defined personal injury.

**In Indian News Chronicle V/S Mrs. Lazarus**, a workman employed as an electrician had frequently to go to the heating room from a cooling plant, was attacked by pneumonia & died after a short illness of 5 days. The Punjab HC held that injury caused by an accident is not confined to physical injury & the injury

in the instance case was due to his working & going from a heating room to a cooling plant as it was his indispensable duty .In case of personal injury caused to a workmen by an accident arising out of & in the course of employment unless the right to compensation is taken away u/sec 3(5) , the employer becomes liable to pay the compensation as soon as the aforesaid personal injury is caused to the workmen .

Employers liability for compensation u/sec 3 of the act , to pay compensation is limited & is subject to the provision of the Act .u/sub sec(1) of sec 3 the liability of the employer to pay compensation is dependent upon the following conditions ;

- Personal injury must have caused to the workmen.
- Such injury must have been caused by an accident.
- Such accident must have arisen out of & in the course of employment &
- The injury must have resulted in death of the workmen or partial disablement for a period exceeding 3 days.

The employer shall not be liable to pay compensation in the following cases

- If the injury did not result in total or partial disablement of the workmen for a period exceeding 3 days.
  - For a period not exceeding 3 days in respect of injury not resulting in death , or permanent total disablement the employer can plead ;
- d. That the workman was at the time of accident in the influence of drugs or drinks.
  - e. The workmen wilfully disobeyed an order expressively given , or a rule expressively framed for the purpose of securing the safety of workmen &
  - f. That the workmen having known that certain safety guards or safety devices are provided for the purpose of providing safety of workmen wilfully disregarded or removed the same.

The employer can succeed only if he is attributable to any one of the following factors. The employer is also liable to compensate in cases of occupational decease, u/sub sec (2) of sec 3 of the Act. The list of Occupational deceases is contained in the Sch III of the Act; the decease must be contracted due to employment, specified u/schIII. To support any claim for compensation in case of occupational deceases in part A no specified period of employment is necessary for deceases in part B, the employees must be in continuous service of the same employer for

a period of 6 months. In the employment specified in that part & for the decrease in part C , the period of employment would be such as is specified by the central govt for each such employment whether in the service of one or more employers . The contracting of the deceases must & should be deemed to be injury by accidents arising out of & in the course of employment.

**Q22. Explain the provision relating to recovery of money due from the employer under the ID Act 1947.**

**Answer:**

section 33-C of the ID Act 1948 deals with the provision relating to recovery of money due from the employer .sub sec (1) of the provision deals with the procedure of recovery, the application may be made to the appropriate govt & if the govt is satisfied that the claim is genuine, it shall issue a certificate for that amount to the collector. The collector shall recover the amount as shown in the recovery certificate as an arrier of land revenue. The application of money due may be made to the appropriate govt by the workmen or any other person authorized to him in writing, or in case of the death of the workmen by his assignee or heirs. Every such application shall be made within one year from the date on which the money falls due to the workmen form his employer. The applications can be entertain able after the expiry of the said period of one year if the appropriate govt finds satisfied that the applicant had sufficient reasons for not making the application within the prescribed time. section 33-C (2) sub sec deals with the jurisdiction of labour laws, which is subject to the fulfillment of the following two requisites; a) a workmen must be entitled to receive from the employer any money and b) a question should have arisen about the amount of money due, or as to the amount at which such benefit should be computed. These questions may be decided by the labour court as may be specified by the appropriate govt within the period not exceeding 3 months , provided that where the presiding officer of the labour court considers it necessary or expedient so to do , he may for reasons to be recorded in writing , extend such period by such period as he may think fit .Hence the labour court has got the jurisdiction to decide not only the right of the workmen , to receive from the employer any money or benefit capable of being computed in terms of money but also the exact amount of it . However the provisions of this sub-sec are subject to any rules made under the act .This sub-sec should be construed so as to take within its fold a workmen who was employed during the period in respect of which he claims relief , even though he is no longer employed at the time of the application , it means that all persons whose claim, required compensation under this sub-sec ,is in respect of an existing right arising from his relationship

as an industrial workmen with his employer .this concept was delth by various courts of the land ,

**In Management of English Electronic Co. Of India V/S Manohar Rao & others.** In this case the Supreme Court of India held that the just reading of the provisions of Sections 33 & 33-A of Industrial Disputes Act 1947 makes it very clear that it is only during the pendency of any proceeding in respect of the Industrial Dispute that the provisions of sec 33-A would be attracted & not otherwise . That the Labour Court lost the sight of the aspect that there were no Industrial Disputes but only a claim petition under sec 33-C(2) of the Act was pending . & they were hence no illegal termination of services. Therefore the order passed by the Labour Court was set aside.

**In M/s R.L Kalithaya & Co V/S State of Gujarat.** In this case the Gujarat HC held that the recovery applications under sec 33-C (2) for dues under the Minimum Wages Act are maintainable. Even though Minimum Wages Act has a separate machinery for settlement, but for any expressed or implied jurisdiction of the Labour Court under sec 33-C (2) of the Act , application for recovery of dues under the act are maintainable under sec33-C(2) of the Act .Hence all matters relating to recovery of money due under Minimum Wages Act application is maintainable under the provision of sec33-C(2).

