

Chapter 3

Labour Legislation in India

*Labour Legislation in India***Contents:**

	Page
3.1 CONSTITUTION OF INDIA	
Relevant Provisions as regards welfare of Labour	95
3.2 LABOUR POLICY IN INDIA AND LABOUR LEGISLATION	100
3.2.1 Need For Labour Legislation	102
3.2.2 Salient features labour legislation	104
3.2.3 Classification of Labour Laws	109
3.3 TRADE UNIONS ACT, 1926, AS AMENDED	114
3.3.1 Definitions	114
3.3.2 Registration of Trade Unions	117
3.3.3 Rights and Liabilities of Registered Trade Unions	127
3.3.4 Regulations	140
3.3.5 Penalties And Procedure	142
3.4 PROVISIONS OF OTHER RELEVANT LABOUR LAWS IN BRIEF	145
3.4.1 The Factories Act, 1948	145
3.4.2 The Minimum Wages Act, 1948	146
3.4.3 The Payment of Wages Act, 1936	147
3.4.4 The Employees Provident Funds and Misc. Provisions Act, 1952	149
3.4.5 Workmen's Compensation Act, 1923	151
3.4.6 The Contract Labour (Regulation & Abolition) Act, 1970	152
3.4.7 The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	152
3.4.8 Maternity Benefit Act, 1961	152
3.4.9 Equal Remuneration Act, 1976	153
3.4.10 The Children (Pledging of Labour) Act, 1933	153
3.4.11 The Bidi and Cigar Workers (Conditions of Employment) Act, 1966	154
3.4.12 The Payment of Gratuity Act, 1972	155
3.4.13 Employees State Insurance Act, 1948	156
3.4.14 The Payment of Bonus Act, 1965	157
3.4.15 The Shops and Establishments Act, 1953	158
3.4.16 The Industrial Disputes Act	160

Labour Legislation in India

3.1 CONSTITUTION OF INDIA:

Relevant Provisions as regards welfare of Labour:

India adopted her own Constitution and declared herself as an Independent Sovereign Republic. The constitution established system of Government. The aim of constitution is to provide welfare to all its citizens and ensure guarantee of their fundamental rights. Labour being an integral part of the society found prominent position in the constitutional provisions with regard to their protection of rights.

The constitution provides adequate safeguards for minority, backward, and tribal areas, and depressed and other backward classes. The protection of the interest of the Working Class was paramount in the mind of the makers of the Indian Constitution.

In a Welfare State all are assured of adequate help in case of need due to illness, old age physical or mental incapacity, unemployment or lack of economic power. State assistance is given as

a right and not as a charity and no stigma or pauperization is attached to those who receive it.

The Fundamental Rights incorporated in the constitution relate to the political democracy on the citizen and the directive principles deal with social, economic and cultural democracy. The Fundamental Rights are the basic principles on which the democratic sovereign is founded and give direction to the state action in clear terms. When these principles are translated into practice, it leads to the development of a welfare state. The Directive Principles of state policy of the constitution may be stated as below:

- Article 38 of the constitution declares that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice – social, economic and political- and shall inform all the institution of the national life.
- Article 41 states that State shall within the limits of economic capacity and development, make provisions for securing the right to work, to education and public assistance in case of unserved want.’ (Such as unemployment, old age, sickness and disablement).

- Article 42 provides for securing just and human conditions of work and for maternity relief. No child below 14 shall, be employed to work in Factory, Mine or engaged in any other hazardous employment.
- Article 43, imposes upon the state obligations (either by suitable legislations or economic organization or any other way) to secure to all workers, agricultural, industrial, or otherwise, work, a living, wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular the State shall endeavor to promote cottage industries on individual and cooperative basis in rural areas.
- Article 43A states the state shall take steps by suitable legislations or in any other way to secure the participation of workers in the management of undertaking establishment or other organisations

engaged in any Industry provided to the working class for achieving a decent living condition and also opportunity to progress.

The labour legislation is based on these principles and attempted incorporate this spirit of constitution in different enactments. As the directive principles of state policy has entrusted the responsibility of implementing the programmes and policies laid down in the constitution as announced in the Constituent Assembly a series of Labour Legislations were enacted. The legislations enacted to safeguard and promote the interest of labour covering several aspects as fair wages and regular payments, working conditions, holidays and leave, safety and health, conditions of works, labour welfare, social security industrial relations, protection of interest of women and child labour, labour indebtedness, housing, recruitment and training. The legislations cover all workers engaged in factories mines, plantations, railways, motor-transport, shops, etc.

