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INTERNATIONAL LABOUR OFFICE

# LABOUR LEGISLATION
## IN
# INDIA

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# PREFACE

The International Labour Office issued in 1938 a publication entitled "Industrial Labour in India", which contained a chapter on "Labour Legislation". In this chapter was given the progress of labour legislation from the earliest enactments for plantations in India up to the year 1937, when Provincial Autonomy was introduced in India.

Later, in the issues of the International Labour Review for April and May 1949, was published an article entitled "A Decade of Labour Legislation in India, 1937-1948", which carried the story to the beginning of the era of Independence in India. This article was enlarged, and developments in the field of labour legislation up to the year 1952 were incorporated in a reissue of this article by the India Branch of the I.L.O. under the title "Labour Legislation in India, 1937-52". An article on "Labour Legislation in India, 1953-54" was also published in "Recent Developments in Certain Aspects of Indian Economy", Vol. 1, a publication of the Branch Office.

The collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour is one of the functions of the International Labour Office under its constitution. The Branch Office of the I.L.O. in India has long felt that in the present formative stage of India's economic history a chronicle of labour enactments from the lattar half of the last century to the present day will serve a most useful purpose. It is to fulfil this purpose that the present volume is being issued. It has brought together within the compass of a single publication the information that lay scattered in the various I.L.O. publications.

After an Introduction in which the main developments in the history of labour legislation are outlined, a detailed historical treatment of different aspects of labour legislation is taken up in different chapters.

The economic development of a country is only a means for the achievement of the social objective. But the achievement of the latter cannot wait till the economic development had taken place, as it is a never ending process. It is therefore essential that stock-taking in the social sphere is taken up from time to time, so that, having reviewed the position at a particular point, one may move forward. Labour legislation plays an important role in the achievement of the social objective, and a complete picture can enable us to consolidate our gains and plan the future lines of action.

It is our earnest hope that this book will be useful to legislators, government officials, the representatives of management and workers, and to students of economics and sociology.

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International Labour Office,
India Branch.

*Mandi House,*
*New Delhi,*
6 *September* 1957.

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# CHAPTER 1

## Introduction

The beginnings of Indian labour legislation go back to the 'thirties of the last century when the Government of India felt the need for regulating the recruitment, forwarding and employment of Indian labourers under the indenture system to the various British colonies. Although this legislation applied only to emigration to foreign countries, it exerted a profound influence on the development of labour legislation within India, especially in regard to the labour supply for the Assam tea gardens. The country was then semi-feudal in character and *laissez faire* was the ruling doctrine of the day; it was sincerely believed that any interference in the employee-employer relationship would prove detrimental to both parties. Far from protecting the interests of labour, the first attempts to 'regulate' labour consisted of enactments, such as the earlier Assam Labour Acts, the Workmen's Breach of Contract Act of 1859 and the Employers' and Workmen's (Disputes) Act of 1860, which rendered workmen liable to criminal penalties for breach of contract and the Indian Penal Code of 1860 also contained provisions of this character.

Towards the close of the nineteenth century, however, efforts were made to enact legislation to correct the more serious abuses in the employment of workers in factories. The earliest of these were the Factories Act of 1881 and 1891, which placed a limitation on the employment and working hours of women and children. The first Mines Act passed in 1901 also had a limited objective of securing safe conditions of work and there were no provisions for the special protection of women and children or for the regulation of hours of work. In factory industries, especially textiles, which were rapidly expanding in range and in the numbers employed, the workers were employed for fourteen and fifteen hours a day and the provisions regarding the minimum age of children and half-timers were totally ineffective. This and several other serious abuses were brought to the notice of the authorities by the Factory Labour Commission appointed in 1907 by the Government of India. As a result, and in spite of opposition on the part of industries, an Act was passed in 1911 with the object of removing some of the obvious shortcomings of the existing law. The regulations about the employment of women and children were strengthened, and, for the first time in India, there was a statutory limitation of hours of work for men, though this was confined to textile factories only. It would thus be seen that early labour legislation was haphazard and tardy.

In contrast, after the first World War, labour legislation took shape at a rapid rate. The reasons generally ascribed for this accelerated pace are many. In the political field the introduction of the Montagu-Chelmsford reforms and the association of popular representatives in the central legislature and the governments in the provinces served to bring the various problems of the country before public attention. The country received its first constitution under the Reforms of 1919, conferring a modified degree of autonomy on the provinces. So far as labour was concerned the central legislature was given powers to legislate on all matters with the exception of housing. The provincial legislatures could, for their part, legislate on housing and also, with the approval of the central government and the overriding authority of the central legislature, on all other subjects except mining.

Besides, at the conclusion of the first World War, there was a rising consciousness among workers through increased knowledge of general economic conditions and of the trade union movement in other countries. The industrial unrest which followed 1919 saw the birth of the first strong central organisation of workers in the All-India Trade Union Congress. At about the same time the International Labour Organisation was set up and the attendance of workers', employers' and government representatives at its meetings and the ratifications by the Government of India of many of the International Labour Conventions resulted in giving a great fillip to labour legislation in India. Another influence was the impact of the nationalist movement under the leadership of the Indian National Congress. Popular leaders like Shri Jawaharlal Nehru and Shri Subhas Chandra Bose associated themselves with the activities of the All-India Trade Union Congress. As a result, labour became more insistent in its demands for protective labour legislation.

The principal measures enacted immediately after the end of the first World War may now be recounted. The Factories Act of 1911 was amended a number of times, *e.g.*, to reduce the hours of work of adults to 11 a day and 60 a week, to provide payment for overtime work at the rate of one-and-a-quarter times the normal wage, to raise the minimum age of employment of children from nine to 12 years and reduce their hours of work to six a day, and to extend coverage to factories using power and employing 20 or more workers. The Indian Mines Act, 1923, which was enacted to replace the Act of 1901, and to implement the Hours of Work (Industry) Convention, 1919, restricted hours of work for adult workers to 60 per week on the surface and 54 underground, fixed the minimum age of employment of children at 12 and made provision for a weekly holiday. The other main

additions to the statute book were : The Workmen's Compensation Act, 1923 (the first enactment on this subject), amended in 1926 and 1929 to implement the Workmen's Compensation (Occupational Diseases) Convention, 1925, and the Equality of Treatment (Accident Compensation) Convention, 1925, adopted by the seventh session of the International Labour Conference ; the Trade Disputes Act, 1929, providing for courts of inquiry and conciliation boards; and the Indian Merchant Shipping Act, 1923, concerning regulation of recruitment, prohibition of employment of children, protection of wages and welfare. An important amendment to the Indian Railways Act, 1890, was made in 1930 to implement the Hours of Work (Industry) Convention, 1919. The Indian Trade Unions Act, 1926, which is still in force, was also passed during this period. These years also saw the beginning of maternity benefit legislation in some of the provinces.

In 1929 the Royal Commission on Labour in India was set up and the Commission made in its report a series of recommendations on all aspects of labour problems including employment of women and children, migration, hours of work, conditions of work and industrial relations. These recommendations led directly to most of the legislation passed from 1931 onwards. Out of 24 labour enactments adopted by the central and provincial legislatures during the years 1932 to 1937 as many as 19 were in implementation of the Commission's suggestions. Among the major measures during this period were :—

the Tea Districts Emigrant Labour Act, 1932, to control migration into Assam for work on plantations ;

amendments to the Workmen's Compensation Act, 1923, extending the scope and coverage of the Act and increasing the scales of compensation;

the Indian Dock Labourers Act, 1934, regulating safety in docks and to implement the Protection against Accidents (Dockers) Convention (Revised), 1932;

a new Factories Act, 1934, a consolidating measure, limiting working hours to ten a day and 54 in the week in perennial factories, and to 11 a day and 60 in the week in seasonal factories, and providing for a weekly holiday, prohibition of night work of women and children and reduction in their hours of work, and higher overtime pay ;

the Mines Amendment Act of 1935, fixing the hours of work above ground at 54 in the week and ten in the day, and underground at nine in the day; and

the Payment of Wages Act, 1936.

The contribution of the provinces during the period was mainly the adoption of maternity benefits legislation by Madras, Bombay and the Central Provinces, the Trade Disputes Conciliation Act in Bombay and a measure to protect labour in unregulated factories in the Central Provinces.

The pace of labour legislation was further accelerated by the inauguration of provincial autonomy in 1937. Before the Government of India Act of 1935 came into force, legislative powers in the labour field were held jointly by the central and provincial governments. While this was continued under the constitutional provisions of the Government of India Act, 1935, there was a demarcation between provincial and central functions regarding legislation as well as administration. While the regulation of labour and safety in mines and oilfields, on the federal railways and in the major ports, and inter-provincial migration were subjects for central or federal legislation, the following were subjects of concurrent legislative jurisdiction : factories, welfare of labour, conditions of labour, provident funds, employers' liability and workmen's compensation, unemployment insurance, trade unions and industrial disputes. The concurrent powers were subject to the overriding jurisdiction of the central legislature. On the other hand, it was also provided that if the central legislature desired to pass legislation on any of these subjects involving "the giving of directions to a province as to the carrying into execution" of such legislation, it must obtain the previous sanction of the Governor-General (Section 126 (2) ).

Provincial autonomy came into force on 1 April 1937 and the popular ministries that came into being in most of the provinces in July that year were pledged to translate into action progressive social programmes.