Sec33-C (3) The labour court while acting under this provision may if it thinks fit appoint a commissioner for the purpose of computing the money value of benefit ,Sec 33-C(4) the labour court shall forward the decision regarding the money due or the amount at which the money should be computed to the appropriate govt and any amount due from the labour court may be recovered in the manner provided in sub sec (1) as the arrears of land revenue . The sub sec (5) of this provision enables the workmen to receive from the employer any money or any benefit capable of being computed in terms of money.

**Q23. What is retrenchment? Explain the provisions relating to regulation of retrenchment?**

#### Retrenchment

Sec (2) (oo)- Where the employer is not able to keep his establishment running continuously for a long period of time, he may retrench his employees. The retrenchment generally should be based on the principals of last come first go unless there's a valid reason for the departure. Retrenchment means -

- i) Termination of service of workman or workmen by the employer.
- ii) Termination may be for any reason whatsoever
- iii) It is necessary that in order to be retrenchment, the termination should not be by way of disciplinary action or punishment.

Retrenchment will not include-

- a) voluntary retirement of the workman or;
- b) retirement of the workmen on reaching the age superannuation.

(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment and the workmen concerned on its expiry.

- c) Termination of the service of workman on the ground of continued ill-health. In

L. Krishna and others v. The Divisional Personal Officer, Southern Rly and another, the Court has held that the termination of services by an employer under Standing Orders or under service conditions governing employees is retrenchment within the meaning of the Act and requires compliance with Sec 25-F.

Pre-conditions of Retrenchment- There are certain conditions precedent which are prescribed to be followed or complied with by the employer before he can retrench the employee. These conditions are contained in Sec 25 F of the industrial dispute Act. According to the provisions of this section no workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:

- a) The workman has been given one month notice in writing indicating the reasons and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the notice period.
- b) The workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part, thereof in excess of 6 months, and
- c) Notice in the prescribed manner is served on the appropriate government or such authority as may be specified by the appropriate government by notification in the Official Gazette.

## **Q24. What are the benefits available under the ESI Act?**

### Benefits Under the Act-

Introduction- the ESI Act which is primarily focused to introduce certain welfare measures and provides the following benefits to the insured persons-

- i. Sickness Benefit- Sickness benefit is payable to an insured person in the form of periodical payment. The sickness is to be certified by a duly appointed medical practitioner or any other person authorized by the Corporation. To avail of the sickness benefit the sickness should have occurred during any benefit period as defined in the Act and if during the corresponding contribution period weekly contribution in respect of him were payable for not less than 13 weeks. For entitlement of sickness benefit the conditions are –
  - i) The person must be under medical treatment at the dispensary hospital or institution provided under

- the Act and must carry out the instructions given by the medical officer;
  - ii) While under treatment he must not do anything, which might reduce his chances of recovering;
  - iii) He should not leave the area, in which medical treatment provided under the Act is being given, without the permission of the medical officer or such other authority;
  - iv) He must allow himself to be examined by any duly appointed officer authorized by the Corporation.
- ii. Maternity Benefit- This is in the form of periodical payment made available to insured woman in cases of confinement, miscarriage, sickness arising out of pregnancy of premature birth of a child. She becomes eligible for such benefits after having to be eligible for such payment by the insurance medical officer attached to the dispensary or institution.

Extent of Benefit- She is entitled to maternity benefit at the daily rate specified in the First Schedule for all days of which she does not work during a period of 12 weeks out of which not more than six weeks shall precede the expected day of confinement. If the woman dies during her confinement or during the period of six weeks immediately following her confinement leaving a new-born child, the maternity benefits are payable benefits for the whole of the period. If the child also dies during the above period, then the benefit is payable to the person nominated by the woman and if there is no such nominee to the legal representatives.

- i) Disablement Benefit- The Act provides for disablement benefit to insured persons suffering from disablement due to employment injury sustained to an employee in a factory or establishment to which the Act applies. Employment injury means personal injury to an employee caused by accident or occupational disease arising out of and in the course of employment, which is an insurable employment whether the accident occurs, or the occupational disease is contracted within or outside the territorial limits of India. The disablement benefit is payable to an insured person as follows:
  - a) For temporary disablement at full rate if the disablement continues for not less three days excluding the day of accident;
  - b) For permanent total disablement at full rate; and
  - c) For permanent partial disablement resulting from an employment injury at a percentage of the full rate as provided in Section 4 of the Workmen's

Compensation Act.

Presumption as to accident arising in the course of employment- Sections 51-A, 51- B, 51-C and 51-D deal with certain presumptions regarding accidents which arise in the course of employment. In the absence of contrary evidence, it is presumed that the accident arose in the course of one's employment. Occupational Disease- Section 52- A deals with occupational disease. This should be read with Schedule 3 of the Act which gives a list of occupational diseases with the corresponding employment.

Conditions to receive disablement benefit- The role of medical board-

Anyone who claims disablement benefit has to submit himself for medical examination before the medical authority who will determine the nature of the employment injury, treatment thereof, etc. The decisions of the medical board on a disablement question referred to it is final and conclusive between the parties subject to the appeal to the Tribunal under Section 54-A (2).

Appeal against the medical board's decision- If the insured person or Corporation is not satisfied with the decision of the medical board, an appeal can be filed to the Appellate Tribunal within three months from the of communication of the medical board's decision.

IV Medical benefit- Medical benefit is available to an insured person and to his family members. The benefit is made after medical treatment or assistance in the case of injury, etc. In the form of outpatient treatment, by visiting the home of the insured person and also by treatment as in-patient in hospital or other institution. A person is entitled to medical benefit during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness or maternity benefit or in respect of such disablement which does not disentitle him to medical benefits under the rules.

