Industrial labour and general law [ILGL]

CS - EXECUTIVE

RAJNISH PANDEY

THE PAYMENT OF BONUS ACT, 1965

APPLICABILITY
(Sec. 1)

- To every factory, Business organization, establishment
- With more than **20 employees,** *employed* on *any working day* of A.Y.
- With employee between 10 to 19 (By passing **a notification in official gazette by Appropriate Government**, giving a *2 months prior notice* to establishment)

Once Applicable
Applicable Forever

Establishment includes branches, departments and undertaking, except those whose books are maintained separately.

MEANINGS → [Sec. 2(1)] **Accounting year**
- Corporate – year ending on closing date of books
- Company – Period of P & L
- Any other – 1st April to 31st march or year ending on closing date of books

[Sec. 2(13)] **Employee** → **ANY Person** (*except apprentice*) doing any job, and getting salary/wage less than Rs. 10,000 per month.

Any means any, whether retrenched, temporary etc **only apprentice** is excluded

[Sec. 2(14)] **Employer** → Owner or person who manages the affair of establishment.

[Sec. 2(21)] **Salary** → remuneration + DA + Food allowances + cash payments **(Nothing else)**

Eligibility
(Sec 8) → Employee Working days ≥ 30 days during A.Y.

Disqualification
(Sec 9) → Employee has been dismissed from service for (any of the following)
- Fraud,
- Riotous or violent behavior while on the premises of establishment.
- Theft misappropriation or sabotage of any property of establishment.

Disqualified u/s 9 for any year will not receive any bonus for any year

COMPUTATION AND PAYMENT OF MINIMUM BONUS [Sec. 10,11,12,13,14,15,17,18,19]

Minimum Amount
(Sec 10) → Employee age
- Age ≥ 15 yrs – Rs. 100 or 8.33% of salary or wages
- Age < 15 yrs – Rs. 60 or 8.33% of salary or wages

Whichever is higher

Minimum bonus is must whether employer has allocable surplus or not

Maximum Amount → (Sec 11)

- if Allocable Surplus exceeds amt of minimum bonus then
  - ® bonus = proportionate to wages or salary
  - ® 20% of wages or salary

  Whichever is lower
- If Allocable Surplus exceeds 20% of wages or salary then
  - ® Excess amt is carried forward as per Sec. 15

Ceiling on salary or wages → (Sec 12)

Lower of two
- Actual Salary or wages
- Rs. 10000 per month

Proportionate reduction → (sec 13)

if employee has not worked on all working days in AY minimum bonus shall be reduced proportionately.

Computation of working days → (Sec 14)

the days on which employee is on leave (any kind) with salary or wages will be deemed as working days

Set off and Set on (Sec 15)

- Allocable Surplus > Max Bonus
  - *Excess amt* carried Forward
  - for being *set on* in 4 succeeding AY
- Allocable Surplus < Min Bonus
  - *Deficiency* Carried Forward
  - for being *set off* in 4 succeeding AY

Deduction from Bonus

- Adjustment of amt paid as (Sec. 17)
  - Customary Bonus (puja, diwali etc.)
  - Interim Bonus
- Deduction of loss caused due to (Sec. 18)
  - Financial loss caused by Employee &
  - Employee found guilty of misconduct

Time Limit for Payment → (Sec. 19)

- within 1 month of award becoming enforceable (in case of dispute)
- extension of 8 months from end of AY with permission of AG

  Procedure → Application by employer to AG
  Stating reason of grant of extension
  Total period including extension ≤ 2 yrs

Provision Applicable to New Establishments → (Sec. 16)

first 5 yrs – Sec 15 Not applicable
6^{th} year – excess/deficiency of 5 & 6 yr C/f
7^{th} year – excess/deficiency of 5,6 & 7 yr C/f
8^{th} year – Sec 15 applicable here onward

Recovery of Bonus due from employer (Sec. 21) → **App. by -** Employee, Legal heir, Authorised person
App. To – Appropriate Government (AG)
Time Limit – *Within 1 year* of bonus become payable
(May be extended by AG if sufficient cause given)

After satisfaction AG ***Issues Certificate of Recovery and*** Delegates the power u/s 21 to a collector who shall proceed to recover the amt in the same manner as arrears of land revenue

In Case of Dispute → **Relating to –** *Payment of Bonus or applicability of act*
Filed with – any court, Tribunal or Arbitrator
It is Presumed that – Particulars contained in books of Account, B/S and P&L A/c of employer ***duly audited,*** are accurate.

Table showing whose and what books should be audited and by whom. Under what section.

S. No.	Meaning of Employer	Section	Nature of Books	Audited by
1.	A Company	Sec. 24	B/S and P&L A/c	Auditor qualified u/s 226
2.	A Corporation	Sec. 24	B/S and P&L A/c	CAG
3.	A Banking Company	Sec. 25	Books of Accounts	Chartered Accountant
4.	Other than Company or Corporation	Sec. 26	Books of Accounts	Auditor qualified u/s 226

If Employer fails to get his accounts audited then → Authority may get the account audited and remuneration + expenses to auditor will be paid by employer

Inspectors (Sec. 27) → **Purpose of Appointment –** To ascertain whether provison of act have been complied
Appointed by – AG (No. required & limits of exercising jurisdiction is also defined)
Power of Inspector –
- Collect Information
- Enter into establishment
- Examine employer, his agents or servants
- Make copies of or take extracts from any book.
- Exercise other powers as prescribed [Sec. 27 (2)]

Non Applicabilty of the act (Sec. 32) → **Employees of** →
1. Insurance and Banking Companies
2. Seamen, CG, SG or a Local authority
3. Educational Institutes
4. Indian Red Cross Society, NPO's
5. Financial Institutes notified in off. Gazette