The Constitution of India has given clear direction to the Centre and State Government to ensure all-round development of labour in every walk of life and they should not lag behind either in social or in political life. The labour legislations enacted after the introduction of constitution aims at achieving this end.

With the adoption of the policy of 'Socialist Pattern of Society' in 1954, the labour policy was also changed. Therefore, establishment of industrial democracy became the precondition for the establishment of a Social Society. Labour legislations and enforcement machinery set up for its implementation can provide a broad frame – work to maintain industrial peace mutual agreements are the best policy. The workers' participation in management has been recognized as a method to introduce industrial democracy. For this purpose workers education and strong Trade Unions are important.

During the Plan period several legislations enacted not only to improve the working conditions but also to maintain industrial peace in the industrial sector. Regarding industrial relations, efforts must continue to minimize the areas of disagreement among the parties concerned and acceptable improvement in law and machinery affected need not be held over and should further be carried out. It is also suggested that workers participation in management should be an integral part of Industrial Relations System. It is also suggested that more welfare and social securities measures and improvement in working and safety conditions should be the aim of policy.

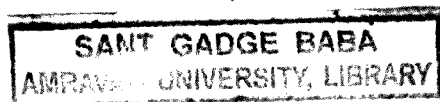
3.2 LABOUR POLICY IN INDIA AND LABOUR LEGISLATION:

Labour has a vital role in increasing productivity and management has to help create conditions in which workers can make their maximum contribution towards this objective. In free India, the labour movement and trade unions should be in a position to assume larger responsibilities in the context of new scenario and challenges which are coming up in the 21st century. One of the main tasks in the Five Year Plans is to evolve practical ways in which they can make an increasing contribution to national development and national policy. The growth of the public sector provides opportunities for working out new concepts of labour relations and the association of labour in management in industry. Economic progress of a country is bound up with industrial peace. Industrial relations are, therefore, not a matter between employers and employees alone, but vital concern of community which may be expressed in measures for the protection of its larger interests.

The National Commission on Labour, however, preferred to describe its approach as one in quest of industrial harmony rather than industrial peace. It emphasizes absence of strife and struggle. The concept of industrial harmony is positive and comprehensive and it postulates the existence of understanding,

cooperation and a sense of partnership between the employers and employees. A quest for industrial harmony is indispensable when a country plans to make economic progress. It may sound platitudinous but is nevertheless that no nation can hope to survive in the modern technological age, much less become strong, great and prosperous, unless it is wedded to industrial development and technological advance. Economic progress is bound up with industrial harmony for the simple reason that industrial harmony inevitably leads to more cooperation between employers and employees, which results in more productivity and thereby contributes to all round prosperity of the country. Healthy industrial relations, on which industrial harmony is founded, cannot therefore, be regarded, as a matter in which only the employers and employees are concerned; it is of vital significance to the community as a whole. That is how the concept of industrial involves the cooperation not only of the employers and employees but also of the community at large. This cooperation stipulates that employees and employers recognize that though they are fully justified in safeguarding their respective rights and interests, they must also bear in mind the interests of the community. If this be the true scope of the concept of industrial harmony, it follows that industrial harmony should and ought to emphasize the importance of raising productivity but the resulting accelerated rate of growth will lead to the good of the community as a whole. Thus industrial prosperity of a country depends to a very great extent on the

1011



efficiency of industrial labour. Labour Legislation, trade unions and capital labour disputes are other very important issues which receive our attention. The term Labour Law is used to denote that body of laws which deal with employment and non-employment, wages, working conditions, industrial relations, social security and labour welfare of industrially employed, persons.

3.2.1 Need For Labour Legislation:

The need for labour legislation arises because of the relationship between the workers and employers, is one of partnership in the maintenance of the production and building up of the national economy the community as a whole as well as individual employers are under an obligation to protect the well being of workers and to secure to them their due share in the gains of economic development.

The object of Labour Legislation, therefore, is two fold namely:

- To improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life.
- To bring about industrial peace this could in its turn accelerate productive activity of the country resulting in its prosperity.