V Dependents benefit- On death of an insured person due to employment injury, his dependents are entitled to certain benefits. Dependents are specified in Section 2(6A). In the absence of any such

Dependents at the time of the death of the insured person, the dependent's benefit is payable to other dependents of the deceased as stated in the first Schedule. The amount payable as dependents benefit is the same as that of disablement benefit. Under Section 55-A, the Corporation may review any decision regarding dependent's benefit if it is satisfied that its previous decision was not correct due to

non-disclosure of a material fact that effected the decision. On review, Corporation may continue, increase, reduce or discontinue the benefit.

VI. Funeral Benefit- Under Section 46(i)(f), the eldest surviving member of the family of an insured person who has died is entitled to receive certain amount towards the funeral expenditure of the deceased insured or if the insured person has no such family or was not living with his family at the time of his death, the amount towards funeral expenditure is payable to the person who actually incurred the expenditure for such funeral. The claim must be put in within three months from the date of the death of the insured person if not otherwise extended by the Corporation or concerned authority.

These are the various benefits which are available to the employee under the Employees State Insurance Act and which he and his relatives can avail.

**Write Short notes on any 2 of the following:**

**1. Industrial Disputes.**

Sec 2 (k) of Industrial Disputes Act 1947 defines Industrial disputes, it means a dispute or a difference b/w

- a. Employers & employees.
- b. Employees & employees.
- c. Workmen & workmen & such difference should be connected with employment or non-employment, terms of employment conditions of labour of any person & the dispute may be further in relation to any workmen or workmen or any other person in whom they are interested as a body. The term “of any person “ appearing in the last line of sec 2(k) means that the person may not be a workmen but he may be someone in whose employment terms of employment or conditions of labour the workmen as a class have a true & substantial interest . An industrial dispute is not restricted to dispute b/w employer & the union. It also means a difference b/w employer & workmen including a minority union. The definition of Industrial Disputes does not refer to industry but to refer to a dispute which has arisen in an industry. Before an industrial dispute is raised there must be first established a relationship of employer & employee associating together, the former following a trade or a business & the latter following any calling of the services or the employment etc .It is not necessary that it should be profit motive but also the enterprise must be analogous to trade & business in a commercial sense. For a dispute to be an industrial dispute it is necessary that a demand must be first raised on the management & rejected by them. Making of such demand to conciliation officer its communication by him to management who rejects the same is not sufficient to constitute industrial disputes.

**In workmen of Hindustan Liver Ltd V/S Hindustan Liver Ltd , In this case**

the question was that whether to confirm employees in an acting capacity in grade in a grade is an industrial dispute . It was held that a demand of the workmen to confirm employees employed in an acting capacity in a grade would unquestionably be an industrial dispute without anything more.

**In Sarava Sharamik Sangh V/S India Hume Pipe Company Ltd**, it was held in this case that the Industrial Dispute Act 1047 does not limit the power of the Industrial Tribunals to grant relief only from the date of rising of Industrial Dispute. The definition of Industrial Dispute in sec 2(k) of the Act does not contain any such limitation. The tribunal has the power to grant relief from the date anterior to the date of rising Industrial Dispute.

**In Tirupattur co-operative Sugar Mills Ltd V/S Shivalingam**, the trail court restrained the sugar mills by temporary injunction from implementing the proposed penalty of reduction in rank against the present respondent. The co-operative Sugar Mills Ltd challenged the said order in the HC. It was held that the lower court has thoroughly gone through into the evidence on the record & allowed the application for temporary injunction. The HC said that there was no irregularity or infirmity in the impugned injunction order. It was made clear that matter of dispute b/w the employer & the workmen other than the discharge, dismissal, retrenchment or termination of services are not Industrial disputes u/sec 2(k) of the act.

## **2.Benefits under ESI act 1948 :**

The ESI Act which is primarily focused to introduce certain welfare measures. Some of the following benefits to the insured persons as per the act are,

1. Sickness benefit by way of periodical payment during the period of certified sickness.
  2. Maternity benefit in way of periodical payment in case of confinement.
  3. Temporary disability benefit, during the certified period of disablement due to employment injury.
  4. Dependents benefit paid periodically to dependents of an insured person who dies as a result of sickness.
  5. Funeral benefits.
1. Sickness benefit: the benefit payable to the insured person in the form of periodical payment, this sickness has to be certified by the duly appointed certified practioner or any other person authorised by the corporation. To claim this benefit the sickness should have occurred during any benefit period as specified under the act. This benefit is not payable for more than 56 days in any two consecutive periods. The daily rate at which the benefit is payable to a person for the period of sickness shall be the standard benefit rate corresponding to daily average wages.  
Certain conditions shall be fulfilled for workmen to claim sickness benefit.
    - a. Person must be under medical treatment.
    - b. While under treatment he shall not do anything which reduces his

- chances of recovering.
- c. He should not leave the place of treatment without the permission of the medical officer or other authority.
  - d. He must be allowed to be examined by any duly appointed officer of sick visitor appointed by the corporation.
2. Maternity Benefit: this is made available to the insured women in cases of confinement, miscarriage, & sickness arising out of pregnancy.
  3. Disability Benefit: the act provides for disability benefit to insured person suffering from disablement due to employment injury sustained to an employee in factory.
- Disablement benefit is payable to the insured workmen under circumstances,
- a) For temporary disability.
  - b) Permanent disability.
  - c) Partial disablement.
  4. Dependents Benefit: On death of the insured person

### 3. Occupier:

Sec 2(n) of the act defines occupier of the factory means a person who has ultimate control over the affairs of the factory. Provided;

1. In the case of firm or other association of individuals, any one of the individual partner or members thereof shall be deemed to be the occupier.
2. In the case of a company, any one of the directors shall be deemed to be the occupier.
3. In the case of a factory owned & controlled by the Central Govt, or any state govt or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Govt, the State Govt or the local authority, as the case may be shall be deemed to be the occupier.