Employees of contractors of building operations have been deleted vide payment of Bonus (amendment) ordinance, 2007, w.e.f. 01.04.2006

Exemption from Act (Sec. 36) → **Granted by** – AG
On Grounds of – Financial Position
Order of Exemption – Shall be published as notification in Official Gazette
Contents of Order – Conditions and Period of Exemption

Payment of Bonus Linked with Production and Productivity → **(Sec. 31A)**

Agreement or settlement between employers and employee that bonus shall

- be Paid annually
- be linked with production and productivity
- be in ***lieu** of* bonus based ***on profit***
- Not exceed *20% of salary or wages* earned in relevant AY

Sec. 31A overrides the entire Act

Any Agreement or settlement ***depriving an employee of his right to minimum bonus*** shall be **null and void.** i.e. every employee has a right to receive minimum bonus *even if* bonus calculated as per provision is less the minimum bonus.

Estabilishment in Public Sector → **Meaning –** 1. Government company

[Sec. 2(16)] 2. A corporation with 40% or more capital held by or owned by CG, SG, RBI

Applicability – Generaly not applied but will apply if

(Sec. 20) *It sell good or render service in competition of private sector and income form such sale is 20% or more than its gross total income.*

5 MININUTES QUICK REVISION

Bonus Act

→ **Applicable to –** Every Factory (20 workers), 10 to 19 (by Notification in OG)

→ **Not applicable to –** Company Controlled by CG, SG
Banking, Insurance and financial Institutions

Every Employee →Have *right* to get Min. Bonus (100/60 or 8.33%) → Max. (20% of salary)
(Salary = lower of actual or Rs 3500)

↓

Who have worked for 30 days or more → Not Disqualified u/s 9 → and Salary < Rs. 10,000
(Excess/deficient allocable surplus can be carried forward)

Employer shall → recover financial loss or adjust other bonus → make payment *within 8 month*
(Within 1 month in case of dispute)

↓

Extension in payment → Approval by AG → Max extension 2 yrs (including 8 months)

Recovery & Dispute → By AG, Court, Tribunal, Arbitrator → Appointment of Inspector/ Collector

↓

Audited Books presented before Court will be presumed Accurate and will not be questioned.

RIGHT TO INFORMATION ACT - 2005

Background:

- The objective behind introduction of this act is to bring transparency and accountability in the working of every public authority.
- Every public authority has been assigned with a duty to maintain records and publish manuals, rules, regulations etc in its possession as prescribed under this act.
- Further, it is obligatory on every public authority to publish the information about various particulars prescribed under the act within 120 days of the enactment.
- The right to information Act,2005 came into force w.e.f.12 th October 2005.
- The RTI Act applies over whole of India except J&K.

Features of this Act:

- It shall apply to public authorities.
- All citizens shall have a right to information, subject to the other provisions of the act.
- The public information officers will be responsible to deal with the request for information and also to assist persons seeking information.
- Fees will be payable by the applicant depending on the nature of information sought.
- Specified category of information are exempted from disclosure as per section 8 & 9 of the act
- To provide transparency in public offices working and accountability.

Definitions:

Public authority {Section 2(h)}: Means any authority or body or institutions of the self government established or constituted –

- By or under the constitution.
- By any other law made by parliament
- By and other law made by state legislature
- By notification issued or order made by the appropriate government.

Record includes (Section 2(i)}

- Any document ,manuscript and file.
- Any microfilm, microfiche, and fax copy of a document.
- Any reproduction of image or images embodied in such microfilm(whether enlarged or not)
- Any other material produced by a computer or any other device.

Information :

means any material in any form ,including records ,documents, memos, emails ,opinions, advices, press releases, circulars, order, logbooks ,contract ,reports ,samples ,models data ,material held in any electronic form.

Right to information: means the right to information accessible under this act which is held by or under the control of any public authority and includes the right to –

- Taking notes, extracts, or certified copies of documents or records.
- Inspection of work, documents, records.
- Taking certified samples of material.

- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode, where such information is stored in a computer or in any other device.

Third party-means a person other than the citizen making a request for information and includes a public authority.

Obligations of public authority under RTI Act 2005(Section 4):

- Every public authority has been assigned with a duty to maintain records and publish manuals, rules, regulations etc in its possession as prescribed under this act{section 4 (1)(a)}.
- As per section 4(1)(b),every public authority has to publish within 120 days of the enactment of the act
    - Information of its organization ,functions and duties.
    - The power and duties of its officers and employees.
    - The procedure followed in its decision making process ,including channels of supervision and accountability.
    - The norms set by it for the discharge of its functions
    - Rules. Regulations used by the employees for discharging their functions
    - A statement of the categories of the document held by it or under its control.
    - A directory of its officers and employees
    - Names ,designations and other particulars of the public information officers.
    - Any other information as may be required as per this act.

Designation of public information officers (PIO) Section 5:

Every public authority has to

- **Appoint** –PIO to provide information to persons who have made a request for the information in all the offices of the central or state government
- Appoint at each level i.e. at sub divisional level or sub district level central or state assistant public information officers to receive the applications for information or appeals for forwarding the same to the central or state public information officers.

Request for obtaining information section 6:

The act specify the manner in which request may be made –

- Application is to be submitted in writing or electronically with prescribed fee, to the PIO.
- Information to be provided within 30 days.
- Information shall be provided within 48 hours in case of where life or liberty is involved.
- In case request is made to Assistant PIO ,information shall be provided within 35 days.
- Time taken for calculation and intimation of fees excluded from the time frame.
- No action taken by any authority within 30 days, is deemed to be refusal to give information.
- If 3rd party also involved ,then the time limit will be 40 days

Duties of PIO under the act-

- PIO shall provide necessary help to the person in making application.
- If the information requested for is held by any other public authority ,the PIO shall transfers ,within 5 days to such authority and then accordingly inform same to applicant immediately.