In pursuance of their labour policy the Governments of Bombay, the Central Provinces and Berar (now part of Madhya Pradesh), the United Provinces and Bihar appointed committees to enquire into conditions of work of industrial employees with special reference to wage position. Before legislative action on the recommendations of the various reports could be considered, the Congress Ministries in most of the provinces resigned in November 1939; they had, however, during the period of their tenure of office strengthened their administrative machinery and carried out legislative reforms in the labour sphere (*e.g.* the Bombay Industrial Disputes Act, 1938, Maternity Benefit Act in Bengal, United Provinces, Punjab, Assam and Sind (now part of Pakistan), Shops and Establishments Acts in Bombay, Bengal and Sind and Trade Employees' Act in Punjab).

Several provinces also appointed Labour Commissioners for dealing with labour problems in their respective provinces.

It may be relevant at this stage to consider the progress of labour legislation in Indian States[1]. Under the Constitution of 1935, there were two main types of political units in India : the autonomous provinces directly under British rule and the Indian States which owed allegiance to the British Crown but were largely independent as far as their internal affairs were concerned. The Constitution aimed at uniting the whole of India into one federal State. There were 562 Indian States and the most important of them were Hyderabad, Mysore, Travancore, Kashmir, Gwalior, Baroda and Indore.

The most important organised industries in Indian States were factories and considerable progress in factory legislation was made after the first World War in Hyderabad, Baroda, Mysore and Indore. Some advance was also made in the regulation of labour conditions in mines in Mysore and Hyderabad. Besides these labour measures relating to particular classes of employment, legislation was enacted in some of the States for the welfare of workers in general, irrespective of the industry in which they were employed. Although the more important enactments in the provinces were adopted in the industrially advanced States, labour legislation in the States fell short of the standards in the provinces.

While considerable progress was made in labour reforms as a result of provincial autonomy since 1937, the unilateral policies of the provincial governments had caused the emergence of divergent labour standards in India, and the need for central co-ordination became more and more apparent. The war, which began in 1939, also stressed the need for concerted action and avoidance of divergent policies. As a result, the Government of India convened under its auspices the Labour Ministers' Conference, composed of the heads of the Labour Departments of provinces and the industrially important Indian States. The first session of the Conference was held in January 1940, and the second and third sessions in January of 1941 and 1942 respectively[2]. Before each of the latter two sessions actually met, the Labour Member of the Government of India called together and met separately representatives of employers and workers and placed before them the proposals on the subjects of the agenda of the sessions and ascertained their views.

1. For a detailed study see *Labour Legislation in Indian States* in *International Labour Review*, Vol. XXXVIII, No. 6, December 1938.

2. For the proceedings of these three Conferences, see Bulletins No. 70, No. 72 and No. 73 in the series : Bulletins of Indian Industries and Labour, published by the Manage r of Publications, Delhi.

At the third Conference in January 1942, the President of the Conference suggested "whether for the future, it will not be healthier for us to develop a practice of having joint meetings of employers, workmen and government representatives"[1]. The first such tripartite Labour Conference was held in August 1942, composed of representatives of the Central, provincial and Indian State Governments, as well as of employers and workers, with a constitution modelled on that of the International Labour Organisation and with the following three objects : (1) the promotion of uniformity in labour legislation; (2) the determination of a procedure for the settlement of industrial disputes ; and (3) consultations on all matters of industrial interest affecting the country as a whole. This Organisation consists of a Standing Committee and a plenary Conference, over both of which the Minister for Labour in the Government of India presides. The Committee, which may meet as often as it is convened by the Government of India, was constituted in 1942 and consisted of ten Government, five employers' and five workers' representatives. The plenary Conference, which meets at least once a year, consisted of 22 Government representatives (excluding the chairman) and 11 representatives each of employers and workers[2].

In September 1943 the tripartite Labour Conference passed a resolution recommending the setting up of machinery to investigate questions of wages and earnings, employment and housing and social conditions generally and in pursuance of the resolution the Government of India appointed a Committee under the chairmanship of Shri D. V. Rege, to go into the labour conditions in the country. The Committee made exhaustive recommendations[3] on the whole question including wages, employment, welfare and housing. Among the difficulties noticed by the Committee were the low level of basic wages, unsatisfactory system of recruitment, bad working conditions and absence of provision for medical relief to workers. To implement the recommendations of the Committee, the Government of India drew up a five-year plan of legislative and administrative action. Besides, the successful functioning of tripartite machinery in promoting regular and periodical discussions between Government, employers and workers naturally helped to focus attention on the main problems of labour, and the years between 1942 and 1947 witnessed a remarkable extension in the scope and content of protective labour legislation. The more important among

1. Proceedings of the Third Conference of Labour Ministers, p. 5.

2. Changes were made in the total number of representatives of the Committee and the plenary conference from time to time. For details, see *Indian Labour Gazette*, Vol. XIII, No. 7, January 1956, pp. 491-497.

3. *Labour Investigation Committee : Main Report.* Manager of Publications, Delhi, 1946.

the enactments which the tripartite organisation has helped to place on the statute book are a series of amendments to the Factories Act which gave workers in factories a 48-hour week, annual holidays with pay and canteen facilities; the Industrial Employment (Standing Orders) Act, 1946, which requires the larger industrial establishments in the country to frame and adopt regular standing orders; and the Industrial Disputes Act, 1947, which provides for the investigation and peaceful settlement of industrial disputes.

The two most important developments which affected the sphere of labour legislation in the post-war era were the complete transfer of power in India on 15 August 1947 and the partition of India into the Dominions of India and Pakistan and the rapid integration with the Union of India of the territories formerly known as the Indian States and the resultant automatic extension of the scope of the labour laws enacted by the Indian legislature. Between August 1947 and June 1948, 219 Indian States with a total area of 84,774 square miles and a combined population of over 12.01 million were merged with the adjoining Indian provinces and another 22 States with an area of 19,061 square miles and a population of 1.4 million were consolidated into units directly administered by the Government of India. In other cases States adjacent to each other have been integrated to create new viable units covering a large territory and thus facilitating better administration. By June 1948, 294 States covering a total area of 150,400 square miles and having a combined population of over 23.1 million had thus been consolidated into six unions each with a common legislature and executive.

Under the new Constitution which came into force on 26 January 1950, the Republic of India was a union of States consisting of nine Part A States (Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal), eight part B States[1] (Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin) and ten Part C States (Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh) and the Part D States of Andaman and Nicobar Islands.

A further step towards the consolidation of the constituent states of the Indian Union was taken on 1 November 1956 when in accordance with the States Reorganisation Act, 1956, the Indian Union was reorganised into 14 States and four centrally administered territories. Under the States

1. For the purpose of improving the administration of Part of B States and for placing them, as far as possible, on a par with Part A States, Part B States Laws Act, was passed in 1951 extending the more important central enactments (including labour Acts) to all Part B States except Jammu and Kashmir.

Reorganisation Act, 1956, the Indian Union consists of (1) the States of Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal; (2) the Union territories of Delhi, Himachal Pradesh, Tripura, Manipura, Andaman and Nicobar Islands, Laccadives, Minicoy and Amindive Islands.

The new Constitution of India retains the earlier division of powers between the Centre, now termed the Union and the provinces now called States. The executive powers of the Union are restricted, except in case of emergency, to the matters in respect of which the Union legislature, *i.e.*, Parliament, has the exclusive right to legislate; these are enumerated in the Union List, and include regulation of labour and safety in mines and oilfields; industrial disputes concerning union employees; and inter-State migration. The State legislatures have the exclusive right to enact legislation on the subjects in the State List. With regard to a third group of subjects, namely those specified in the Concurrent List, both Parliament and the State legislatures have the right to make laws. But when the provisions of the Act passed by the Union conflict with those of an Act passed by a State, the former prevails over the latter. Among the subjects in the Concurrent List are (1) trade unions; industrial and labour disputes; (2) welfare of labour, including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old-age pensions and maternity benefits; (3) social security and social insurance; employment and unemployment; (4) vocational and technical training of labour; (5) economic and social planning; and (6) factories.

The principal legislative measures enacted after Independence were :

the Minimum Wages Act, 1948, which provides for the statutory fixation and periodical revision of minimum rates of wages in a number of employments;

the thorough overhaul of the Factories Act in 1948 with a view to strengthening its provisions relating to young persons, health, safety and welfare measures in factories;

a steady extension of social security measures in the shape of (a) an integrated scheme of compulsory insurance against the risks of sickness, maternity and employment injury under the Employees' State Insurance Act, 1948, applicable in the first instance to workers in India's perennial factories; (b) a compulsory provident fund for coal miners (1948) and employees in certain classes of factories in some specified industries, (1952); and (c) amendments to the Industrial Disputes Act, 1947, providing for the

payment of compensation to workers in factories and plantations in the event of their layoff or retrenchment ;

a new emphasis on adequate welfare measures as exemplified by the Coal Mines Labour Welfare Fund Act, 1947, and the Mica Mines Labour Welfare Fund Act, 1946, and the new and comprehensive provisions relating to welfare measures in factories included in the Factories Act of 1948;

the regulation of the conditions of work and employment of plantation workers by the Plantations Labour Act, 1951 ;

the provision of shorter working hours, overtime pay and holidays with pay for mine workers under the Mines Act 1952 ;

the enactment of a series of Shops Acts in States regulating conditions of work in shops, commercial establishments, restaurants and theatres in the more important urban areas ;

the setting up of an Appellate Tribunal with jurisdiction over State Tribunals (1950) ;

the beginning of a scheme of registration of dockworkers in India, with a view to securing for this important class of wage earners, whose greatest disability hitherto has been extremely irregular employment, longer periods of continuous and regular employment under the Dock Workers (Regulation of Employment) Act 1948 ;

the Factories (Amendment) Act, 1954, to give effect to the Night Work (Women) Convention (Revised), 1948 ; and the Night Work of Young Persons (Industry) Convention (Revised), 1948 ; and

the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, substituting the present system of tribunals by a three-tier system of original tribunals, namely, labour courts, industrial tribunals and national tribunals.