Provided that I the case of a ship which is being repaired or on which maintenance work is been carried out,

- a. The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided by provisions under the act.

**In Kirlosker Pumatic co. Ltd V/S V.A More & others** that an occupier need not be a Director of the co. Any person who has ultimate control over the affairs of the factory can be nominated as occupier.

In another case of ION Exchange India Ltd V/S Deputy Chief Inspector of Factories Salem [1996, I LLJ 283 (Mad)] , in this case the owner can nominate any person to be in ultimate control of the Factory . If no one has been nominated to be in the ultimate control over the affairs of the company, Director of the company or any partner of the partnership are deemed to be the occupier.

The duties of the occupier are dealt u/sec 7-A:

1. Every occupier shall ensure so far as is reasonable practicable, the Health, safety & welfare of all the workers while they are at work in the factory.
2. Without prejudice to the generality of the provision ;

- a. The provision & maintenance of plant & system of work in the factory that are safe & without risk to health.
- b. The arrangements in the factory ensuring safety & absence of risk to health in connection with the use, handling, storage & transport of the articles & substances.
- c. The provision of such information, instruction, training & supervision as are necessary to ensure the health & safety of all workers at work.
- d. The maintenance of all places of work in the factory in a condition that is safe & is without risk to health & the provision & maintenance of such means of access, to & egress from, such places as are safe & without risk.
  1. The provision maintenance or monitoring of such working environment in the factory for the workers that is safe, without risk to the health & adequate as regards facilities & arrangements for their welfare at work. Except in such cases the occupier may prepare, & as often as may be appropriate, revise, a written statement of his general policy with respect to the health & safety of the workers at work & the organisation & arrangements for the time being in force for carrying out this policy & to bring the statement & any revision thereof to the notice of all the workers in such manner as may be prescribed.

#### **4. COLLECTIVE BARGAINING:**

According to ILO, negotiation about working conditions & terms of employment b/w the employer, a group of employers on the one hand & one or more representative organisation of workers on the other hand with the view to conclude is known as collective bargaining.

The word collective bargaining was coined by Beatrix Webb “ collective bargaining is a method by which problems of wages & conditions of employment are resolved amicably, peacefully & voluntarily b/w the labour & management”. It is the negotiation b/w the employer & the employees to reach agreement on working conditions.

When the employer & the employee of the industry sits on the two sides of a table & negotiate to reach an agreement on the working conditions, there is collective bargaining.

The development of undertaking or an Industry depends upon industrial peace. Industrial peace can be achieved by peaceful settlement of differences b/w the management & labour. Labour legislations can only provide a suitable framework in which the employers & the workers can function. The best solution to common problem can be found by mutual agreement. If the employer & employee resolve the problem of wages & condition of services amicably, peacefully & voluntarily, such method is technically called collective bargaining. Collective bargaining is a technique for voluntary regulation of Industrial relation. The system of collective bargaining is highly developed in many countries. It has developed in India to some extent since independence. The prerequisites of for its success are,

1. Trade Union which are neither controlled nor seriously influenced by the employers &
2. Some rough equivalence of bargaining on two sides of the table.

Advantages of Trade Unions:

1. It is quick & efficient.
2. It is more domestic.
3. It produces more harmonious relationship b/w employer & worker.

Disadvantages of Collective Bargaining:

1. The consumers are not represented in the bargaining through they bear the burden of settlements rising wages & the consequential price hike.
2. The collective bargaining settlements flow more from the power, politics than from rational & moral thoughts. &
3. Under this system, when the bargaining parties fail to agree, intolerable strikes sometimes occur.

## 5. LABOUR COURT:

The labour courts are constructed under sec 7 of the act, the constitution is vested with the Appropriate Govt, it may constitute one or more labour courts. The constitution of the labour Courts together with the names of persons constituting. The Labour courts should be notified in the official Gazette.

The functions of the labour Court under the act,

1. Adjudicating the matters of industrial disputes relating to matters specified in the second schedule.
2. Performing of such other functions as may be assigned to them under ID Act 1947.

According to sec7(2) of the act, the Labour Court may constitute of only one person as a presiding officer, who shall be appointed by the appropriate Govt, his qualification as a presiding officer of the Labour Court are laid down in sec 7(3)

1. He is or has been a judge of the HC.
2. He has for a period of not less than three years, been a District judge or an Additional Judge or
3. He has held judicial office for a period of not less than 7yrs or
4. Has been the presiding officer of a Labour Court constituted under any provisional act or state for not less than 5yrs.
5. He is a Deputy Chief Labour Commissioner (central) or Joint Commissioner of the state labour department including 3yrs of experience as Conciliation officer.
6. He is an officer of Indian Legal Services in Grade III with 3yrs of experience.