- PIO may seek the assistance of any other officer for the proper discharge of his/her duties and in that case PIO within 30 days of the receipt of the request ,either provide the information or reject the same with reason.
- PIO shall provide information in the form in which it is sought unless it is contrary to the provisions of the act or detrimental to the safety.
- If PIO allows partial access to information, he should communicate the same to the applicant.
- If the request has been rejected the PIO shall intimate the applicant-
  1. He will mention reasons for rejection.
  2. Mention period within which appeal has been for rejection.
  3. The authority to whom such appeal shall be made.

Exemptions from disclosure:

- If disclosure of the information prejudicially affects the sovereignty and integrity of India.
- Information which has been expressly forbidden by any court or tribunal.
- If disclosure would cause a breach of privilege of parliament or the state legislature
- Information include commercial confidence
- Information received in confidence from a foreign government
- Information the disclosure of which endangers life or physical safety of any person or identify confidential source of information.
- Information that would stay the process of investigation.
- Personal information which would cause invasion of the privacy unless larger public interest justify it.

Rejection of request:

The public information officer has been empowered to reject a request for information where an infringement of a copyright subsisting in a person would be involved.

Partial disclosure allowed(Section 10):

As per this section, only that part of the record which does not contain any information which is exempt from disclosures may be provided.

Who is excluded from disclosures of information

- The act excludes Central intelligence and security agencies specified in the 2nd schedule like directorate of revenue intelligence, Central economic intelligence Bureau, BSF, CRPF etc. the exclusion is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human right violations.

Information commissions:

Central Information Commission (CIC)-

- The Central Information Commission is to be constituted by the Central Government through a Gazette notification.
- The Central Information Commission consists of the Chief Information Commissioner and Central Information Commissioners not exceeding 10.
- These shall be appointed by the President of India on the recommendations of a committee consisting of PM who is the Chairman of the committee; the leader of Opposition in the Lok Sabha; and a Union Cabinet Minister to be nominated by the Prime Minister.

- The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology.
- CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- The general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner who shall be assisted by the Information Commissioners.
- Commission shall have its Headquarters in Delhi.
- Other offices may be established in other parts of the country with the approval of the Central Government. Commission will exercise its powers without being subjected to directions by any other authority. (Section 12)
- CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier.
- CIC is not eligible for reappointment.
- Salary will be the same as that of the Chief Election Commissioner.

State Information Commission (SIC)-

- The State Information Commission will be constituted by the State Government through a Gazette notification.
- The State Information Commission consists of one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC).
- These shall be appointed by the Governor on the recommendations of a committee consisting of the Chief Minister who is the Chairman of the committee.
- Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.
- The qualifications for appointment as SCIC/SIC shall be the same as that for Central Commissioners.
- The salary of the SCIC will be the same as that of an Election Commissioner.
- The salary of the SIC will be the same as that of the Chief Secretary of the State Government.
- The commission will exercise its powers without being subjected to any other authority.
- The Headquarters of the State Information Commission shall be at such place as the State Government may specify.
- Other offices may be established in other parts of the state with the approval of the State Government. (Section 15 & 16)

Powers of Information Commission-

The Central Information Commission/ State Information Commission has a duty to receive complaints from any person-

- Who has not been able to submit an information request because a PIO has not been appointed
- Who has been refused information that was requested;
- Who has received no response to his/her information request within the specified time limits;
- Who thinks the fees charged are unreasonable;
- Who thinks information given is incomplete or false or misleading

- Any other matter relating to obtaining information under this law.

The Central Information Commission or the State Information Commission during the inquiry of any complaint under this act may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. (Section 18)

Appellate Authorities:

- Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the act.
- ***First Appeal:*** First Appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority is sufficient cause is shown)
- ***Second Appeal:*** Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown.)
- ***Third Party Appeal*** against PIO's decision must be filed within 30 days before first Appellate Authority and within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.
- Burden of proving that denial of information was justified lies with the PIO. First appeal shall be disposed of within 30 days from the date of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, for reasons to be recorded in writing. Time period could be extended by 15 days if necessary. (Section 19)

Penalties

- Section 20 of the Act imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information.
- Every PIO will be liable for fine of Rs. 250 per day, up to a maximum of Rs. 25,000/- for-
  - Not accepting an application;
  - Delaying information release without reasonable cause;
  - Malafidely denying information;
  - Knowingly giving incomplete, incorrect, misleading information;
  - Destroying information that has been requested; and
  - Obstructing furnishing of information in any manner.
- The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty.
- They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

Jurisdiction of Courts

As per section 23, lower courts are barred from entertaining suits or applications against any order made under this act.

Role of Central/ State Governments

Section 26 explains the Role of Central/ State Governments. It authorizes the Central/ State Governments to:

- Develop and organize educational programmes for the public especially disadvantaged communities on RTI.
- Encourage public authorities to participate in the development and organization of such programmes
- Promote timely and effective dissemination of accurate information by the public authorities
- Train officers and develop training materials
- Compile and disseminate a user guide for the public in the respective official language
- Publish names, designation, post addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

The Child Labour Act bans the employment of children, below 14 years of age in specified occupations and processes, which are considered unsafe and harmful to child workers and regulates the conditions of work of children in employment's where they are not prohibited from working. No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

It also lays down penalties for employment of children in violation of the provisions of this Act, and other Acts, which forbid the employment of children;

The Act extends to the whole of India. The Child Labour Act of 1986 applies to all establishments and workshops wherein any industrial process is carried on.