Labour Legislation is necessary for the following reasons:

- The individual workers are economically weak. They cannot bargain with the employers for the protection of their rights and even for subsistence wages. As such legislation for protection of labour against long hours of work, unhygienic working conditions, low wages and exploitation is needed.
- The workers are exposed to certain risks in factories, mines and other establishments. As such in order to make provision for their health, safety and welfare, legislation is needed.
- In order to increase the bargaining power of labour, legislation is necessary to encourage the formation of trade unions.
- In order to avoid industrial disputes which lead to strikes and lockouts, labour legislation is needed.
- To protect children and women from taking to work under hazardous conditions and at odd hours and in hazardous, laws are necessary.

Labour Legislation has grown up as one of the most important social institution in India. A quest for industrial harmony is indispensable when a country plans to make economic progress.

3.2.2 Salient features labour legislation:

Salient features labour legislation is based on certain fundamental principles:

- **Social Justice:** In an industrial set up, social justice means an equitable distribution of profits and benefits accruing from industry between industrialists and workers and affording protection to the workers against harmful effect to their health, safety and morality.
- **Social Equity:** Another principle on which labour legislation is based on social equity. Legislation based on social justice fixes a definite standard for adoption for the future, taking into consideration the events and circumstances of the past and the present. But with the change of circumstances and ideas there may be a need for the change in the law. This power of changing the law is taken by the Government by making provisions for rule making powers in the Acts in regard to certain

specified matters. The rules may be modified or amended by the Government to suit the changed situation.

- **International Uniformity:** International uniformity is another principle on which labour laws are based. The important role is played by the International Labour Organization (I.L.O.). The main aims of the I.L.O. are to remove injustice, hardship and privation of large masses of toiling people all over the world and to improve their living and working conditions and thus establish universal and lasting peace based upon social justice. The basic principles of the Labour Policy of I.L.O. are as follows:

- Labour is not a commodity
- Freedom of expression and of association are essential to continued progress.
- poverty any where constitutes a danger to prosperity every where
- War against want requires to be carried on with unending vigour within each nation and by continuous effort in which the representatives of workers and employers

enjoying equal status with those of Governments join with them in free discussion and democratic decisions with a view to promoting of common welfare.

- National Economy: In enacting labour legislation, the general economic situation of the country has to be borne in mind lest the very objective of the legislation be defeated. The state of national economy is an important factor in influencing labour legislation in the country. Legislation is essential to safeguard the interests of the labouring classes. In the absence of legislation, factory worker is bound to be exploited by the employer. Labour legislation provides essential safeguard to workers in matters of conditions of work, hours of work, safety in the factories, minimum wages, bonus, equal wages for men and women for the same work, prohibition of employment of children and that of women in hazardous industries.

Labour policy in India derives its philosophy and content from the Directive Principles of the Constitution and has been evolving in response to specific needs of the situation to suit requirements of planned economic development and social justice. It

has been envisaged that growth of the economy would not only increase production but also absorb the backlog of unemployment and under-employment and a substantial proportion of additional labour force.

From the time immemorial, we find that a constant struggle has been going on between labour and capital. We may say that the history of labour struggle is nothing but a continuous demand for fair return to labour expressed in different forms, e.g. increase in wages, resistance to decrease in wages, grant of allowances and other benefits. The mutual conflict between the employer and the employees over the question of adequacy of their respective shares in the social produce, constituted the crux of the labour problem. Capital has been exploiting the labour to their own maximum benefit for they have better economic footing and power and further stand in better position to dictate their terms.

With the emergence of new problems arising out of industrial revolutions, the new ideas of social philosophy, national economy and social justice have taken the roots in industrial order which are discussed here before.

After the First World War, the cost of living considerably increased. The increase in cost of living and countryside

political upsurge found its way in economic discontent among the masses, particularly in industries. The industrial unrest and economic discontent led to a number of strikes and labour troubles. Labour problems constituted as serious menace to the society and needed solution so that wheels of industry may be kept moving. Employers devoted their sole attention to the maintenance of machines and improvement of the technical know-how to the utter neglect of workers employed to run the machines, because they were available in large numbers and could be replaced in no time.

Workers were generally illiterate, poor and unconscious of their rights. The employer did not care for socio-economic status of the workers; As such, the workers were at a disadvantage in negotiating with the employer for employment. The employers dictated their own terms and conditions with regard to wages, hours of work, leave, etc. The workers being in weaker position were left with no choice but to accept such terms, for employment was their sole means to earn their livelihood and to feed the family.