In *Statesman (p) Ltd. V/S H.R Deb*, the question in this case was whether a magistrate holds a judicial office. The facts that the duties of the magistrate are partly judicial & partly other do not detract from the position that while acting as a magistrate he is a judicial officer. The phrase judicial officer postulates that there is an office & that office is primarily judicial.

It was held that the appointment was void ab initio. Because the registrar is administrative & not judicial in nature.

## **6. Standing orders:**

Sec 2(g), of the act defines standing orders; it means rules relating to matters set out in the schedule to the act.

The schedule in the act enumerates matters to be provided in the act.

They are:

1. Classification of workmen
2. Manner of intimating to workmen period & hours of work , holidays, paydays & wage rates
3. Shift working
4. Attendance & late coming
5. Conditions of procedure in applying for the authority which may grant leave.
6. Requirement to enter premises by certain gates
7. Closing & re-opening of sections of the industrial estbnt, temporary stoppage of work & the rights & liabilities of the employer & workmen.
8. Termination of employment, & notices to be give by the employer & workmen.
9. Suspension or dismissal for misconduct & act or omission which constitutes misconduct.
10. Means of redress for workmen against unfair treatment or wrongful expulsion by the employer & his agents or servants.
11. Any other matter prescribed.

The employer is instructed to prepare the standing orders on these matters.

Under Sec 3 of the act the employer shall submit to the certifying officer five copies of the draft of the standing orders proposed by him for adoption in his industrial establishment. Such draft is to be submitted within six months from the date on which this act becomes applicable to an industrial estbnt.

Such standing orders must cover every matters set out u/sec3 of the act which are applicable to the industrial estbnt.

1. Total nu of workmen employed
2. Number of permanent workmen
3. Number of temporary workmen
4. Number of badly or substitutes
5. Number of probationers
6. Number of apprentices
7. Name of the TU if any to which the workmen belongs.

On receipt of the draft standing orders, the certifying officer shall forward a copy to the TU of workmen. If there is no TU a copy of the same to the draft shall be forwarded to the workmen. He should also send a notice requiring objections to the standing orders. The objections may be submitted within 15 days from the receipt of the notice.

The certifying officer shall give the opportunity to hear the employer & the TU or the preservatives of workmen. he should decide whether any additions or

deletions to be made in the draft standing orders in order to render it certifiable under the act.

The certifying officer shall thereupon certify the draft standing orders to the employer, Union or the representative of the workmen within seven days.

Any employer, union or representative of the workmen aggrieved by the order of the certifying officer may within 30 days from the day on which the copies are sent appeal to the appellate authority.

## **PROBLEMS**

- 1. Majority of the workmen applied for leave, the employer rejected the leave & treated the absence of the workmen as illegal strike. Decide.**

Strike is a collective stoppage of work by the workmen undertaken in order to bring pressure upon those who depend on the sale or use of the products of work.

Lays down certain conditions which are to be complied with before resorting to strike. Strike or a lock out will be illegal if it violates sec 22, 23, and 24 of the act, right to strike is an inherent right of every worker & the same could not be abridged or taken away except in the conformity of the act.

In the above case the employer cannot treat the absence of workers as an illegal strike; strike means a concerted refusal to go on strike for the demand put forth by the workmen before the management to be fulfilled. As in this case there are absence of all the essentials ingredients of strike hence the absence of the workmen cannot be termed as abstaining from work due to demand put forth before the management which has to be fulfilled, hence it cannot be deemed to be illegal strike.

- b. Membership of the registered Trade Union was denied to "A" a workmen on the ground that "A" has not contributed to the political funds of the Trade Union, "A" wants to challenge the illegality of the denial can he succeed?**

A registered trade union can constitute a separate fund for political purpose this has been provided under sec 16 of the act. Out of this funds its members in furtherance of any civic or political objects enumerated in sec 16, no expenditure for political purpose out of the general funds is permitted. This fund may constitute lawfully of donations, subscriptions, & such.

Sec 16(2) states as civic & political objects.

1. Payments of any expenses incurred, either directly or indirectly & legislative body constituted under the constitution or of any local authority , before during or after elections in connection with his candidature or election or
2. The holding of any meeting or the distribution of any legislature or documents in support of any such candidate or prospective candidate or.
3. Maintenance of any person who is member of any legislative body constituted under the constitution or of any local authority or
4. Registration of electors or the selection of candidate for any legislative body constituted under constitution or for any legislative authority.
5. Holdings of any political meetings.

As this is a contributory fund by the members of the Trade Union, it has to be born in mind that no member shall be compelled to contribute to the political fund of the union .any member who does not contribute to the to this fund shall not be excluded from any benefits of the Union . he cannot be placed directly or indirectly under any disability or at any disadvantage in comparison to other members of the union who have contributed to the fund.

Also further contribution cannot be made as a condition for admission of a person to the trade union. However the control of management of political funds can be exclusively vested in the hands of those members who have contributed to the political funds. A non-contribution does not render a member ineligible for any office involving the control or management but such a right cannot be forcibly taken.

In this case A, would succeed in challenging the denial of membership to trade union, as contribution to the political fund cannot be a condition for seeking admission to trade union according to the provision of the Trade Union Act 1926.