An "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, and restaurant, eating house, theatre or other place of public amusement or entertainment.

WHO IS A CHILD LABOUR?

Under the Act, 'Child' means a person who has not completed his fourteenth year of age. Any such person engaged for wages, whether in cash or kind, is a child worker.

1. **Occupations and Processes where Child Labour is Prohibited**

No child should be employed or permitted to work in any occupations set forth below, or in any workshop wherein any of the processes listed in Part B of the schedule is carried on, except a workshop wherein the process is carried on by the occupier with the aid of his family or a Government recognised/aided school.

Any occupation connected with –

- Transport of passengers, goods or mails by railway,
- Cinder picking, clearing of an ash pit or building operation in the railway premises,
- Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment, from one platform to another or into or out of a moving train,
- Work relating to the construction of a railway station or with any other work which is done in close proximity to or between the railway lines,
- A port authority within the limits of any port,
- Work relating to selling of crackers and fireworks in shops with temporary licences, and
- Abattoirs/Slaughter Houses.

The processes specified in Part B of the schedule are:

- Bidi making
- Carpet weaving
- Cement manufacture including bagging thereof
- Cloth printing, dyeing and weaving
- Manufacture of matches, explosives and fire works.
- Mica-cutting and splitting
- Shellac manufacture
- Soap manufacture

- Tanning
- Wool-cleaning
- Building and construction industry
- Manufacture of slate pencils (including packing)
- Manufacture of products from agate
- Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene pesticides and asbestos.
- Hazardous processes, Printing and dangerous operations as notified in the rules of the Factories Act, 1948
- Cashew and cashew nut descaling and processing.
- Soldering processes in electronic industries.

2. **Regulation of Work Conditions**

Employment of children in an establishment or a class of establishments shall be regulated as under:

3. **Maintenance of Register**

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment other than those prohibited, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing-

- The name and date of birth of every child so employed or permitted to work;
- Hours and periods of work of any such child and the intervals of rest to which he is entitled;
- The nature of work of any such child; and
- Such other particulars as may be prescribed

4. **Hours and Period of Work**

No child shall be permitted or required to work between 7 p.m. and 8 a.m. and to work overtime. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had a rest interval for at least one hour. The total working hours including the rest interval and the time spent in waiting for work shall not be spread over more than six hours per day.

No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

5. **Weekly Holiday**

The Act also provides that every child employed in an establishment shall be allowed in each week, a holiday for one whole day. The weekly holiday specified by the employer shall not be altered more than once in three months and a notice to that effect shall be displayed at a conspicuous place in the establishment.

6. **Health and Safety of Child Workers**

The appropriate Govt. has been empowered under the Act to make rules for the health and safety of working children in any establishment or class of establishment. These rules may provide for such matters as cleanliness in work place, drinking water, temperature and artificial humidification, fencing of machinery, excessive weights, protection of eyes, device for cutting off power, etc.

7. **Duties of Employers / Penalties for Violation**

The employer will notify the Inspector in case he employs a child in his establishment, within 30 days from the date of such employment.
The employer shall maintain a register in respect of children employed or permitted to work in his establishment and make it available for inspection by an inspector. This register will show -

- name and date of birth of each child worker engaged by him or working in his establishment,
- hours and period of work and rest interval of each such child, and
- the nature of work of every such child.

A notice in the local language and in English, containing an abstract of the list of occupations and processes which cannot employ a child and the penalty for doing so shall be displayed at every railway station, port or establishment, by its occupier.

8. **Penalties**

For employing any child or permitting any child to work in any of the occupations or processes in which he is not allowed to do so the penalty is imprisonment for at least months which may extend to one year, or fine of not less than Rs.10,000 which may be increased to Rs.20,000, or both.

Repeating the offence mentioned above after conviction the penalty is imprisonment for not less than 6 months, which may be extended to two years.

Failure to give notice to the inspector, or failure to maintain register, or failure to display a notice, (as explained under duties of employer) or failure to comply with or contravention of any other provision the penalty is simple imprisonment which may extend to one month, or fine up to Rs.10,000, or both.

9. **Procedure Relating to Offences**

- Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.
- Every certificate as to the age of a child, which has been granted by a prescribed medical authority shall for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
- No court inferior to that of a Metropolitan Magistrate or a magistrate of the first class shall try and offence under this Act.

FACTORIES ACT - 1948

Introduction

Factories Act is one of the earliest labour welfare legislations. The object of the Act is to secure health, safety, welfare, proper working hours, and other benefits to workers. The Act requires that workers should work in healthy and sanitary conditions and for that purpose, it provides that precaution should be taken for safety of workers and prevention of accidents.

Meaning of Factory

Factory means any premises, including the precincts thereof, in any part of which manufacturing process is carried on with or without the aid of power, provided that at least 10 or 20 persons respectively are employed or were employed on any day of the preceding 12 months.
The Act is applicable to all the factories.
The term "premises" is generic term meanings open land or land with building or building alone. The term "precincts" is usually understood as a space enclosed walls.

Manufacturing Process

Section 2(k) of the Factories Act, 1948 defines "manufacturing process". It means any process for:

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

The definition is quite important and it has been the subject of judicial interpretation in large number of cases. The Madras High Court in the case of in **Re. Seshadrinatha Sharma,** held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

In the case of **Shri Laxmi Dass Premji Ghee Merchant V. R Inspector of Factories Gantur**, where ghee brought from various customers was sampled chemically, analyzed and packed in tins for transportation to the Head Office of the concern for sale in the market, the court held that manufacturing process was going in the premises.