The Government realized the importance of the problem and could not be a silent spectator to this, for the workers formed a large section of the society. Therefore, the Government had

to intervene to settle the disputes in-the interest of national economy and welfare of the society at large.

In the post-independence period the national Government paid attention to the improvement of labour conditions in industry as the prosperity of the country lies upon the development of industrial growth. No industry could flourish unless there is industrial peace and cooperation. Industrial peace is possible only with the co-operation of labour and capital.

The contribution of the capital and labour in any industry is equally important. Therefore, the prosperity of an industry depends on the cooperation of the capital and labour. As disputes between capital and labour are inevitable, so the object of industrial legislation is to ensure the smooth relationship between the two.

3.2.3 Classification of Labour Laws:

Labour Laws may be classified under the following categories:

Laws relating to conditions of work in' factories and establishments:

- General Laws which are applicable to all establishments not otherwise provided for, e.g., Factories Act 1948; the Industrial Employment (Standing Order) Act, 1946.
- Specific Laws which are applicable to specific industry-The Mine Act, 1952, The Plantations Labour Act, 1948, Indian Merchants Shipping- Act, 1923. Working Journalists Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act, 1955.
- Laws relating to specific matters, namely-(a) 'wages, (b) social security, -(c) welfare, (d}housing, (e) leave, e.g.,
- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Workmen Compensation Act, 1923;
- The Employees' Provident Fund Act, 1952;
- The Employees .state Insurance Act, 1948;
- The Bonded Labour and System (Abolition) Act, 1976.

Laws relating to association of workers *e.g.*,

- The Trade Union Act, 1926;
- The Industrial Disputes Act:
- Laws relating to children and women. There are specific provisions relating to these persons in
- The Factories Act 1948;
- The Mines Act, 1952;
- The Plantations Labour Act, 1951.

Laws relating to social insurance.

- The Workmen Compensation Act, 1923,
- The Maternity Benefit Act, 1961 and
- The Employees' State Insurance Act, 1948.

A large -number of labour legislations have been enacted to promote the condition of labour, keeping in view development of industry and national economy. But for industrial regeneration it is necessary that the partners of industry must cure their respective defects. Since independence, a lot has been done by legislation and public opinion to improve the conditions of workers. The employers are now realizing that it is there duty as a citizen of a

democratic country to forego their acquisitive tendencies of the past and set a new ideal for the future of country. At the same time it is the duty of the workers to realize their responsibility in improving the work efficiency and help in stepping up production resulting in greater profits, and prosperity of the industry to be ultimately shared by the management, workers and community at large. Workers are the dominant partners in the industrial undertaking and without their cooperation, good work, discipline, integrity and character the industry will not be able to produce effective results or profits. However efficient the machine touch in the industry may be, if the human element refuses to cooperate, the industry is bound to fail in the long run. Therefore, the profits of the industry must be shared by employers, workers and the community, the workers claiming a dominant share, being the producers of wealth.

The trade unions both of employees and employers can play an effective role in molding and shaping the national economy. Labour, which is comparatively in a disadvantageous position in a competitive social order, has to shoulder greater responsibilities in the years to come. Trade unions, which control the working class, are to grow upon healthier lines for establishing harmonious relations with the employers. The state is fully conscious of the worker's difficulties and problems as has been amply proved by the discussion and details inside or outside the parliament. Certain

legitimate demands of the workers have been conceded by amending the law relating to obnoxious practices, such as lay-off, retrenchment and closure resorted employers. Workers in the country must understand fully that if they desire to have due place in the industrial economy of the country, they should realize their responsibilities and duties. Sabotage and violence of all kinds and bitterness in thought, word and deed must be eschewed. Then alone is a socialist democracy possible and industrial relations of a higher order can be maintained for the benefit of the country and the community.

Modern industrialization and economic growth, envisaged in our planning would, of necessity; call for increased use of legislation not only for tackling the social and economic problems that are existing but also for creating such industrial conditions as would seem to be conducive for establishing a healthy and just social order. Both employers and employees should have co-operative attitude towards each other. Both the groups should realize the significance of industrial democracy for productivity and efficiency in industry. They should resolve their disputes through joint consultation which is based on their mutual understanding.