- c. A bomb was kept in the premises of the workshop by some strangers, it exploded & injured a workmen. Is the employer liable for compensating to the workmen advice?**

**Answer:**

If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this act. An accident is said to "arise out of" the employment when there exists a causal connection between the conditions under which the work is required to be performed and the resulting injury, while the phrase "in the course of" employment is held to designate an accident

occurring within the period of employment at a place where the employee may reasonably be while fulfilling his duties or engaged in something incidental to it. An entire law on this is based on the concept of the phrase "arising out of and in the course of employment". These words refer to the link between the cause of the accident and the employment. To arise out of the employment a nexus must be established between the accident and the employment. "In the course of employment" means that the employee is helping the employer's business goals in doing the activity where the injury occurred.

Once an employee reaches his place of employment, they are deemed to be covered for an accident should one occur before they are on the clock, but after they have reached the premises that is either owned by the employer or provided by the employer. Injuries that occur during short break may be compensable as well as injuries that occur during a trip for the employer's benefit. It is no doubt true that in order to succeed in an application for getting compensation under section 3 of the Act the following points are required to be established:—

- (1) That the accident must arise out of and in the course of the workman's employment;
- (2) There must be causal connection between the injury and the accident and the work done in the course of the employment;
- (3) The workman has to say that while doing a part of his duty or incidental thereto it has resulted into an accident. It is necessary that the workman must be actually working at the time of the injury or the accident. Therefore, the three factors, that there must be injury, which must be caused in an accident, it must be caused in the course of and out of the employment must be established; Meaning of the expression "arising out of employment" means that there must be casual relationship between the accident and the employment. If the accident has occurred on account of the risk which is an incident of employment, it has to be held that the accident has arisen out of the employment.

In this case where the bomb was kept in the premises of the establishment & where the workman was injured by the blast in the establishment is being protected under this act under sec 3 for liability of the employer. The workman is entitled for compensation as under the provision of the Employees Compensation Act.

- d. A workman worked in the establishment as a mason in a company & was drawing Rs 2500 per month his duties involved supervisory work of about 100 workers, he also used to decide who should do overtime work, is 'A' a workman? Decide giving reasons.**

**Answer:**

Under the ID Act 1947 Since the Industrial Disputes Act, 1947, this term, workman under Section 2(s) defines workman as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, **for** hire or reward, terms of employment be express or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. It excludes persons employed in army/Navy/Air Force/Police and those employed in *mainly managerial or administrative, supervisory capacity* and drawing wages of more than Rs 6500.

The Courts have interpreted this definition and have identified various determining factors to know whether a person is "workman" or not. The factors which should be considered are

**(a)** whether there is a Master-Servant relationship;

**(b)** when a person is performing various functions which overlap in their characteristics, the nature of main function for which the claimant is employed should be considered;

**(c)** work is either manual, skilled, unskilled, technical operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman; and

**(d)** that the exceptions are not applicable. Further, designation, source of employment, method of recruitment, terms and conditions of employment or contract of service, the quantum of wages and the mode of payment should not be considered while determining whether a person can be termed as "workman."

Over a period of time, courts have interpreted specific points of contention in the definition under the ID Act which has enlarged the scope of the legislation. This note discusses some of the important components of section 2(s) and their interpretation by the courts . A person working in purely managerial and/or supervisory capacity does not fall within the definition of workman under ID Act. However, when a person performs multifarious functions, the nature of the main function performed by the person has to be considered to determine if the person is a "workman." The designation of a person is not a conclusive factor in determining the nature of work. Even if a person is designated as supervisor, the employer has to prove that his work and his duties were in nature of a supervisor.

To fall within the exception, the person must be,

**(a)** Employed in a supervisory capacity;

**(b)** Draw more than Rs 6500 as wages; and

(c) Primarily perform the functions of managerial nature.

The emphasis really is to exclude those persons who are performing mainly managerial work and are employed in supervisory capacity i.e. evaluating the work of their subordinates. Further, a supervisor earning less than 6,500/- may also raise an industrial dispute for an increment in wages which may eventually exclude him from the definition of workman.

In this case 'A' being employed as a mason in the company who is drawing wages up to Rs2500 per month & whose duties involved supervisory work of about 100 workmen & with the deciding authority is a workman under the provision of the Industrial Disputes Act 1947 section 2 (s).

**4. On the account of strike by some workmen in one part of the establishment, management refuses to give work to the workmen in another part of the establishment, the workmen claimed lay-off compensation. Decide whether they are entitled to compensation?**

**Answer:**

Lay-off is a practice whereby the employer cannot give employment to workmen for various reasons including shortage of raw materials, coal or power, accumulation of stocks, break-down of machinery etc, or for any other connected reasons. It has been defined under Section 2(kkk) of the Act. If a workman, whose name is on the muster rolls of the industrial establishment presents himself for work and is not given by the employer it amounts to lay-off.

Workman not entitled to Compensation:

Section 25E of the Act highlights situations when a workman is not entitled to compensation even after being laid-off. This section 25E works like an exception to Section 25C. A workman is not entitled to lay-off compensation as an "Industrial Dispute" is defined under Section 2(k) of the Act. It lays down certain pre-requisites that must exist to constitute an industrial dispute. There can be no lay-off if the dispute does not fall within the ambit of Section 2(k). Further, the application of the Act is limited to "industries" as defined under Section (j).

Meaning of lay-off as per the Act and deals with the issue of compensation resulting from such lay-off.

A workman refuses to accept any alternate employment offered by the employer in the same establishment, or in any other establishment of the same employer, provided such establishment is within a five miles radius from the previous establishment. Further, such alternate employment should not call for any special skill or experience and the employer must pay at least the same wages as were previously paid to the workman.