Meaning of occupier of factory

Occupier of factory means a person who has ultimate control affairs of factory. It includes a partner in case of a firm and director in case of a company. It may be noted that if a factory is run by a company, then only the director of the company can be treated as occupier.[J.K. Industries v. Chief Inspector of Factories]

The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory. The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories. The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

Following are the general duties of the Occupier.

1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends shall include.

a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health.
b) The arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
c) The provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
d) The maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
e) The provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare are work.

Facilities and Conveniences

1) Factory should be kept clean.
2) There should be arrangement to dispose of wastes and effluents.
3) Ventilation should adequate.
4) Reasonable temperature for comfort of employees should be maintained.
5) Dust and fumes should be controlled below permissible limits.
6) Artificial humidification should be at prescribed limits.
7) Over crowding should be avoided.
8) Adequate lighting, drinking water, toilets, and spittoons should provide.

Additional facilities in case of large factories:

1) Ambulance room, if 500 or more workers are employed
2) Canteen, if 250 or, more workers are employed.
3) Rest rooms/Centers with drinking facility, if 150 or more workers are employed

4) Crèches, if 30 or more women are employed.
5) Full time Welfare Officer, if 500 or more workers are employed.
6) Safely Officer, if 1000 or more workers are employed.

Welfare Measures

1) All machines should be properly fenced to protect workers when machinery is in motion.
2) Hoist and lifts should be in good condition and tested periodically.
3) Pressure Plant should be checked as per the rules.
4) Floor, stairs, and means of access should be of sound construction and free from obstructions.
5) Safety appliances for eyes, dangerous dust, gas, fumes should be provided.
6) In case of hazardous substances, additional safety measures have to be taken.
7) Adequate firefighting equipment should be available.
8) Safety Officer should be appointed if number of workers in factory is 1000 or more.

Working Hours

A worker cannot be employed for more than 48 hours in week. Weekly holiday is compulsory. If the worker is asked to work on weekly holiday, he should avail the holiday on one of the 3 days immediately after the normal day of holiday. A worker cannot be employed for more than 9 hours in day. At least ½ - hour rest should be provided after every 5 hours. Total period of work including rest interval cannot be more than 10 ½ hours.

Overtime wages

If a worker works beyond 9 hours a day and 48 hours a week, overtime wages are paid at double the rate of normal wages. However, overtime wages are not payable on tour. Total working hours including overtime should not exceed 60 hours in a week and total overtime hours in a quarter should not exceed 50 hours.

Leave

Worker is entitled in every calendar year annual leave with wages at the rate of 1 day for very 20 days of work performed in the previous calendar year provided that he had worked for 240 days or more in the previous calendar year. Child worker (who is 14 years and above but less than 15 years) is entitled to 1 day leave with wages for very 15 days. While calculating 240 days earned leave, maternity leave up to 12 weeks and lay off days will be considered but leave shall not be earned on those days. Leave can be accumulated up to 30 days in the case of an adult and 40 days in the case of a child.

Leave admissible is exclusive of holidays occurring during or at either end of leave period.

Leave cannot be taken for more than 3 times in a year.

It may be noted above-mentioned benefit arethe minimum benefits. Employer can of course provide additional or higher benefits.

Employment of Women

A women worker cannot be employed-beyond 6 a.m. to 7 p.m. state government can grant exemption to any factory from such provisions but in no case a woman can be permitted to work during 10 p.m to 5 a.m shift changes can be done only after weekly or other holiday and not in between.

Young Person and Adult

"Young Person" as per Section 2(d) of the Factories Act, 1948 means a person who is either a child or an adolescent.

"Adult" according to section 2(a) of the Factories Act, means a person who has completed his eighteenth year of age.

Employment of Children

Children below 14 years of age cannot be employed. A child of age 14 years but below 15 years can be employed for only 4.5 hours per day. He should be certified fit by certifying surgeon. He cannot be employed during night from 10 p.m. to 6 a.m.

A person of 15 years of age but below 18 years of age is termed as adolescent. He can be employed as an adult if he has certificate of fitness for a full days work from a certifying surgeon. An adolescent is not permitted to work between 7 p.m. to 6 a.m

Display on Notice Board

A Notice containing an abstract of the Factories Act, 1948 and the rules made there under in English and local language shall be displayed by employer.

The name and address of Inspector of factories and Certifying Surgeon shall also be displayed on the Notice Board.

Punishment to Welfare Officer

No punishment can be imposed on Welfare Officer without prior sanction of Chief Commissioner of Factories. However, Simple oder of termination as per terms of appointment is not punishment and such termination order is valid.[Arun Kumar Bali v. Government , NCT of Delhi.]

Powers of Inspectors

An inspector may exercise any of the following within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as factory.
2. He can make examination of the premises, plant, machinery etc.
3. He can require the production of any prescribed register or any other document relating to the factory.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.

Special Provisions relating to Hazardous Processes

Meaning of Hazardous Process : Hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would.

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

ii)result in the pollution of the general environment;

Special provisions relating to hazardous processes have been envisaged under Chapter IVA of the Factories Act, 1948. This chapter was inserter was inserted by the Factories (Amendment) Act, 1987 and consists Sections 41 to 41 H. Theses sections are as follows:

Constitution of site Appraisal Committees [Section 41A]: A Committee under the name Site Appraisal Committee shall be constituted by the state Government to advise the Government in the matter of examination of applications for establishment of factories involving hazardous

Processes. The constitution of the site appraisal committee consisting of committee has been specified therein.