3.3 TRADE UNIONS ACT, 1926, AS AMENDED:

- An Act to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions
- Whereas it is expedient to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions;

This Act may be called the Trade Unions Act, 1926. It extends to the whole of India. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

3.3.1 Definitions:

In this Act 'the appropriate Government' means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and, unless there is anything repugnant in the subject or context,

- "executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted;
- "office-bearer", in the case of a Trade Union, includes any member of the executive thereof, but does not include an auditor;
- "prescribed" means prescribed by regulations made under this Act;
- "registered office" means that office of a Trade Union which is registered under this Act as the head office thereof;
- "registered Trade Union" means a Trade Union registered under this Act;
- "Registrar" means -
 - a Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes any Additional or Deputy Registrar of Trade Unions; and
 - in relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated ;

- "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and
- "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more TradeUnions:

Provided that this Act shall not affect –

- any agreement between partners as to their own business;
- any agreement between an employer and those employed by him as to such employment; or
- any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade or handicraft.

3.3.2 Registration of Trade Unions:

Appointment of Registrars:

The appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State.

The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or Deputy Registrar shall exercise and discharge the powers and functions so specified.

Subject to the provisions of any order under subsection (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.

Mode of registration:

Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

Where an application has been made under subsection (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the application.

Application for registration:

Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely: -

(a) the names, occupations and addresses of the members making the application;

(b) the name of the Trade Union and the address of its head office; and

(c) the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

(2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Provisions to be contained in the rules of a Trade Union:

Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely: -

(a) the name of the Trade Union;

(b) the whole of the objects for which the Trade Union has been established;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the office-bearers and members of the Trade Union;

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as office-bearers required under section 22 to form the executive of the Trade Union;

(ee) the payment of a subscription by members of the Trade Union which shall be not less than twenty-five naye paise per month per member;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(g) the manner in which the rules shall be amended, varied or rescinded;

- (h) the manner in which the members of the executive and the other office-bearers of the Trade Union shall be appointed and removed;
- (i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office-bearers and members of the Trade Union; and
- (j) the manner in which the Trade Union may be dissolved.

Power to call for further particulars and to require alteration of name:

- (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.
- (2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name

as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Registration:

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

Certificate of registration:

The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

Cancellation of registration:

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar

- (a) on the application of the Trade Union to be verified in such manner as may be prescribed, or
- (b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6:

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

Appeal:

(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal, -

(a) where the head office of the Trade Union is situated within the limits of a Presidency-town, to the High Court,

or

(b) where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the appropriate Government may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same

procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (b) of sub-section (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose of such appeal, have all the powers of an appellate Court under sub-sections (2) and (3), and the provisions of those sub-sections shall apply accordingly.

Registered office:

All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the register referred to in section 8.

Incorporation of registered Trade Unions:

Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

Certain Acts not to apply to registered Trade Unions:

The following Acts, namely: -

- (a) The Societies Registration Act, 1860 (21 of 1860),
- (b) The Co-operative Societies Act, 1912 (2 of 1912),
- (c) The Companies Act, 1956 (1 of 1956);

shall not apply to any registered Trade Union, and the registration of any such Trade Union under any such Act shall be void.

3.3.3 Rights and Liabilities of Registered Trade Unions:

Objects on which general funds may be spent:

The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:

- (a) the payment of salaries, allowances and expenses to office-bearers of the Trade Union;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;
- (e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;

(h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued

to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the official Gazette.

Constitution of a separate fund for political purposes:

(1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

(2) The objects referred to in sub-section (1) are:

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or of any local authority; or

(d) the registration of electors or the election of a candidate for any legislative body constituted under the Constitution or for any local authority; or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

(2A) In its application to the State of Jammu and Kashmir, references in sub-section (2) to any legislative body constituted under the Constitution shall be construed as including references to the Legislature of that State.

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1); and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the

Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

Criminal conspiracy in trade disputes:

No office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B Indian Penal Code (45 of 1860), in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

Immunity from civil suit in certain cases:

(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer; or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to

break a contract of employment, or that it is in 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 of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious 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 instructions given by, the executive of the Trade Union.

Enforceability of agreements:

Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered

Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

Right to inspect books of Trade Union:

The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an office-bearer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

Rights of minors to membership of Trade Unions:

Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

Disqualifications of office-bearers of Trade Unions:

(1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if -

(i) he has not attained the age of eighteen years,

(ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(2) Any member of the executive or other office-bearer of a registered Trade Union who, before the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.