If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

And such lay-off is due to a strike or slowing-down of production by workmen in another part of the establishment.

The burden of proof is on the employer to show that the workman is disentitled to claim compensation because his case falls under the purview of Section 25E. Therefore in this case the workmen cannot bring a claim against the employer for the lay-off compensation as the workmen were not deemed to be laid off as under the provision of the act & he falls in the exemption category under the provision of the act .As Section 25E of the Act highlights situations when a man is not entitled to compensation even after being laid-off. This section 25E works like an exception to Section 25C. A workman is not entitled to compensation. Therefore, it becomes the duty of the employer to provide compensation to the workmen if their case falls within the scope of the Section 25C6 of the Act. However, no compensation can be awarded in advance of actual lay-off on grounds of social justice.

***1. Akshata & co is a public utility service industry where a strike commences during the pendency of the conciliation proceedings & the workmen plead that the strike was provoked by the employer. Decide.***

*Yes the strike conducted here is considered to be as unlawful. Because in this case strike is conducted in duration of pendency of conciliation proceeding.*

*Strike is defined according to sec 2 (q) of the ID Act, it is a cessation of work by the employees for any length of time under a common understanding to put pressure on an employer to accept their demand.*

*The essentials of strike are;*

- 1. Cessation of work by a body of persons employed in any industry acting in combination or*
- 2. A concerned refusal of any number of persons who have been employed to continue to work to accept employment.*
- 3. A refusal under a common understanding of any number of such persons to continue to work or to accept employment.*

***According to Sec 22 to 23 of the ID Act 1947 deals with the prohibition of strikes & Lock-outs.***

*Sec 22 bans the commencement of strike & lock –outs in public utility services. Every public utility service is an Industrial establishment.*

*Sec 22 (1) the employee of a public utility services shall not commence a strike unless the following conditions are satisfied;*

- 1. A notice of strike should be given to the employer in*

*advance.*

2. *The notice should be given at least 14 days before the strike.*
3. *The strike shall not commence before the expiry of the date specified in the notice.*
4. *The strike shall not be commenced during the pendency of any conciliation proceeding before a conciliation officer & seven days after the conclusion of such proceedings.*

2. ***'A' was an employee of B, appointed as a driver of Lorry, his duty was to load 'X' material & unload it at work place, while the lorry was moving he attempted to hit the rabbit passing on the road & in this attempt he fell down from the lorry & died. His wife wants to claim compensation Advise her.***

*The widow of 'A' could claim compensation, as the fatal accident caused was in duration of work.*

*Employers liability for compensation u/sec 3 of the act , to pay compensation is limited & is subject to the provision of the Act*

*.u/sub sec(1) of sec 3 the liability of the employer to pay compensation is dependent upon the following conditions ;*

- *Personal injury must have caused to the workmen.*
- *Such injury must have been caused by an accident.*
- *Such accident must have arisen out of & in the course of employment &*
- *The injury must have resulted in death of the workmen or partial disablement for a period exceeding 3 days.*

*The accident must have arisen out of & in the course of employment.*

*Arising out of employment does not mean that personal injury must have resulted from mere nature of employment; also it is not limited to the cases where the personal injury is preferable to the duties which the employee has to discharge. The word 'arising out of employment' means that during the course of*

*employment, injury has resulted from some risk incidental to the duties of the service which unless engaged in the duty owing to the master it is reasonable to believe the employee would not have otherwise suffered. There must be casual relation b/w the accident & employment. If the accident had occurred on a/c of a risk which is an incident of the employment, the claim of compensation must succeed unless of course the employee has exposed himself to an added danger from his own side*  
***In Savithri Devi V/S Bharathi Filling Station & others***, the appellants son worked as a driver with the respondent, the owner of the tanker & he died while on duty. Appellant filed petition for compensation but was denied by the respondent on the ground that there was no connection b/w the work death of the deceased. The commissioner dismissed the application for compensation. The HC held that the commissioner was wrongfully in concluding that there is no connection b/w the work & death of the deceased & held the employer liable for compensation.

*Hence here in this case the driver 'A' of the lorry was an employee of the employer 'B', & the accident occurred when 'A' was on duty to deliver the material hence claim can be made by the widow of 'A' & the employer is liable to pay compensation.*

**3. An employer dismissed the services of the workmen for misconduct; the dismissed workmen raised an Industrial Dispute under ID Act 1947. Whether the Industrial Dispute is an Industrial Dispute decide.**

*In this case the dispute is not an Industrial Dispute but an individual dispute according to sec 2-A of the act.*

*Industrial dispute is a dispute or difference b/w the employer & the employee over any terms of work or*

*conditions of work, also for a dispute to come under the definition of sec 2(k) of the IDAct 1947 the dispute should have been supported by the union, hence in this case the dispute cannot be considered as an Industrial dispute under the act.*

*Sec 2-A of the act defines an individual dispute as according to the act, it means a difference or a dispute b/w the employer & the employee, effecting a single employee or a workmen.*

*Sec 2 (k) of Industrial Disputes Act 1947 defines Industrial disputes, it means ad dispute or a difference b/w*

*a. Employers & employers.*

*b. Employees & employees.*

*Workmen & workmen & such difference should be connected with employment or non-employment, terms of employment conditions of labour of any person & the dispute may be further in relation to any workmen or workmen or any other person in whom they are interested as a body.*