The site Appraisal Committee shall examine an application for the establishment of a factory involving a hazardous process and make its recommendation to the site Government within a period of ninety days in the prescribed form.

Compulsory disclose all information by the occupier [Section 41 B]: It is compulsory on the part of the occupier of every factory involving a hazardous process to disclose all information regarding dangers, including health hazards to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.

Specified responsibility of the occupier in relation to hazardous processes [Section 41C]: Accurate and up-to-date health records or medical records of the workers of the factory who are exposed to any chemical toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be maintained by the occupier of a factory involving any hazardous process.

Inquiry Committee [Section 41D] : in the event of occurrence of an extraordinary situation, the Central Government may appoint an Inquiry Committee to inquire into the standards of health and safety observe in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures prescribed for the health and safety of the workers or the genral public.

Emergency standards [Section 41E] : The Director-General of Factory Advice Service and Labour Institutes may be directed by the Central Government to lay down emergency standards in respect of hazardous process.

Permissible limits of exposure of chemical and toxic substances (Section 41F): The Second Schedule added to the Act, indicates maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes in any factory.

Workers Participation in safety management (Section 41G): The occupier in every factory shall set up a safety committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf where hazardous process is involved.

Warning about imminent danger (Section 41H): If there is reasonable apprehension regarding likelihood of imminent danger to the lives or health of the workers employed in a factory, they may bring the same to the notice of the occupier, agent, manager, etc.

EMPLOYEES' COMPENSATION ACT, 1923

Introduction

This Act provides social security to employees. Under this Act, an employee who dies or suffers disablement partial or total, due to an accident is entitled to get compensation from his employer.

Disablement under the Employees' Compensation Act

Disablement means loss of capacity to work or to move. Disablement of a employee may result in loss or reduction of his earning capacity. In the latter case, he is not able to earn as much as he used to earn before his disablement. Disablement may be partial or total. Further it may be permanent or temporary. Partial disablement means 'any disablement as reduces the earning capacity of a employee as result of some accident' Partial disablement may be temporary or permanent.

Temporary partial disablement means any disablement as reduces the earning capacity of a employee in any employment in which he was engaged at the time of accident which resulted in such disablement. Permanent partial disablement is one, which reduces the earning capacity of a employee in very employment which he was capable of undertaking at the time of injury.

The distinction between these two type of disablement depends on the fact as to whether an injury results in reduction of earning capacity in all the employments which the employee was capable of undertaking or only in that particular employment in which he was engaged at the time of injury.

Applicability of the Act

A employee covered under ESI Act, 1948 is not entitled to get compensation under Employees' compensation Act 1923. Thus, Act is applicable to those factories, mines, transport establishments , construction works, etc. which are not covered under ESI Act , 1948.

Meaning of employee

"Employee" means a person, who is-

1) Railway servant;
2) Crew of ship;
3) Crew of aircraft;
4) Driver, cleaner, helper or mechanic of motor vehicles;
5) Employees recruited abroad;
6) Persons employed in activities like manufacturing process, explosives, mines, ship loading/unloading, construction, electricity generation distribution, drivers, horticulture, circus.

It may be noted that the 'employee' does not include any person working in the capacity of a member of the Armed Forces of the Union.

Every employee including those employed through contractor who is engaged for the purpose of employer's business is eligible for employees' compensation.

In a case of contract labour, the principle employer is liable to pay compensation in the same manner, as he is liable for his departmental labour. However, he is entitled to be indemnified by the contractor for such compensation. [Managing Director, Orissa State Warehousing Corporation v. Smt Geetaranil]

Employer's Liability for Compensation

An employer is liable to pay compensation if personal injury is caused to a employee by accident arising out of and in the course of his employment.

However, an employer is not liable in the following case.

1) Injury which results in total or partial disablement of employee up to 3 days;
2) Injury caused by an accident directly attributable to the following :
   a. Employee working under the influence of driks or drugs;
   b. Willful disobedience of express orders of safety;
   c. Willful removal of safety guards or devices.

However even is such cases, if the employee dies or suffers permanent total disablement the employer will be liable.

Further, an employer is liable to a employee, if a employee contracts any specified occupational disease while he is in the service of the employer for at least 6 months.

It may be noted that compensation is payable even when there is no fault of the employer, except the aforesaid cases where the compensation is not payable. The compensation is payable even if it is found that the employee did not take proper precautions or he was careless or negligent in the performance of his work.

Amount of compensation payable

Compensation is payable to employee in case of partial or total disablement. It is payable to dependants of employee in case of death.

It may be noted that compensation must be paid through the Commissioner of Employees' Compensation, appointed by the Government, in case death and total disablement.

In case of death, compensation payable is an amount equal to 50% of monthly wages of deceased employee multiplied by a factor depending on the age of the employee(more the age, lower the compensation), subject to a minimum compensation of Rs. 80,000/- In addition to this funeral expenses of Rs. 2,500/- are also paid.

In case of permanent total disablement, compensation payable is an amount equal to 60% of monthly wages of disabled employee multiplied by a factor depending on the age of the employee(more the age, lower the compensation, subject to a minimum compensation of Rs. 90,000/-.

In case of permanent partial disablement, compensation is paid based on percentage of loss of earning capacity.

Time Limit for disposal of cases relating to compensation [Sec.25A]

The Compensation Commissioner shall dispose of the matter relating to compensation within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

Accident arising out of and in the course of employment

Accident arising out of employment **:** An accident arising out of employment implies a proximate and direct connection between the accidental injury and the employment. In this case, the compensation will be payable if the accident has occurred at the place where the employee was performing his duties.