(3) In its application to the State of Jammu and Kashmir, reference in sub-section (2) to the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), shall be construed as reference to the commencement of this Act in the said State.

Proportion of office-bearers to be connected with the industry:

Not less than one-half of the total number of the office-bearers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Change of name:

Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 25, change its name.

Amalgamation of Trade Unions:

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the

members of each or every such trade Union entitled to vote are recorded, and that at least sixty per cent of the votes recorded are in favour of the proposal.

Notice of change of name or amalgamation:

(1) Notice in writing of every change of name of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

(2) If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

(4) The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

Effects of change of name and of amalgamation:

(1) The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it

by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more registered Trade Unions shall not prejudice any right of any of such Trade Unions or any right of a creditor of any of them.

Dissolution:

(1) When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

(2) Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

Returns:

(1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of December. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of office-bearers made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

(4) For the purpose of examining the documents referred to in sub-sections (1), (2) and (3), the Registrar, or any officer authorised by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union.

3.3.4 Regulations:

Power to make regulations:

(1) The appropriate Government may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: -

- (a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration;
- (b) the transfer of registration in the case of any registered Trade Union which has changed its head office from one State to another;
- (c) the manner in which, and the qualifications of persons by whom, the accounts of registered Trade Unions or of any class of such Unions shall be audited;
- (d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections; and
- (e) any matter which is to be or may be prescribed.

Publication of regulations:

- (1) The power to make regulations conferred by section 29 is subject to the condition of the regulations being made after previous publication.

(2) The date to be specified in accordance with clause

(3) of section 23 of the General Clauses Act, 1897 (10 of 1897), as that after which a draft of regulations proposed to be made will be taken into consideration shall not be less than three months from the date on which the draft of the proposed regulations was published for general information.

(3) Regulations so made shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

3.3.5 Penalties And Procedure:

Failure to submit returns.-

(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every office-bearer or other person bound by the rules of the Trade Union to give or send the same, or, if

there is no such office-bearer or person every member of the executive of the Trade Union, shall be punishable, with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

Supplying false information regarding Trade Unions:

Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he

knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

Cognizance of offences:

(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No Court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

3.4 PROVISIONS OF OTHER RELEVANT LABOUR LAWS IN BRIEF:

3.4.1 The Factories Act, 1948

Objectives:

- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.
- To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Scope and coverage:

- Regulates working condition in factories.
- Basic minimum requirements for ensuring safety, health and welfare of workers.
- Applicable to all workers.
- Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Main provisions:

- Compulsory approval, licensing and registration of factories.
- Health measures.
- Safety measures.
- Welfare measures.
- Working hours.
- Employment of women and young persons.
- Annual leave provision.
- Accident and occupational diseases.
- Dangerous operations.
- Penalties.
- Obligations and rights of employees.

When to consult and refer:

- On starting and throughout the life of the factory

3.4.2 The Minimum Wages Act, 1948

Objectives:

- To determine the minimum wages in industry and trade where labour organisations are non-existent or ineffective.

Scope and coverage:

- Applicable to all employees engaged to do any work, skilled, unskilled manual or clerical, in a scheduled employment, including out-workers.
- Fixation of minimum wages.

Main provisions:

- Fixation of minimum wage of employees.
- Procedure for fixing and revising minimum wages.
- Obligation of employees.
- Rights of workers.

When to consult and refer:

- At the time of fixation of salary of new/existing employees

3.4.3 The Payment of Wages Act, 1936:**Objectives:**

- To ensure regular and prompt payment of wages and to prevent the exploitation of a wage earner by prohibiting arbitrary fines and deductions from his wages.

Scope and coverage:

- Application for payment of wages to persons employed in any factory.
- Not applicable to wages which average Rs 1600/- (\$35.83) per month or more.
- Wages include all remuneration, bonus, or sums payable for termination of service, but do not include house rent reimbursement, light vehicle charges, medical expenses, TA, etc.

Main provisions:

- Responsibility of the employer for payment of wages and fixing the wage period.
- Procedures and time period in wage payment.
- Payment of wages to discharged workers.
- Permissible deductions from wages.
- Nominations to be made by employees.
- Penalties for contravention of the Act.
- Equal remuneration for men and women.
- Obligations and rights of employers.