It may thus be seen that in the past three decades an impressive record of labour legislation has been built up, the process quickening with the progressive evolution of self-government and the growing industrialisation of the country.

We may now proceed to analyse in some detail the main developments in India in the field of labour legislation dealing in turn with the legislation relating to plantations, factories and workshop, mines, shops and offices, transport, wages, trade unions and trade disputes, social security, industrial housing and seafarers ; the principal wartime measures and the effects of independence are also noted.

## CHAPTER 2

### Plantation Legislation

The plantation industry was the first organised industry in India for which labour legislation was specially enacted. The main object of this earliest legislation was the regulation of the contractual relations between planters and labourers—providing the workers with steady work, adequate wages and proper health conditions, while guaranteeing the employers a stable labour force, for the recruitment and transportation of which they had often to spend considerable sums of money. After the abolition of the system of indentured labour, plantation legislation became exclusively concerned with the protection of the labourer as an emigrant.

*Assam Labour and Emigration Acts.*—The development of the tea garden industry in Assam was rendered particularly difficult by the scarcity of population in the province and its distance from the sources of labour supply. Recruiting of labour was both complicated and expensive, and there arose a class of contractors or professional recruiters, called *arkattis* or *sardars*, who resorted to various devices to recruit and forward labourers from Bengal and other provinces to Assam. Between 1863 and 1901[1], a series of legislative measures was passed providing for the licensing of recruiters, the registration of emigrants, the taking of sanitary precautions on the journey to the labour districts, the fixing of the duration of labour contracts at from three to five years, and the determining of wage scales. It was further provided that desertion and other forms of breach of contract on the part of labourers should be punishable by law, and planters were empowered to arrest absconders without warrant.

The Assam Labour and Emigration Act of 1901 granted powers to Local Governments to close any area to recruitment except through licensed recruiters and tea garden *sardars*. An amending Act of 1908 further prohibited the conclusion of labour contracts with new recruits elsewhere than in the recruiting districts, and the entering into new contracts by time-expired labourers. Recruitment by unlicensed contractors and the right of arrest by planters were also prohibited, and facilities were created for recruitment by garden *sardars* under certain conditions. Moreover, in the same year, the provisions relating to indentured labour were, by notification, made inoperative in the Surma Valley and in the two lower districts of the Assam Valley.

1. Between 1863 when the first Act was passed and 1889, five Acts were passed in Bengal and one in Madras.

A further step was the passing of the Assam Labour and Emigration (Amendment) Act, No. VIII of 1915. By this, the indentured labour system was abolished in respect of the other districts of the Assam Valley, recruitment by contractors of all kinds was suppressed, and provision made for the creation of an Assam Labour Board for the supervision of recruitment by garden *sardars* under local agents.

*Penal Sanctions in Other Legislation.*—These amendments of the Assam Labour and Emigration Act did not, however, result in the abolition of criminal penalties for breach of labour contract, for which provisions were included in other legislation still in force, the most important being the Workmen's Breach of Contract Act of 1859. This Act providing for criminal penalties for breach of contract, was of general application in the cases falling within its scope[1] and continued to be applied to tea garden labour up to the year 1920. In that year, the provisions of the Act were somewhat modified[2], and in 1923, following the recommendations of the Assam Labour Enquiry Committee of 1921-1922, which considered penal sanctions to be an anachronism, an Act was passed repealing the Workmen's Breach of Contract Act and two sections of the Indian Penal Code under which workmen could be punished for breach of contract. This repealing Act came into force on 1 April 1926[3].

Penal sanction legislation, however, still existed in other provinces. In Madras a Planters' Labour Act had been passed in 1903, which was applicable to workers employed on plantations in two Madras districts and included provisions both for criminal penalties for breach of contract and for the welfare of the workmen subjected to these penalties. This Act was repealed by an Act of 1927 which came into force at the beginning of 1929[4].

When the Workmen's Breach of Contract Act of 1859 was repealed, the Government of India indicated that Local Governments and Administrations might give some temporary relief to employers. This, coupled with representations made by the planters and the local landholders[5] in Coorg, resulted in enactment of the Coorg Labour Act of 1926, the principles of which were based on those of the Workmen's Breach of Contract Act.

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1. The full title was: "Act to provide for the punishment of breaches of contract by artificers, workmen and labourers in certain cases."

2. *Report of the Assam Labour Enquiry Committee, 1921-1922*, pp. 75-76.

3. *Report on Immigrant Labour in the Province of Assam, 1926*, p. 3; A.G. CLOW: *The State and Industry*, Government of India 1928, p. 163.

4. A.G. CLOW : *The State and Industry*, p. 165.

5. Landholders depended upon outside labour for the cultivation of land.

Its operation was, however, limited to five years only and its scope confined to workmen employed in the cultivation and the protection of coffee, tea, rubber and other agricultural products. The Act expired on 1 April 1931[1].

*The Tea Districts Emigrant Labour Act*, 1932.—In the meantime, the application of the regulations regarding recruitment and engagement of labour for Assam tea gardens became more and more difficult, a view which was shared by both the Government of India and the Local Governments. Accordingly, in 1928, the Government of India drafted an Assam Recruitment Bill, but the Bill was not proceeded with pending enquiry and report by the Royal Commission on Labour in India.

The Royal Commission devoted considerable attention to the problems of the plantations, recruitment for Assam, wages on plantations and health and welfare in plantations and made several important recommendations on the subject. The Commission found the Assam Labour and Emigration Act of 1901 open to several objections. It was unintelligible to most people and obsolete in many parts owing to the recent amendments ; it seriously hampered the free flow of labour to the Assam tea gardens. The Commission, therefore, recommended the enactment of new legislation and elaborated a scheme with the object of securing the free movement of labour, a more stable labour force, and better administration of the law[2]. On the basis of these recommendations, the Indian legislature passed a new Act, the Tea Districts Emigrant Labour Act, in 1932. This replaced the Assam Labour and Emigration Act of 1901, thus removing the last of the Acts which provided for contract labour; it came into force on 1 October 1933[3].

*Provisions of the Act.*—Every emigrant labourer (person who "last entered Assam as an assisted emigrant and is employed on a tea estate") and his family, have a right of repatriation at the expense of the employer on the expiry of three years after entry into Assam. Earlier repatriation in certain circumstances and repatriation of the families of deceased workers are also provided.

Children under sixteen may not be assisted to emigrate for work in the tea gardens unless accompanied by either of the parents, or other adult

1. A.G. CLOW : *The State and Industry*, p. 164; *Report of the Royal Commission on Labour in India*, pp. 355-356.

2. *Report of the Royal Commission on Labour in India*, pp. 359-382.

3. *Annual Report on the Working of the Assam Labour Board, 1932-1933*, p. 5; Government of India: Department of Industries and Labour : *Third Report showing the Action raken by the Central and Provincial Governments on the Recommendations made by the Royal Commission on Labour in India, 1934*, p. 32.

guardian relatives. A married woman may be assisted to emigrate only with the consent of the husband.

The Central Government[1] is empowered to declare any area to be a controlled emigration area, and thereafter any assisted emigrant may be forwarded to Assam only by a licensed forwarding agent, acting on behalf of an employer or employers of labourers; forwarding should take place only along prescribed routes and subject to employers making proper provision for accommodation, feeding and sanitary arrangements on the journey. The Central Government has powers to declare any controlled emigration area or part of it, to be a restricted recruiting area, and thereafter, no person may offer to assist another to proceed to Assam as an assisted emigrant except a licensed forwarding agent, a licensed recruiter, or a garden *sardar* holding a certificate from the owner or manager of a tea estate.

Provision is made for the appointment of a Controller of Emigrant Labour, assisted by a Deputy Controller, to exercise the various powers and discharge the various duties under the Act; the cost of this organisation and of other expenses of the administration of the Act are to be met from contributions by employers to an Emigrant Labour Fund.

*Administration of the Act.*—The Act empowers the Central Government to make rules for the administration of the Act and other purposes including the regulation of the procedure of the Controller of Emigrant Labour and those exercising his powers, prescribing the agency and its procedure to collect the Emigrant Labour Cess, its mode of payment, etc., regulating variour details connected with forwarding or repatriating, like prescription of scales of subsistence allowances, routes of forwarding emigrants, manner of forwarding them to depots, keeping of necessary registers, submission of returns, etc., and generally to carry out the purposes of the Act. Rules may also be made to regulate the procedure of owners and managers in the grant of withdrawal of certificates to workers empowering them to recruit labour, and to require employers to submit returns of wages and earnings.

The duties of the Controller of Emigrant Labour or person authorised to exercise his powers include: (1) enforcement of the provisions of the Act relating to repatriation from Assam; (2) supervision of forwarding routes including inspection of depots, trains or other vehicles in use, etc., and (3) supervision of recruiting.

Although plantation industry provided employment to a large number of workers, there was no comprehensive legislation to improve the working

1. Before the constitution of 1935 came into force, provincial Governments were empowered to exercise this function.

conditions in plantations. The Labour Investigation Committee which was appointed by the Government of India in 1944 observed in its report "that as the conditions of life and employment on plantations were different from those in other industries, it would be very difficult to fit plantation labour in the general framework of the industrial labour legislation without creating serious anomalies" and recommended a plantation labour code covering all plantation areas.