Accident in the course of employment: An accident in the course of employment implies a casual connection between the accidental injury and the employment. In this case, for the payment of compensation it is not necessary that the accident occurred at the place where the employee was performing his duties. Further, it is also not necessary that the employee must be actually working at the time of his death. This is known as theory of notional extension.

It is well established that there must be some casual connection between the death of the worker and his employment. If the employee dies, as a natural results of the disease from which he was suffering then it will be considered that he has died of that disease as a wear and tear of his employment and hence no liability would be fixed upon the employer. However, if the employment is contributory cause or has accelerated the death, or if the reason of the death is not only the disease but also the disease coupled with the employment then it could be said that the death arose in the course of the employment and the employer would be liable.

Employer's liability when contractor is engaged

Section 12 makes the employer liable for compensation to such employees hired by the contractor under following circumstances:

(a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal);
(b) The employees were engaged in the course of or for the purpose of his trade or business; &
(c) The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.
(d) The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

INDUSTRIAL DISPUTES ACT, 1947

INTRODUCTION

THE OBJECT OF INDUSTRIAL Disputes Act, 1947 is to make provisions for investigation and settlement of industrial disputes. The purpose is to bring the conflict between the employer and the employees to an amicable settlement. The Act also provides machinery for settlement of disputes, if dispute cannot be resolved through collective bargaining. In addition to above, the Act also makes other provisions in respect of lay-off, retrenchment, strike, lock-out etc.

Meaning of Industry

Industry means any business, trade, undertaking and manufacture of employees and includes any services, employment, handicraft or industrial occupation of workmen.

In **Bangalore Water Supply and Sewage Board V.A. Rajappa and Others**, a very wide interpretation of the term industry was given. It was held profit motive or desire to generate income is not necessary for any undertaking to be covered under the concept of industry. Any systematic activity organized by cooperation between employers and employees for the production and/or distribution of goods and services calculated to satisfy human wants and wishes is an industry.

Thus, many hospitals, educational institutions, universities, charitable institutions, welfare organizations, club, cooperatives, research institutions etc. are also industries within the meaning of industrial Disputes Act, 1947.

Mention should be made that a **legal consultancy firm** has been included in the definition of the term 'industry' by the Industrial Disputes (Amendment) Act, 1982 in view of the decision of the Supreme Court in Bangalore Water Supply v. Rajappa. But this definition has not come into force till now.

Meaning of Industries Dispute

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

Who can raise a dispute?

Industrial Disputes Act provides that a dispute between an employer and a single workman do not fall within the definition of industrial Dispute, but if the workman as a body or considerable section of them make a common cause with the individual workman, then such dispute will be an Industrial Dispute.

Thus, an Industrial Dispute is a collective dispute supported by either a trade union or a substantial number of fellow workers.

However, in respect of certain disputes relating to dismissal, discharge, retrenchment or termination of services, even a single workman can raise a dispute.

Employees covered under the Industrial Disputes Act

Every person employed in an establishment for hire or reward, to do manual, clerical, skilled, unskilled , technical, operational or supervisory work is covered under the Act.

However, the Act does not apply to the following:

1) Persons employed mainly in a managerial or administrative capacity.
2) Persons employed in a supvisory capacity and drawing wages **exceeding Rs. 10,000/-** p.m. or exercising functions mainly of managerial nature.
   Persons subject to Army Act, Air force Act, and Navy Act of those employed in the police service or as an officer or employee of a prison.

Adjudication of Disputes

The Act provides for constitution of **Grievance Redressal Committee in industrial establishment employing 20 or more workers.** First of all, the **Grievance Redressal** Committee will try to settle the dispute. If the dispute is not settles it will be referred to the Conciliation Officer. The Conciliation Officer will try to arrive at fair and amicable settlement acceptable to both the parties . if he is unable to do so, he will send the report to the Central Government. The Government may then refer the industrial dispute to the Board of Conciliation. It may ne noted that here the employer and the employees can voluntarily refer the matter to arbitration. If no settlement is arrived at then there is arrived that three-tier system of adjudication t.e. Labour Court, Industrial Tribunal and National Tribunal. The order made by them is called Award.

Matters within the jurisdiction of Industrial Tribunals

As per Section 7A of the Industrial Disputes Act, 1947 the appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Thrid Schedule and for performing such other functions as may be assigned to them under this Act.

The Third Schedule of the Industrial Disputes Act, 1947 deals with matters within the jurisdiction of industrial Tribunals. These are as follows:

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances ;
3. Hours of work and rest intervals ;
4. Leave with wages and holiday;
5. Bonus, Profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Retrenchment of workmen and closure of establishment; and
10. Any other matter that may be prescribed.

Arbitration and Adjudication

Adjudication involves in the dispute by the third party appointed by the government for the perpose of deciding the nature of final settlement. On getting a report of the failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one on more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The circumstances under which an industrial dispute may be voluntarily referred to arbitration have been stipulated under Section 10A of the Industrial Disputes Act, 1947.

Voluntary Reference to Arbitration

Where any industrial dispute exists or is apprehended and the employer and the workmen agreed to refer the dispute to arbitration, they may, at an time before the dispute has been referred under Section 10 to a Labour Court or Tribunal or National Tribunal, BY A WRITTEN AGREEMENT REFER THE DISPUTE TO ARBITRATION AND THE REFERENCE SHALL BE TO SUCH PERSON OR PERSONS (INCLUDING THE PRESIDING OFFICER OF A Labour Court or Tribunal or National Tribunal) as an arbitrator as may be specified in the arbitration agreement.

An arbitration agreement shall be in such form shall be signed by the parties thereto as prescribed. A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the official Gazette.