When to consult and refer:

- Deciding wages and salary administration at all times.

3.4.4 The Employees Provident Funds and Misc. Provisions Act, 1952:

Objectives:

- To make provisions for the future of the industrial worker after he retires or for his dependents in the case of his early death.
- Compulsory Provident Fund
- Family Pension
- Deposit linked insurance

Scope and coverage:

- Application to factories and establishments employing 20 or more persons.
- Can be made applicable by central government to establishments employing less than 20 persons or if the majority of employees agree.

- Excludes establishments employing 50 or more persons or 20 or more persons but less than 50 persons, until the expiry of three years in the case of the former, and five years in the case of the latter, from the date of setting up of establishment.
- Applicable to all persons who are employed directly or indirectly through contractors in any kind of work.

Eligibility:

- Employees drawing pay not exceeding Rs. 3500/- (\$78.37) per month.

Benefits:

- Apart from terminal disbursement of non-refundable withdrawals for Life Insurance Policies
- House building
- Medical treatment
- Marriage

- Higher education
- Family pension
- Retirement-cum-withdrawal benefits
- Deposit linked insurance Amount equal to the average balance in Provident Fund of deceased subject to a maximum of Rs. 25,000/- (\$559.79).

3.4.5 Workmen's Compensation Act, 1923:

To provide compensation for workmen in cases of industrial accidental / occupational diseases in the course of employment resulting in disablement or death. Coverage for persons employed in Factories, Mines, Plantations, the Railways and others mentioned in Schedule II of the Act.

Benefits:

- Compensation for Death
- Minimum - Rs. 20,000 (\$447.83) Maximum - Rs. 1,14,000 (\$2,552.62)
- Compensation for Permanent disablement
- Minimum - Rs. 24,000 (\$537.4) Maximum - Rs. 70,000 (\$1567.4)
- Temporary disablement
- 50% of wages for a maximum period of 5 years.

3.5.6 The Contract Labour (Regulation & Abolition) Act, 1970:

- Not to be required to work beyond 9 hours between 6 A.M. and 7 P.M.
- with the exception of midwives and nurses in plantations.

3.5.7 The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:

- Separate toilets and washing facilities to be provided in employment covered by the 3rd and 6th laws.

3.5.8 Maternity Benefit Act, 1961:

- Maternity benefits to be provided on completion of 80 days working.
- Not required to work during six weeks immediately following the day of delivery or miscarriage.
- No work of arduous nature, long hours of standing likely to interfere with pregnancy/normal development of foetus or may cause miscarriage or

likely to affect health to be given for a period of one month immediately preceding the period of six weeks before delivery.

- On medical certificate, advance maternity benefit to be allowed.
- Rs. 250 (\$5.6) as medical bonus to be given in case when no prenatal confinement and post-natal care is provided free of charge.

3.4.9 Equal Remuneration Act, 1976:

- Payment of equal remuneration to men and women workers for same or similar nature of work protected under the Act and also under the provisions at ISMW Act, mentioned above.
- No discrimination permissible in recruitment and service conditions except where employment of women is prohibited or restricted by or under any law.

3.4.10 The Children (Pledging of Labour) Act, 1933:

- Any agreement to pledge the labour of children is void.

3.4.11 The Bidi and Cigar Workers (Conditions of Employment)

Act, 1966:

- Employment of children under 14 years of age prohibited under the laws at Sl. Nos. 2 to 5.
- Except in the process of family based work or recognised school-based activities, children not permitted to work in occupations connected with:
Passenger, goods mail transport by Railway
Cinder picking, cleaning of ash pits Building operations, construction Catering establishments in Railway premises or port limits Beedi making Carpet weaving Cement manufacturing Cloth printing Dyeing, weaving Manufacture of matches, explosives, fireworks Mica cutting, splitting Wool cleaning
- In occupations and processes other than the above mentioned, work by children is permissible only for six hours between 8.00 A.M. and 7.00 P.M. with one day's weekly rest.
- Occupier of establishment employing children to give notice to local Inspector and maintain prescribed register.

3.4.12 The Payment of Gratuity Act, 1972:

Objective:

- To provide for payment of gratuity on ceasing to hold office

Coverage:

- Factories, Mines, Oil fields, Plantations, Ports, Railway Companies, Shops & Commercial Establishments and to other establishments to which the Government extends the law.