In 1947, a tripartite Industrial Committee for Plantations was set up by the Government of India to consider the problems of the plantation industry. Its work at its earlier sessions gave useful information supplementing that in the Labour Investigation Committee's Report and leading up to legislation. On the recommendation of the tripartite committee, the main outlines of a Plantations Labour Bill were drafted and discussed at a Tripartite Plantation Conference held in September 1949 and at the third Session of the Industrial Committee on Plantations held in November 1950. Largely on the basis of these discussions, a Bill was finally framed and introduced in Parliament on 7 June 1951, passed by Parliament on 15 October 1951 and received the assent of the President on 2 November 1951.

### *Plantations Labour Act*

The Act applies to all tea, coffee, rubber or cinchona plantations on which 30 or more persons are employed, or were employed on any day of the preceding 12 months.

Any State Government may, subject to the previous approval of the Central Government, apply the Act to any other class of plantations within that State.

*Health.*—On every plantation effective arrangements should be made by the employer for the provision and maintenance at convenient places of a sufficient supply of wholesome drinking water for all workers; separate urinals and latrines of prescribed types for men and women workers; and medical facilities for the workers of such standards as may be prescribed by the State Government. State Governments are empowered to make rules for the establishment of canteens on plantations where 150 workers are ordinarily employed.

*Creches.*—Suitable rooms for the use of women workers' children under the age of six are to be provided and maintained by the employer on every plantation employing 50 or more women workers—adequately lighted and ventilated, and maintained in a clean and sanitary condition, in charge of a woman trained to look after children and infants.

*Housing.*—Every employer is required to provide and maintain the necessary housing accommodation for every worker and his family residing on the plantation. The State Government can make rules for standards of accommodation, the selection of the sites for the construction of houses, the fixing of rent, if any, and the constitution of joint advisory boards consisting of representatives of the Government, the employer and workers, for consultation in regard to these matters.

*Hours of Work.*—No adult worker may work more than 54 hours a week on a plantation; after not more than five hours of work, a worker must be allowed a rest interval of at least half-an-hour. The period of work of an adult worker inclusive of intervals for rest and the time spent for waiting for work on any one day shall not be spread over more than 12 hours.

*Weekly Rest.*—No worker may work for more than ten consecutive days without being allowed a whole day of rest. The State Government may make regulations providing for a day of rest in every period of seven days, and for the payment for work done on a day of rest at a rate not less than the normal overtime rate.

*Employment of Women and Children.*—The Act prohibits the employment of children under 12 years of age on plantations. The working hours of children and young persons under 18 years of age are fixed at 40 a week. No woman or child worker may be employed at night without permission from the State Government.

*Holidays with Pay.*—The minimum annual holidays with pay must be calculated at the rate of one day for every 20 days' work for an adult and at one day for every 15 days' work for a young person; accumulation is allowed up to a maximum of 30 days.

Payment for the annual leave is at a rate equal to the daily average of total full-time wages, exclusive of any overtime earnings and bonuses, if any, but inclusive of cost-of-living allowances and the cash equivalent of any advantage accruing to the workers concerned by the concessional supply of foodgrains.

The Act reserves the rights accruing to workers from awards, agreements or contracts of services providing for longer periods of leave.

*Sickness and Maternity Benefits.*—Rules may be made by State Governments to regulate the payment by employers of sickness or maternity allowances and to specify the circumstances in which such allowances shall

not be payable or shall cease to be payable, due regard being given to the medical facilities that may be provided by the employer on any plantation.

*Inspecting Staff.*—Provision is made for the appointment of a Chief Inspector and Inspectors of Plantations and certifying surgeons for the examination of and enquiry into the conditions of work, and for the exercise of medical supervision.

Though enacted in 1951, the implementation of the Act was delayed mainly by adverse effects on the industry created by a slump in 1952. Eventually, after the slump had passed off, the tripartite committee recommended that the Act should be brought into force on 1 April 1954 and that sections which would automatically come into force, as for example, those relating to the provision of drinking water, fitness certificates and annual leave with wages, should be given effect to from that date. The committee also decided that a phased programme for the implementation of other welfare measurs should be drawn up after the finalisation of the rules.

This recommendation was accepted by the Government of India[1].

The draft model rules under the Act were discussed at the sixth session of the Industrial Committee on Plantations in July 1954. The model rules have since been finalised and forwarded to the State Governments concerned for adoption. These rules provide for phased implementation of measures relating to housing and medical facilities while in case of certain facilities *viz.*, conservancy, canteens, creches, recreational and educational facilities, it has been left to the State Governments to fix the date or dates from which they should be provided.

The progress of implementation of the Act was reviewed at the 7th Session of the Industrial Committee on Plantations held at New Delhi on the 31 August and 1 September 1955. Some of the State Governments have since issued their final rules under the Act, while others are expected to do so shortly.

1. Notification SRO 880 dated 6 March 1954, *Gazette of India*. Part II. Section 3 18 March 1954, p. 533.

## CHAPTER 3

### Factories and Workshops

### Factory Legislation

*Historical Development.*—The rise of large scale factory industry in India dates only from the latter half of the nineteenth century and the question of legislation to regulate working conditions in factories appears to have been raised first in India in the report by Major Moore, Inspector-in-Chief of the Bombay Cotton Department, on the administration of his department for 1872-1873. The first Factories Act was not, however, enacted till 1881, and it has been rightly described as a "triumph for conservative opinion[1]." In addition to provisions relating to health and safety, the Act limited the employment of children in factories, a "factory" being defined to be any premises using mechanical power and in which 100 persons or more were employed for four months or more in the year. A "child" was defined as any person below the age of 12 years; no child under seven years of age might be employed, and the hours of work of children were limited to nine in the day with an interval of rest of one hour; it was also provided that children should have four holidays in the month.

Dissatisfaction with provisions for the protection of children and, in particular, the absence of any regulation of women's labour, gave rise to an agitation for the amendment of the Act. After inquiry by the Bombay Factory Commission of 1884 and the Factory Labour Commission of 1890, an amending Act was passed in 1891. By this, the definition of "factory" was amended to include permises in which 50 persons or more were employed and Local Governments were granted powers to extend it to premises in which 20 persons or more were employed. Provisions relating to women's work were now introduced, the hours of work of women being limited to 11 a day, with an interval of rest for an hour-and-a-half. The Act restricted the employment of women at night, raised the lower and upper age limits for child workers in factories to nine and 14 years of age respectively, and reduced the maximum permissible daily hours of work of children from nine to seven and to daylight. For the first time in India it provided for the grant to all workers in factories, including adult male workers, of a regular rest interval of half-an-hour in the middle of the day and of a weekly day of rest.

The next stage in the evolution of factory legislation in India came in 1911. The new Indian Factories Act of 1911 made the following changes:

1. A.G. Clow : *Indian Factory Legislation : Historical Survey*, Bulletins of Indian Industries and Labour, No. 37 (Government of India, 1926), p. 12.

(1) the hours of work of men employed in textile factories were limited to 12 in the day; (2) the hours of work of children employed in textile factories were reduced to six in the day and all children were required to be in possession of a certificate stating whether they were fit for employment as well as their age ; (3) women and children were prohibited from employment in certain dangerous processes ; and (4) the employment of women and children between the hours of 9 P.M. and 5-30 A.M. was prohibited.

The next important amendment of Indian factory legislation was made in 1922, when an Indian Factories (Amendment) Act was passed with the object, among other things, of giving legislative effect to the International Labour Conventions on hours of work, the minimum age for admission of children to employment, the night work of women, and the night work of young persons.

The Act of 1922 did more than give effect to these provisions, as will be seen from the following summary of the principal amendments made by the Act: (1) The scope of the Act of 1911 was extended to include industrial undertakings using mechanical power and employing not less than 20 persons, Local Governments also being given the power to declare, by notification, that undertakings employing not less than 10 persons, and working with or without mechanical power should be deemed to be factories for the purposes of the Act. (2) The hours of work of all adult workers were restricted to 11 in any one day and 60 in any one week. (3) A "child" was defined as a person who was under 15 years of age; the minimum age for the admission of children to employment was raised to 12 years; the hours of work of all children were limited to six in the day, with a rest period of half an hour for children working more than 5 1/2 hours; further, in addition to medical examination for age and physical fitness before admission to employment in factories, children were required to undergo re-examination for continuing work, if thought necessary by an inspector. (4) No person was to be permitted to work more than five hours continuously, and a rest period of one hour, which could be divided into two periods at the option of the worker, was to be given in respect of each period of six hours' work done; the provisions for the Sunday rest were amended to secure that the exceptions should not involve any person working for more than ten days without a day's holiday. (5) In case of overtime, workers were to receive at least one-and-a-quarter times the normal rate of pay. (6) Women and young persons under 18 years of age were prohibited from employment in certain lead processes[1].

1. Indian Factories (Amendment) Act, No. II of 1922.

Some minor amendments to the Indian Factories Act were made in 1923, 1926 and 1931[1]—the Act of 1926 provided *inter alia*, for the imposition of penalties on parents or guardians who permitted children to work in two factories on the same day—but no changes of importance were made until the Act of 1934, which was based on the recommendations of the Royal Commission on Labour in India.

*The Factories Act*, 1934.—The Factories Act, 1934, XXV of 1934, which came into force on 1 January 1935 was a consolidating and amending measure replacing all the previous legislation in regard to factories, and thoroughly overhauling the Act of 1911 in the light of the recommendations of the Royal Commission on Labour.