Meaning of Award

Award means an interim or final determination of any industrial dispute or of any question relating thereto by any Labor Court, Industrial Tribunal, or National Tribunal. The Term award also includes arbitration award. The award is required to be published by the Central Government or State Government within 30 days from the date it is made. The award become effective only after 30 days of its publication. Generally the validity period of an award is 1 year.

Meaning of Settlement

Settlement means a settlement arrived at in the course of conciliation proceedings. It includes written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceedings.

The settlement arrived in the course of conciliation and arbitration award and labor Court award or the Industrial or National Tribunal Award binds all parties to industrial dispute, including present and future workmen and all parties who are summoned to appear in the proceedings. If settlement is arrived at otherwise in the course of conciliation proceedings, it binds only those who are actually parties to the agreement. Generally, the settlement is valid for 6 months.

Meaning of Lay-off

Lay off means failure, refusal or inability of the employer to give employment to a workman because of any of the following reasons :

1) Shortage of coal, power or raw material ;
2) Accumulation of stock;
3) Breakdown of machinery;
4) Natural calamity;
5) Any other similar or analogous reason.

Lay off means not giving employment within 2 hours after reporting to work. Lay off can be for half day also wherein the worker shall be asked to come in the second half of the shift.

A factory employing 50 or more but less than 100 employees can lay off its workmen who have completed 1 year of service by paying compensation equal 50% of the salary/wages. A factory employing more than 100 employees can lay off its workmen with the previous approval of Central Govt. However the approval of Central Govt. is not required in case lay off is done on account of shortage of power or due to natural calamity. Employer can offer him alternate employment if alternate employment does not call for any special skill or previous experience. In such a case lay off compensation will not be payable if the employee refuses to accept the alternate employment.

Meaning of Retrenchment

Retrenchment means the termination of service of a workman by the employer for any reason other than as a punishment inflicted by a disciplinary action. In addition, retrenchment does not include voluntary retirement or retirement on reaching the age of superannuation or termination on account of non – renewal of contract or termination of contract itself or termination due to continued ill-health of workman.

Retrenchment means discharge of surplus labour or staff of the employer. It is not by way of punishment. The retrenchment shall be done on LIFO basis in respect of each category.

A workman who has completed one year of service can be retrenched by giving one month's notice or one month's salary and retrenchment compensation.

Retrenchment compensation is calculated at the rate of 15 days' average wages for every completed year of service or any part thereof in excess of 6 months. Average wages means average of the wages payable for the proceeding 3 complete calendar months. For the purpose of retrenchment compensation, one-day wage shall be calculated by dividing monthly wage by 30.

Principles laid Down Supreme Court with Regard to Retrenchment

The Supreme Court in the case of Workmen of Subong Tea Estate v. Subong Tea Estate laid down the following principles with regard to retrenchment:

1. The management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimization or any unfair labour practice.
2. It is for the management to decide the strength of its labour force, and the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion.
3. If the number of employees exceeds the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them.
4. Workmen may become surplus on the ground of rationalization or on the group of economy reasonably and bona fide adopted by the management or of other industrial or trade reasons.
5. The right of the employer to effect retrenchment cannot normally be challenged but when there is a dispute in regard to the validity of the retrenchment, it would be necessary for the tribunal to consider whether the impugned retrenchment was justified for proper reasons and it would not be open to the employer either capriciously or without any reason at all to say that it proposes to reduce its labour for no rhyme or reason.

Meaning of strike

Strike means a cessation of work by a body of persons employed in any industry, acting in combination or a converted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

Workmen cannot go on strike in the following cases:

1) During pendency of conciliation proceedings and 7 days thereafter;
2) During pendency of proceedings before Labour Court or Industrial Tribunal or National Tribunal;
3) During period of arbitration proceedings;
4) During period when settlement or award is in operation in respect of the matters covered by the award or settlement.

In case of public utility service (hospitals, railways, ports, docks, telephone, transport etc.) employees have to give at least 14 days' notice for strike. The notice is valid only if strike commences within 6 weeks otherwise fresh notice is required. If such notice is received by any employer, Government authorities should be informed within 5 days of the receipt of notice.

Wages during strike period are payable only if strike is both legal and justified. [Syndicate Ban v. Umesh Naik]

Strike in violation of above provisions is illegal. In such a case, the workman shall be punishable with fine, which may extend to Rs. 50/- per day and with imprisonment, which may extend to month.

Types of Strike

1. **Stay-in, sit down, pen down or tool-down strike**
   In all such cases, the workmen after taking their seats refuse to do work.
2. **Go slow**

Go slow does not amount to strike, but it is a serious case of misconduct.

3. **Sympathetic strike**
   Cessation of work in the support of the demands of workmen belonging to other employer.
4. **Hunger strike**
   Some workers may resort to fast on or near the place of work or residence of the employer.
5. **Work-to-rule**
   Since there is no cessation of work, it does not constitute a strike.

Meaning of Lock – Out

Lock – out means temporary closing of a place of employment or the suspension of work or the refusal by the employer to continue to employ any number of persons employed by him.
Employer cannot fo for lock-out in the following cases:

1) During pendency of conciliation proceedings and 7 days thereafter;
2) During pendency of proceedings before Labor Court Industrial Tribunal or National Tribunal ;
3) During period of arbitration proceedings;
4) During period when settlement or ward is in operation in respect of the matters vexed by the award or settlement.

In HAL Employees' Union v. Presiding Officer, it was held when lock out by employer is legal and justified, workmen are not entitled to compensation and wages for the period during which lock out continues. In case of illegal lock out, the employer can be punished with fine may extend to Rs. 1,000/- and with imprisonment, which may extend to 1 month.