Eligibility:

- Employees drawing wages not exceeding R. 3500/- (\$78.37) per month.

Benefits:

- 15 days wages for every completed year of service or part thereof in excess of six months subject to a maximum of Rs. 50,000 (\$119.58)

3.4.13 Employees State Insurance Act, 1948

Objective:

To provide for health cover, Medical care and Cash benefits for

- Sickness , maternity & employment injury
- Pensions to dependents in case of Death (or) Employment injury

Eligibility:

- Employees drawing wages not exceeding Rs. 3000/- (\$67.17) per month

Benefits:

- Compensation for Death Minimum - Rs. 20,000 (\$447.83 Maximum) - Rs. 1,14,000 (\$2552.62)
- Compensation for Permanent disablement Minimum - Rs. 24,000 (\$537.4) Maximum - Rs (70,000) \$1,567.4
- Temporary disablement 50% of wages for a maximum period of 5 years.

3.4.14 The Payment of Bonus Act, 1965:

Objectives:

- To provide statutory obligations for payment of bonus to persons employed in certain establishments on the basis of profits or productivity.

Scope and Coverage:

- Applicable all over India to factories under the Factories Act and to other establishments employing 20 or persons on any day during a year.
- Government can extend its coverage to establishments employing between 10 and 20 workers.
- Covers all workers including supervisors, managers, administrators, technical and clerical staff employed on salary or wages not exceeding Rs 2,500 (\$55.97) per month.

Main Provisions:

- Eligibility for bonus.
- Payment of minimum and maximum bonus.
- Time limit for payment of bonus.
- Deductions from bonus.

- Computation of gross profits and available allocable surplus.
- Rights of employees.

When to Consult and refer:

- When the factory is registered under the Factories Act.
- When the number of employees in the establishment is above.
- When calculating the bonus.

3.4.15 The Shops and Establishments Act, 1953:

Objectives:

- To provide statutory obligation and rights to employees and employers in the unorganised sector of employment, i.e., shops and establishments.

Scope and Coverage:

- A state legislation; each state has framed its own rules for the Act.

- Applicable to all persons employed in an establishments with or without wages, except the members of the employer's family.
- State government can exempt, either permanently or for a specified period, any establishments from all or any provisions of this Act.

Main Provisions:

- Compulsory registration of shop/establishment within thirty days of commencement of work.
- Communications of closure of the establishment within 15 days from the closing of the establishment.
- Lays down the hours of work per day and week.
- Lays down guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
- Rules for employment of children, young persons and women
- Rules for annual leave, maternity leave, sickness and casual leave, etc.
- Rules for employment and termination of service.

- Maintenance of registers and records and display of notices.
- Obligations of employers.

When to Consult And Refer:

- At the time of start of an enterprise.
- When framing personnel policies and rules.

3.4.16 The Industrial Disputes Act:

Objectives:

- To provide a machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers.

Scope and coverage:

- Applicable to all industrial and commercial establishments
- Covers all workers and supervisors drawing salaries up to Rs. 1600/- (\$35.82) per month.

- Not an applicable to person employed in managerial and administrative capacities.

Main provisions:

- Defines industry, industrial dispute, layoff, lockout, retrenchment, trade union, strike, wages, workman, etc.
- Provides machinery for investigating and settling disputes through works committees, conciliation officers, boards of conciliation, courts of enquiry, labour courts, tribunals and voluntary arbitration.
- Reference of dispute for adjudication.
- Awards of labour courts and tribunals.
- Payment of wages to workers pending proceedings in High Courts.
- Rights of appeal.
- Settlements in outside conciliation.
- Notice of change in employment conditions.
- Protection of workmen during pendency of proceedings
- Strike and lockout procedures.
- Lay-off compensation.
- Retrenchment compensation.

- Proceedings for retrenchment.
- Compensation to workmen in case of transfer of undertakings.
- Closure procedures.
- Reopening of closed undertakings.
- Unfair labour practices.
- Recovery of money due from employer.
- Penalties.
- Obligations and rights of employees.

When to consult and refer:

- When a dispute arises with the workers' union.
- When you plan changes in employment conditions.
- When there is a strike.
- When there is a lockout.
- When retrenchment of workmen.
- When undertaking is being transferred
- On closure of an establishment.
- On re-opening establishment.

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