The Act introduced a new classification of factories into non-seasonal (perennial) and seasonal factories. Factories engaged in cotton ginning, cotton or jute pressing, the decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea, were declared seasonal factories. If any of these factories worked more than 180 days in a year, it might be declared a non-seasonal factory, and conversely a non-seasonal factory working for less than 180 days in a year might be declared a seasonal factory.

The provisions for health and safety were made more definite and the powers of the inspectors enlarged. The provincial Governments were empowered to make rules (a) prescribing standards of artificial humidification and methods to be adopted to secure their observance; (b) protecting workers against the effects of excessive heat; (c) requiring any factory employing more than 150 workers to provide adequate shelter for the use of workers during the periods of rest; (d) requiring any factory employing more than 50 women to reserve a suitable room for the use of children under six years of age belonging to such women and (e) requiring factories to secure a certificate of the suitability of any building which was new or in which structural alteration had been made. Provincial Governments were further empowered to make rules regarding hazardous occupations[2] prohibiting or restricting the employment of women, adolescents and children and providing adequate protection to workers engaged in such operations.

1. Indian Factories (Amendment) Acts, No. IX of 1923, No. XXVI of 1926, and No. XIII of 1931.

2. Acting under powers vested by Section 33 (4) of the Factories Act, the Government of India notified on 18 and 27-3-1937 prohibition of the employment of women, children and adolescents in hazardous occupations like those involving the manufacture or recovery of lead and lead compounds ; rubber ; aerated waters ; chromium ; cellulose spraying ; sand blasting ; carbonates, chromates, chlorates, oxides or hydroxides of potassium, sodium, iron, aluminium, cobalt, nickel, arsenic, antimony, zinc

(*Continued on next page*)

The Act laid down a 54-hour week and a 10-hour day for adult workers in non-seasonal factories and a 60-hour week and 11-hour day (10-hour day for women) in seasonal factories. An adult worker in a non-seasonal factory engaged in a continuous process could work for 56 hours a week. Weekly day of rest was provided; in case of pressure of work, this might be relaxed, but a worker should not work for 10 days consecutively without one day of rest. For the payment of overtime the time and-a-quarter rate had been maintained for any hours worked in a non-seasonal factory in excess of 54 or 56 up to 60 hours, but any hours worked in excess of 60 hours either in a non-seasonal or seasonal factory must be paid at the rate of time-and-a-half; the same rate applies to overtime work in non-seasonal factories in excess of 10 hours in the day. Double employment was prohibited.

The hours of work of children (persons between the ages of 12 and 15 years) were reduced from six to five a day, and those of women from 11 to 10 a day, in both seasonal and non-seasonal factories, and adolescent workers, *i.e.*, young persons between the ages of 15 and 17 years, might not be employed as adults unless they had been medically certified to be fit to work as adults.

*Administration of the Law.*—While the rule-making power under the Indian Factories Act of 1934 was reserved, in respect of certain matters, to the Governor-General in Council, extensive powers to make rules were conferred on Local Governments, who were entrusted with the administration of the Act and the organisation of inspection[1].

Two Acts amending the Factories Act, 1934, were passed in 1935 and 1936. Act No. XI of 1935 brings Indian law into line with the Night Work (Women) Convention (Revised), 1934, and Act No. VIII of 1936 widens the powers of Local Governments in regard to workshops.

Since 1937, the scope of the Factories Act had been considerably extended and the rights it conferred on workers in India's factories were

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or magnesium, ammonia and the hydroxide and salts of ammonia; sulphurous, sulphuric, nitric, hydrochloric, hydrofluoric, hydroiodic, hydro-sulphuric, boric, phosphoric, arsenous, arsenic, lactic, acetic, oxalic, tartaric or citric acids and their metallic organic salts; and cyanogen compounds ; extraction of metal from ore by a wet process or chemical manufacture through use of electric energy ; the manufacture or production of carbon disulphide, hydrogen sulphide, bleaching powder, chlorine gas, Portland cement and explosives involving use of nitro compounds ; distillation of gas tar or coal tar ; use of nitric acid in preparing nitro-compounds ; ceramics and glass making ; vitreous enamelling ; handling wool, hair, bristles, hides, and skins ; and mixing yellow orpiment. (Notifications Nos. L-3050 dated 18-3-1937 and L-3050 (1) to L-3050 (6) dated 27-3-1937, *Gazette of India*, 27 March 1937, Part I, pp. 627-630 and 776-778).

1. The rule-making power passed later on entirely to the provincial Governments.

substantially enlarged by a series of amendments, enacted in 1940, 1941, 1944, 1945, 1946 and 1947. The more important among these enacted in 1940, 1945, 1946 and 1947 considerably strengthened the protective provisions of the Act relating to the employment of children in factories and introduced three new principles, *viz.*, annual holidays with pay, a 48-hour week and canteens for workers. The whole of this legislation was recast in a new Act adopted in the autumn of 1948.

The Factories (Amendment) Act, 1940 (Act XVII of 1940), which inserted in the Act a new chapter on "Small Factories", was designed to prevent the exposure of children to the risks of exploitation and employment under unhealthy and dangerous conditions in the smaller industrial establishments using power. It extended the provisions of the Factories Act concerning health, safety, children and registration to factories using power and employing ten to 19 persons, defined as "Small Factories." It further empowered the provincial Governments to declare any premises employing children to be a "Small Factory", notwithstanding that less than ten workers were employed therein[1].

The Factories (Amendment) Act (XVI) of 1941, mainly sought to remedy two administrative defects which had been revealed in the working of the Act. It definitely empowered the provincial Governments to extend all or any of the provisions of the Factories Act to any specified manufacturing establishment or class of such establishments, working with or without power, and employing ten or more persons. As instances of the use of this enabling provision may be mentioned a notification by the Government of Madras on 4 February 1942[2], extending the provisions of the Factories Act, either in part or as a whole, to 11 classes of small factories employing ten or more workers, including establishments engaged in the decortication of groundnuts, the milling of rice, the manufacture of matches and confectionery and the tanning of hides or skins; and another, issued by the Government of Bombay on 2 April 1942, extending the provisions of the Factories Act, in part or in full, to 29 classes of small factories enumerated in the notification[3].

Like the amending Act of 1941, the Factories (Amendment) Act of 1944 made no significant addition to the protective provisions of the Factories Act. It merely strengthened the powers of the inspector appointed by the Government to call for all relevant information from the occupier of a

1. Cf. International Labour Office: *Legislative Series*, 1944—Ind. 1. The initials L.S. will be used to denote further references to this series.

2. *Fort St. George Gazette*, 10 February 1942, Part I, pp. 167-168.

3. *Bombay Government Gazette*, 9 April 1942, Part IVA, pp. 140-145.

factory before the factory was allowed to commence work, and generally strengthened the provisions of the original Act concerning washing facilities in factories and means of escape in case of fire.

Unlike the amending Acts dealt with above, the three Factories (Amendment) Acts passed since 1944 had substantially added to the benefits enjoyed by factory workers in India by securing for them annual holidays with pay and a 48-hour week, and by imposing on the owners or managers of the larger factories an obligation to provide canteens for workers. Moreover, by these provisions, the standards with regard to hours of work in industry and holidays with pay were brought into closer conformity with those laid down in the relevant International Labour Conventions.

*Holidays with Pay.*—The principle of giving workers in organised industries annual holidays with pay first came into prominence in 1940 when it was approved by the First Conference of Labour Ministers convened by the Government of India. The details of the legislation necessary to give effect to this decision were discussed with representatives of the provincial Governments at the two subsequent sessions of the Labour Ministers' Conference, in 1941 and 1942, and with representatives of employers and workers at meetings convened by the Government of India in January 1941 and January 1942. The Factories Second (Amendment) Bill, 1944, granted to the workers in perennial factories with a year of continuous service to their credit, a holiday of at least seven consecutive days of which at least six were to be paid for. The "Statement of Objects and Reasons" appended to the Bill rightly claimed that it covered "not an unimportant part" of the I.L.O. Convention relating to holidays with pay[1], and the fact that the provisions of the Bill were considerably liberalised by the legislature before it received the assent of the Governor-General on 16 April 1945 made it even more beneficial for the workers.

The Act came into force on 1 January 1946 as the Factories (Amendment) Act (III) of 1945. It applied to all non-seasonal factories coming under the scope of the Factories Act and provided for ten consecutive days of annual holidays with pay for adults and 14 days for children (persons between the ages of 12 and 15 years), the qualifying period being one year of continuous service. During the holidays the workers were entitled to wages at the average daily rate during the three months preceding its commencement; half the amount due for the entire number of days' holiday must be paid before it began. The Act, furthermore, authorised factory inspectors to act on behalf of the workers in respect of any dispute concerning

1. *Gazette of India*, 8 April 1944, Part V, pp. 15—17.

annual holidays, and ensured that its provisions did not prejudice any rights to which a worker might be entitled under any other enactment or contract of service[1].

*The Forty-Eight Hour Week.*—As already stated, the Factories Act, 1934, fixed the maximum permissible weekly hours of work for adult workers at 54 for perennial factories and 60 for seasonal factories. The question of reducing the maximum limit to 48 hours a week was first officially raised by the Labour Department of the Government of India in a memorandum presented to the seventh plenary session of the Indian Labour Conference at New Delhi in November 1945[2]. The memorandum claimed that the time was particularly opportune for a reduction in the hours of work in factories in India and based the case for such a reduction on certain specific grounds.