*Hence in this case the difference or dispute was only affecting one employee & not a group of employees or workmen.*

**4. 'A' a workmen died due to an accident while performing the duty of an employer. Subsequently it had been proved that at the time of the accident that the workmen were under the influence of intoxication.**

*The workmen died as he was under the influence of intoxication, in such circumstances he is not entitled for compensation.*

***Conditions for Receiving Compensation***

*An employee to whom personal injury is caused by accident is entitled to receive compensation under the Act if the accident arose out of and in the course of his employment. That means the accident must occur while the employee is in employment and it must also be connected with his employment.*

***Circumstances in which the employer is not liable to pay compensation for injury to a workman:-***

*The employer is not liable to pay compensation for injury to an employee on following circumstances:-*

- 1. If the injury does not result in total or partial disablement of the employee for a period exceeding three days;*
- 2. If the injury does not result in death of the employee and is caused by an accident which is directly attributable to:-*
  - If an employee have been at the time thereof under the influence of drink or drugs*
  - The disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or*
  - The willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.*

*Hence in this case the employer is not liable for compensating to the employee who has met a fatal end under the influence of intoxication.*

***5. 'X' a driver in KSRTC was terminated on account of his eyesight problem. He claimed retrenchment compensation. Is he entitled to it?***

*In this case 'X' the driver who was terminated on account of eyesight problem does not amount to retrenchment as retrenchment generally means, just means termination of excess labour & cutting down of the employees in an Industry. It also means the discharge of surplus labour or*

*staff by the employer for any reason whatsoever, otherwise than by way of punishment inflicted as a measure of disciplinary action. Hence 'X' cannot claim compensation for retrenchment .*

*SEC 2(OO) OF THE Act defines a retrenchment, it means termination of the services by the employer for any reason whatsoever otherwise other than as a punishment inflicted by way of disciplinary action.*

*The following are not termed to be retrenchment.*

- *Voluntary retirement of a workman.*
- *Retirement of a workman after reaching the age of superannuation.*
- *Termination of service of a workmen as a result of the non - renewal of a contract of employment on its expiry. Termination of service of a workman on grounds of continued ill health.*

**6. Ajay an employee in Jaydeep Industries died in a fatal accident in a factory. The employer paid widow of Ajay 1 Lakh compensation directly. Is it a valid payment?**

*In this case it is not a valid payment made by the employer to the widow of Ajay.*

*Payment of compensation in respect of employee whose injury has resulted in death is not to be made directly to the dependents of the employee. In such case the employers is required to deposit the amount of compensation with the Commissioner for Employee's Compensation. The Commissioner will then apportion the amount among the dependents of the employee. Schedule III part A, employer shall be liable to pay compensation if the accident or injury arises out of & in the course of employment. Part B, where the service*

of the employer in whose service he has employed for a continuous period of 6 months in any employment specified in part B of the schedule. The employer shall be liable to pay compensation to an employee where an employee contracts any disease after he has left his employment if the following conditions.

1. If an employee has served the employer according to part B of the sch III, for a continuous period of 6 months.

2. If the employee has after cessation of his service contracted any disease specified in part B of the schedule.

3. If it is proved that such disease arose out of employment. Part C of Sch III,

1. If it is proved that the employee has served under one or more employers in any employment specified in part C of the Sch III for such continuous period as specified by the Central Govt. If he has after cessation of his service contracted any disease specified in part C of Schedule .

2. If he has after cessation of his service contracted any disease specified in part C of sch III as an occupational disease to that employment.

3. If it is proved that such disease arose out of employment.

**7. ABC, Industries , a women run organisation employing only women workers, it allots to some workmen workers night shift b/w 6 p.m to 2 am is it justifiable . Decide.**

According to the factories Act 1948, the women run organisation employing only women cannot allot night shifts to women b/w 6pm & 2am unless the organisation has taken special permission from the appropriate govt. Sec 66, prohibition of employment of women, Cl (1) restrictions of employment no women is entitled to work in factories b/w 6pm & 7am .

***Sec 66(1) prohibition of women at work***

*Prohibition of employment of women in employment of services* sec 66(1) lays down that the provision shall be applicable to all women working in factories.

a. *No exemption of the provision of sec 54 may be granted in respect of anywomen.*

b. *No women shall be required to work in any factory except b/w 6am & 7pm.*

*But the state govt may by notification in the official Gazettes , in respect of any factory or group or class or description of factories vary the limit laid down in clause*

*(b) in case if any women to be employed during night she could only be employed b/w 10p.m to 5a.m.*

***In TriveniKS & others V/S Union of India & others (2001 III LLJ 320 (AP)),***

*The constitutionality of section 66(1), & (b) was challenged being discriminatory on the basis of sex, the HC of Andrapradesh held that the women should not be employed during night for their own safety & welfare . it was further observed after referring to Art 2,3,& 5 of the convention of 89 of ILO, that it has to be seen whether the state is following the convention . se 66(1) (b) of the act , the state govt has been authorized to assign working hours for women without any restriction in fish industries . HC further observed that, women would be safe in fish industry but not in textile industry consequently sec 66(1) & (b) of the act was struck down as unconstitutional by the HC & declared that the same safeguards as provided to women in fish Industry should be given to the women working in other industry.*

*Hence the state govt is empowered to make rules providing for exemption from restriction set out in sub sec*

*(1) to such extent & to such condition as it may prescribe.*