The Conference unanimously supported the proposal to establish a 48-hour week in factories, and the result was the enactment by the Government of India in April 1946 of the Factories (Amendment) Act (X), which came into force on 1 August 1946. This Act reduced the maximum weekly working hours for adults from 54 to 48 in perennial factories, and from 60 to 50 in seasonal factories. The daily limits were fixed at nine hours and ten hours, respectively, as compared with ten hours and 11 hours respectively provided by the Act of 1934, and the maximum permissible spreadover of the working time of an adult worker was similarly reduced from 13 hours in any day to 10 1/2 hours in the case of perennial and 11 1/2 hours in the case of seasonal factories. Overtime was to be paid at twice the ordinary rate of pay. The provincial Governments were, however, empowered to grant exemption from the limitation of hours in exigencies of public need, to any industry[3].

As will thus be clear, the practice in India in 1946 with regard to hours of work in factories was well in advance of the special provisions concerning India laid down in the International Labour Convention No. 1, concerning hours of work in industrial undertakings.

*Factory Canteens.*—The Factories (Amendment) Act, 1947 (Act V of 1947), need not be discussed in detail. Briefly, it empowered provincial

1. *Idem* 2 April 1945, Part IV, pp. 5—7. In some respects the provisions of the Factories (Amendment) Act, 1945, were in advance of the minimum standards laid down in the *International Labour Code.* Cf. Preparatory Asian Regional Conference of the International Labour Organisation, New Delhi, 1947, *Report III : Programme of Action for the Enforcement of Social Standards Embodied in Conventions and Recommendations Not Yet Ratified or Accepted* (I.L.O., New Delhi 1947), p. 34.

2. Cf. *International Labour Review,* Vol. LIII, Nos. 1-2, January-February 1946, pp. 78-81.

3. For the consolidated text of the Factories Act, 1934, as modified up to 1 August 1946, see *L.S.,* 1946—Ind. 1.

Governments to make rules requiring that in any specified factory where more than 250 workers were employed, an adequate canteen should be provided for the use of the workers; the scope of the rule-making power to include the standards in respect of furniture, accommodation, foodstuffs to be served and their prices and the representation of workers in the management of the canteen[1].

*State Factory Legislation.*—During the period 1939 to 1947, some provincial Governments also effected amendments to the Factories Act by exercise of their powers to legislate concurrently, such amendments applying of course, only to the province concerned. Thus, the Government of the Central Provinces (now Madhya Pradesh) in 1939 (Act XXXVI) and the Government of Punjab in 1940 (Act VII), effected amendments empowering imposition of a registration fee on factories subject to the Act, in order to meet part of the expenditure on the factories inspectorate. The Punjab amending Act also prohibited the unauthorised establishment or extension of factories manufacturing textiles, glass, cement, chemicals, steel rolling mills, etc., in order to restrict cut-throat competition.

In 1941 the Factories Act was amended by the Government of Madras (Act VI) in order to restrict the medical examination of adolescents and children to such as were guaranteed employment provided they were physically fit. An amending Act enacted by the Government of the North-West Frontier Province in 1947 (Act VII) sought, like the Punjab Act of 1941, to prevent the unauthorised establishment of factories in the province by providing for a system of licensing of factories.

*The New Factories Act, 1948.*—While the many amendments to the Act of 1934 effected up to 1948, cumulatively represented a great measure of advance, the general framework of the Act of 1934 had remained unchanged and experience of the working of the Act had increasingly revealed the need for wholesale revision with a view to extending its protective provisions to the large number of smaller industrial establishments which were then outside its scope and generally strengthening its provisions relating to the safety, health and welfare of workers. An entirely new Act to consolidate and amend the law relating to labour in factories was, therefore, passed by the Constituent Assembly on 28 August 1948, received the assent of the Governor-General of India on 23 September 1948 and came into force on 1 April 1949. In framing the new Act, as the Labour Minister stated in the Legislature on 30 January 1948, the Government had tried to implement as

1. *Gazette of India, Extraordinary*, 11 March 1947, pp. 224-235.

many of the provisions of the I.L.O. Code of Industrial Hygiene as were practicable under Indian conditions; and the provisions relating to the periodical medical examination of young persons and the submission of plans of factory buildings had also been taken from International Labour Conventions[1].

The more important among the changes introduced by the Factories Act (LXIII) of 1948, were: (1) widening of the definition of the term "factory" to cover all industrial establishments employing ten or more workers where power was used, and 20 or more workers in all other cases; (2) abolition of the distinction between seasonal and non-seasonal factories; (3) splitting up of Chapter III of the old Act into three separate chapters, dealing with health, safety and welfare of workers, respectively, and clear specification in the Act itself of the minimum requirements under those heads; (4) extension of the basic provisions of the old Act relating to health, safety and welfare to all workplaces irrespective of the number of workers employed, except premises where processes are carried on by the occupier with the sole aid of his family; (5) raising of the minimum age for the admission of children to employment from 12 to 14 years and a reduction in the maximum permissible daily hours of work of children from five to four and a half; (6) provisions for the licensing and registration of factories, and the prior scrutiny by the Factories Inspectorate of the plans and specifications of factory buildings; and (7) the grant to provincial (now State) Governments of the power to make rules requiring the association of the workers in the management of arrangements for the welfare of the workers[2]. Certain minor amendments were made to the Act by the Repealing and Amending Acts No. XL of 1949 and No. XXXV of 1950.

India's ratification of International Labour Convention No. 90 prohibiting employment of young persons during night in factories necessitated amendment of the relevant section of the Factories Act of 1948. A Bill to amend the Act was accordingly introduced in the Council of States on 3 September 1953 and opportunity was also availed of to remove certain practical difficulties experienced in the working of the Act. One important amendment related to calculating wages for the purposes of overtime and leave with pay.

The Bill was passed by the House of the People on 28 April 1954 and was gazetted as Act 25 of 1954[3]. The Act amends certain sections of

1. Cf. *Hindustan Times*, 31 January 1948.
2. For the text of the Act, see *L.S.* 1948—Ind. 4.
3. *Gazette of India, Extraordinary*, Part II, Section 1, 8 May 1954, pp. 159-170.

the Factories Act and substitutes a new chapter on "Annual Leave with Wages" for Chapter VIII of the Act; a period of 240 days has been fixed as the minimum attendance necessary during a calendar year to qualify for leave with wages. For calculating payments for overtime, the cash equivalent of any advantage accruing through the concessional sale to workers of food-grains and other articles will be on the basis of a maximum quantity of food-grains and other articles admissible to a standard family which is defined as a family consisting of the worker and his or her spouse and two children below the age of 14 years. The Act, among other things, gives effect to I.L. Conventions No. 89 and No. 90 prohibiting employment of women and young persons during night in factories. Employment of women and young persons is prohibited on work of cleaning, lubricating or adjusting any prime mover or transmission machinery while it is in motion, if such work will expose them to risk of injury. State Governments are empowered to make rules specifying safeguards to be provided in respect of new machines, and the Chief Inspector of Factories may permit the exceeding of the nine hour limit where this is required to facilitate change of shifts.

During the discussions in the Lok Sabha on the Factories (Amendment) Bill references were made to the increase in the accident rate in factories. The question of accident prevention was discussed at some length at the Conference of the Chief Inspectors of Factories held in 1955 and the need for safety pamphlets covering the general principles of guarding hazardous machines in certain industries was urged. The Conference decided to constitute committees for the collection of the basic data necessary for the preparation of the safety pamphlets. Four committees have been constituted for the following industries : (i) transmission machinery, (ii) wood-working machinery, (iii) textile, and (iv) rice mills.

The conference also discussed some more proposals for amendment of the Act. The more important of these related to the definitions of the terms 'worker,' 'factory' and 'manufacturing process' all three of which, taken together, determine the coverage of the Act. These amendments are under the consideration of the Government.

### Standing Orders for Industrial Establishments

Another important legislative enactment, relevant under this section is the Act concerning standing orders in industrial establishments enacted by the Government of India in 1946. The absence of "standing orders" clearly defining the rights and obligations of the employer and the worker in respect of recruitment, discharge, disciplinary action, holidays, leave etc., was one of the most frequent causes of friction between managements and

workers in industrial undertakings in India, and discussions on the subject in the Tripartite Labour Conferences in 1943, 1944 and 1945 revealed a consensus of opinion in favour of a separate central enactment making it obligatory on the part of the employers in large industrial undertakings in the country to frame and enforce, with the approval of the Government, standing orders defining precisely the conditions of employment under them. The result was the enactment in 1946 of the Industrial Employment (Standing Orders) Act (XX).

The Act provides for the framing of standing orders in all industrial establishments (including factories, mines, railways, docks and plantations) employing 100 or more workers. Within six months of the application of the Act, the employer shall submit to the certifying officer standing orders covering, *inter alia*, classification of workmen (permanent, temporary etc.); manner of intimating to them hours of work, holidays, pay days, and wage rates; procedure for application for leave and holiday; termination of employment; discharge and disciplinary action. The certifying officer appointed by the appropriate Government, central or provincial (now State) as the case may be, is empowered to modify the draft standing orders so as to render them certifiable under the Act, although he has no right to adjudicate upon their fairness. The Act provides for consultation of the workers concerned before certification of the standing orders framed for any industrial establishment. The appropriate Government however is empowered to exempt by notification in the official gazette, conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of the Act[1].

In pursuance of the Act, the Central Government published the Industrial Employment (Standing Orders) Central Rules in 1946, applying to all Chief Commissioner's provinces and to the undertakings under the Central Government. Provincial (now State) Industrial Employment (Standing Orders) Rules, framed under the Act, were gazetted in Assam (April 1947), Bengal (October 1946), Bihar (November 1947), Bombay (November 1948), the Central Provinces and Berar (November 1947), Madras (November 1947), Orissa (July 1947), East Punjab (April 1949), and the United Provinces (December 1946).

Several States have amended the Act in its application to their respective areas. To eliminate the inconvenience caused by the delay in the certification of standing orders the Government of Saurashtra passed an amending Act[2]

1. *Gazette of India*, 4 May 1946, Part IV, pp. 46-50.
2. *Saurashtra Government Gazette*, 10 April 1953.

in March 1953, providing that till such time as the Standing Orders in respect of an industrial establishment came into operation, the model standing orders, if any notified by the State Government in respect of industrial establishments generally or of that class of industrial establishments, shall apply to such industrial establishments.

For almost the same reason, the Government of Bombay enacted the Industrial Employment (Standing Orders) Bombay (Amendment) Act, 1955 (No. LIII of 1955),[1] empowering Government to make the model standing orders prescribed under the Act applicable to all establishments covered by the Act subject to a right of employers and workers of individual establishments, to submit amendments, within a period of six months. Other amendments in the Act of Bombay are: (1) the Act is made applicable to all establishments employing 50 workmen or more; (2) a new item 'age for retirement or superannuation' is added as a further item to be covered by standing orders; (3) provision is made for modification of standing orders with or without amendments on an application by the employer or workmen after a specified period. A minor amendment was made in June 1956 by the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1956[2]. The amendment Act restricts the definition of the term 'employer' so that it does not cover employer of an establishment in respect of workers employed through a contractor for work not ordinarily part of the industrial establishment.

Under the provisions of the Act only the employer can take steps to modify the existing standing orders and the certifying officer has no power to judge the fairness or reasonableness of the standing orders before they are certified. Workers in Bihar and in the central undertakings expressed their dissatisfaction over the limitations on the powers of the certifying officer to adjudicate upon the fairness and reasonableness of the standing orders. In amending the Industrial Disputes Act, 1947, through the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956[3], opportunity was taken to amend the Industrial Employment (Standing Orders) Act, 1946, as well, to remedy the defects. Thus, an amendment to section 4 of the Act empowers both the certifying officer and the appellate authority to take into account the fairness and reasonableness of the standing orders before they are certified. Another amendment empowers both the employer and workmen to apply to the certifying officer

1. *Bombay Government Gazette*, Part IV, 19 December 1955, pp. 205-210.

2. No. XXXVI of 1956 (*Bombay Government Gazette*, Part IV, 21 June 1956, pp. 148-149).

3. Act No. 36 of 1956 (*Gazette of India, Extraordinary*, Part II, Section 1, August 1956, pp. 723-745).

for modification of the standing orders. Provision has also been made for the resolution of differences that may arise between the parties as to the application and interpretation of standing orders.

## B. Regulation of Workshops

The Indian Factories Act of 1934, made no substantial change in the definition of a "factory", with the result that the Act only applied to undertakings employing 20 workers or more on any day during the preceding twelve months and in which mechanical power was used, except in so far as provincial Governments might make use of their power to declare undertakings employing more than ten workers, and working with or without the aid of power, to be factories. Generally, therefore, the following two kinds of factories were non-regulated: (1) those which use power, but do not employ 20 persons or more, and (2) those which do not use power, irrespective of the number of persons employed.

To bring these undertakings under regulation, the Royal Commission on Labour recommended the applicatton by provincial Governments of the whole or part of the Factories Act to factories of the first category, and, in respect of factories of the second category, the enactment of a separate and simple Act providing, among other things, that the minimum age for admission of children to employment in such factories should be 10 years, and that the hours of work of children between the ages of 10 and 14 years should be limited to seven in the day. The Commission also recommended that both kinds of factories should be required to be registered with the factory inspection departments and that inspections should be carried out by part-time inspectors and be co-ordinated by the chief inspectors in consultation with the medical authorities.

Considerable numbers of wage earners in India are employed in small manufacturing establishments which do not use mechanical power and therefore fall outside the scope of the Factories Act. The more important among this group of industries, which until 1937 almost wholly escaped regulation, were "mica manufacture, wool cleaning, shellac, bidi (cigarette) making, carpet weaving, indigenous tanneries, coir matting, handloom weaving, glass bangle manufacture, etc.[1]"

Section 5(1) of the Factories Act, 1934, of course, empowered provincial Governments to extend to such of these workshops (factories not using

1. Labour Investigation Committee: *Main Report* [Delhi, Manager of Publications (1946)], p. 18.

mechanical power) as employed more than ten workers, all or any of provisions of the Act but little use was actually made of this enabling provision[1].

Between 1937 and 1952 five important legislative enactments were placed on the statute book to regulate working conditions in the workshop falling outside the scope of the Factories Act. Three of these were central, relating to the employment of children; the other two were provincial, and more general in character.

*Employment of Children*

The Employment of Children Act, 1938 (XXVI) and the amending Act (XV) of 1939[2] were designed solely to fight the evil of child labour in workshops. Defining a workshop as any premises wherein any industrial process was carried on, exclusive of premises to which the provisions of section 50 of the Factories Act, 1934 (prescribing a minimum age of 12 years for employment in factories) applied, it prohibited the employment of children under 12 years of age[3] in workshops engaged in ten processes listed in a schedule appended to the Act. The list includes *bidi* making, carpet weaving, cement manufacture, manufacture of matches, mica cutting and splitting, shellac manufacture, the tanning of leather and the cleaning of wool. Section 3A of the Act empowers provincial Governments, after giving due notice in the official gazette, to add any description of processes to the schedule; thus a notification under this section issued by the Government of Madras on 19 September 1947 prohibited the employment of children as cleaners in workshops attached to motor companies[4], and in the United Provinces (Uttar Pradesh) the Government has added the brassware and glass industries to the schedule[5].

The Act was amended by the Factories Act of 1948 to raise the minimum age of employment of children in all workshops enumerated in the Act from 12 to 14. Certain minor changes were also introduced in the Act by the Repealing and Amending Act No. XL of 1949[6].

The Act was again amended in 1951 by Act No. XLVIII of 1951[7] to give effect to the provisions of International Labour Convention No. 90

1. The only exceptions were Bombay and the United Provinces, which had extended the Factories Act to workshops engaged in the manufacture of bidies and glass, respectively.
2. Cf. *L.S.* 1939—Ind. 5; 1939—Ind. 3.
3. Raised to fourteen years under an amendment made by the Factories Act of 1948.
4. *Fort St. George Gazette*, 30 September 1947, Part I, p. 831.
5. *Government Gazette of the United Provinces*, 4 September 1948; Part IA p. 474.
6. *Gazette of India, Extraordinary*, 3 May 1949, pp. 156-160.
7. *Idem, Extraordinary*, 3 September 1951, Part II, Sections I, pp. 300-302.

concerning night work of young persons employed in industry which had been ratified by India. The amendment prohibits the employment of children under 15 years of age in any occupation connected with the transport of passengers, goods or mails by railway or connected with a port authority within the limits of any port. It also prohibits the employment of young persons between 15 and 17 years of age during the night in railways and ports.

*State Legislation*

The Central Provinces Unregulated Factories Act (XXI) of 1937, since repealed, was the earliest attempt in India to regulate conditions of work in workshops by law. The Act applied within selected areas notified by the Government and, in the first instance, only to workshops employing 50 or more persons and engaged in *bidi* making, shellac manufacture or leather tanning. It limited the hours of work to ten in the day and provided for the grant to each worker of a weekly holiday. Further it prohibited the employment of children under ten years of age, made the employment of those under 14 years conditional upon possession of a certificate of physical fitness, and limited the daily hours of work of children and women to seven and nine respectively. For both women and children, night work was prohibited and provision was also made for adequate health and safety measures in workshops[1].

Much more comprehensive than either of the two enactments described above was the Madras Non-Power Factories Act (XXXVII) of 1947, since repealed, which sought to regulate the conditions of labour and to make provision for the welfare of workers in places and premises to which the Factories Act, 1934, did not apply, in the province of Madras. The Act defined a non-power factory as any place or premises to which the Factories Act did not apply, wherein ten or more workers were employed and in which one or more of 23 industries and handicrafts specified in a schedule appended to the Act was or were being carried on. Among the industries enumerated in the schedule were the manufacture of matches, confectionery, *bidi*, cigars, metal vessels, fibres, carpets and salt; the curing of tobacco; the cleaning of wool; engineering; handloom weaving; the tanning of skins and hides; oil extraction; and printing and binding. Under the provisions of the Act, the occupier of every non-power factory was obliged to take out a licence from the Chief Inspector appointed by the Government, permitting him to carry on work. Hours of work of adults in non-power factories were limited

1. *Cf. Industrial Labour in India*, (I.L.O., Geneva, *1938*) pp. 76-77. For the text, see *L.S.* 1937-Ind. 3.

to nine in the day and 48 in the week. Night work after 7 p.m. and before 5 a.m. was prohibited in the case of women, and no child was to be allowed to work in a non-power factory who was under 14 years of age. Every worker in such factories was to be granted a full day's rest after six days' consecutive work. A striking feature of the Act was the liberal provision it made for holidays with pay. Every worker who had completed a period of 12 months' continuous service was granted, during the subsequent period of 12 months, holidays with wages for a period of 12 days, with the right to accumulate such holidays up to a maximum of 24 days. In addition, every worker was entitled to sick leave with wages for a period not exceeding 12 days in a year, and to casual leave with wages up to a maximum of another 12 days in a year[1].

The provisions of the Madras Act were thus much in advance of the Central Provinces Unregulated Factories Act. The Madras Act applied to a large number of industries and sought to cover a large number of workshops, namely, establishments employing more than ten workers, as against establishments employing more than 50 workers in the Central Provinces. Its provisions in respect of the minimum age for admission to employment and of holidays with wages were, again, well above the standards laid down in the Factories Act.

Apart from the Central Provinces and Berar (Madhya Pradesh) and Madras, no other province has regulated conditions of labour in workshops by law. The Standing Labour Committee of the Tripartite Labour Organisation, at its session in New Delhi in March 1946, considered a Government proposal for the enactment by the Central Government of separate legislation applicable to the whole of India for the regulation of workshops. The workers' representatives, however, were generally in favour of bringing the workshops under the provisions of protective labour legislation, not by enacting separate legislation, but by extending to them all the provisions of the Factories Act.[2] This view has substantially prevailed, since the revised Factories Act, 1948, as already stated, applies also to all non-power industrial establishments employing 20 or more workers.

With the coming into force of the Factories Act, 1948, from 1 April 1949, the two State Acts mentioned above became redundant, and most of the unregulated factories are now covered by the Factories Act. The

1. *Fort St. George Gazette*, 13 April 1948, Part IVB, pp. 49-64.
2. Ce. *Trade Union Record* (Bombay), March 1946.

Madras Non-Power Factories Act, 1947, was repealed in May 1951 by Madras Act XIV of 1951[1], and the Central Provinces Unregulated Factories Act, 1937, was repealed in July 1952 by Madhya Pradesh Act VII of 1952[2].

1. *Fort St. George Gazette*, 22 May 1951, Part IVB, pp. 133-146.
2. *Madhya Pradesh Gazette*. 25 July 1952, Part IVB, p. 154.

## CHAPTER 4

### Mining Legislation

While plantation and factory legislation started just after the middle of the nineteenth century, mining legislation can be traced only from the closing years of the century. Mining industry itself began to develop late in India, and coal mining in the early days at least was invariably surface mining so that measures to regulate conditions of work were not felt very keenly.

The first step was taken in 1893 when, as a result of the increase in the number of workers employed, and especially of children and women, in an industry which is particularly subject to insanitary conditions and accidents, a mining inspector was appointed. This appointment was followed in 1895 by the setting up of a Mining Committee to draft rules, and on the basis of its report the first Indian Mines Act was passed in 1901 and came into effect on 22 March of the same year[1].

The chief provisions of the Act of 1901 were the following : (1) any excavation 20 feet below the surface where minerals were searched for or obtained was to be regarded as a mine; (2) a Chief Inspector of Mines was to be appointed by the Government of India and inspectors or subordinate officers by Local Governments; (3) a child was defined as a person under the age of 12 years and the Chief Inspector was granted power to prohibit the employment of children and of women in mines where the conditions, in his opinion, were dangerous to their health and safety; (4) local mining boards and committees were to be appointed to enquire into cases of accidents or dangers considered by the inspector to be the result of mismanagement and into such other matters as might be referred to them; (5) powers were granted both to the Government of India and to Local Governments to make rules to carry out the objects and purposes of the Act in regard to health and safety, the appointment of boards and committees, the employment of women and children, and the duties and qualifications of managers; (6) breaches of the law were to be punishable by fines not exceeding Rs. 500 or imprisonment not exceeding three months, or both.

The Act proved defective in several respects, including (1) lack of provisions for regulating the conditions of employment, (2) inadequate

1. Indian Mines Act (VIII) of 1901; *Report of the Chief Commissioner of Mines in India*, 1901, p. 43.

provisions for regulating the labour of women and children, and (3) lack of definite division of authority between the Central and Provincial Governments regarding administration[1]. Moreover, ratification by the Government of India in 1921 of the Hours Convention made it necessary to amend the Act in order to conform to the principle of the 60-hour week. A new Act was therefore passed in 1923, and came into force on 1 July 1924[2].

This Act made a number of important amendments to the provisions of the Act of 1901 ; (1) the definition of a mine was extended to include any excavation, irrespective of depth, for searching for or obtaining minerals, (2) the weekly hours of work were limited to 54 underground and 60 above ground, (3) working days were limited to 6 in the week, (4) the definition of "child" was amended to mean any person under the age of 13 years, and no child was allowed to be employed in a mine or to be present in any part of a mine which was below ground. Other amendments made more precise the division of the rule-making power between the Governor-General in Council and Local Governments reserving to the former, in particular, the power to prohibit, restrict or regulate the employment of women.

There being thus no statutory limitation on the daily hours of work, it was alleged that in certain cases workers were underground for as long as 17 or 18 hours a day[3]. This, and the consequent difficulty of checking hours of work without a daily limit, led to the enactment of an amending Act in 1928 forbidding employment of any person in any mine for more than 12 hours in any period of 24 consecutive hours. It was also provided that work should not be carried on in any mine for a period exceeding 12 hours in any consecutive period of 24 hours except by a system of shifts so arranged that there should be no overlapping of shifts, and that a register of workers and their hours of work should be maintained in all mines. Some sections of the Act came into force immediately, while others were not put into operation until 7 April 1930, so that mine owners might have time to make the necessary adjustments[4]. The Act was again amended in 1931 for some minor purposes[5].

*The Indian Mines (Amendment) Act, 1935.*—Before the passage of the amending Act of 1928, the majority of the members in the Select Committee

1. A.G. Clow: *The State and Industry*, 1928, pp. 152-156.
2. Indian Mines Act, No. IV of 1923. *L.S.*, 1923, Ind. 3.
3. *Legislative Assembly Debates*, 8 April 1935, p. 3953.
4. Indian Mines (Amendment) Act, No. XIII of 1928. *L.S.*, 1928, Ind. 1.
5. *Labour Gazette*, Bombay, October 1931, p. 137.

on the Bill agreed that it was desirable that progress should be made towards an 8-hour day and recommended that after the Act had been in force for three years, the situation should be examined in order to see whether 8-hour shifts could then be introduced. The question of shorter hours in mines was again considered by the Royal Commission on Labour of which a minority stressed the point that some of the larger collieries were already working 8-hour shifts and other collieries 10-hour shifts, and that it was significant that in these collieries the attendance and wage levels seemed to be higher; the minority therefore proposed a daily limit of eight hours. This view was not, however, adopted by the majority of the Commission. Having regard to the difficulty of adjustment and the fact that workers were unaccustomed to regular hours, they recommended the reduction of hours worked on the surface to 54 a week and the examination of the possibility of a daily limitation to ten, nine or eight hours[1].

In 1931 the International Labour Conference, at its Fifteenth Session, adopted Convention No. 31 limiting hours of work to 7 hours and 45 minutes a day for underground work in hard-coal mines. This Convention was considered by both chambers of the Indian Legislature which recommended that the Governor-General in Council should examine the possibility of further limiting hours of work in mines and should place the results of this examination before them[2].

In accordance with this resolution, the Government of India addressed on 21 September 1932, a circular letter[3] to Local Government and Administrations for their opinions, suggesting at the same time that nine hours was as low a daily limit as could possibly be adopted at present.

In the light of the opinions and criticisms of the provincial Governments and other interested parties, the Government of India framed a new Bill further to amend the Indian Mines Act, 1923, for certain purposes, and introduced it into the Legislative Assembly on 22 January 1935[4]. The Bill was passed by the Assembly and the Council of State on 8 and 15 April respectively and was assented to by the Governor-General on 21 April 1935[5]. It came into force on 1 October 1935. The main amendments made by the Act are the following :

1. *Report of the Royal Commission on Labour in India*, pp. 126-129.

2. *Legislative Assembly Debates*, 24 February 1932; *Council of State Debates*, 2 March 1932.

3. *Bulletin of Indian Industries and Labour*, No. 49 Reduction of Hours of Work in Mines; 1939, pp. 1-4.

4. *Legislative Assembly Debates*, 8 April 1935, pp. 3940-3958, *Council of State Debates*, 17 April 1935, pp. 903-906.

5. Indian Mines (Amendment) Act No. V of 1935. *L.S.*, 1935, Ind. 3.

(1) Hours of work above ground were reduced from 60 in the week and 12 in the day to 54 in the week and 10 in the day. The period of spread-over for work above ground was limited to 12 hours in the day including at least one hour's rest for six hours' work. The weekly hours of work below ground were the same as before, i.e. 54 hours, but daily hours were reduced from 12 to nine; moreover, these nine hours were to be counted from the moment the first worker leaves the surface until the moment when the last worker returns to the surface, so that, excluding the journey to and from the face, the actual hours of work underground were not likely to exceed eight in some mines.

(2) The minimum age for the admission of children to employment in mines was raised from 13 to 15 years, and adolescents between the ages of 15 and 17 years could be employed underground only when they had been duly certified by qualified medical practitioners to be physically fit for the work.

*Administration.*—The Indian Mines Act, 1923, was administered by the Central Government through the Chief Inspector of Mines and other inspectors appointed by the Government of India. The Government had power to make regulations prescribing the duties of inspectors concerning health and safety in mines, duties and responsibilities of employers, etc. Among the powers of inspectors was that of requiring mine managements to frame bye-laws for the control and guidance of persons acting in the management of or employed in the mine.

*Legislation since 1937.*—The main developments in this sphere since 1937 have been an extension of safety measures in collieries, the progressive extension of welfare measures in mines and the introduction of a new principle of financing such measures by the levy of a cess on output, the grant of maternity benefit to women workers, the setting up of a tripartite committee on coal mining to advise the Government on matters relating to the coal mining industry, the introduction of schemes for the payment of bonus and the establishment of a provident fund for workers in coal mines and the enactment of a new Mines Act consolidating the law relating to mines and providing for shorter working hours, overtime pay and holidays with pay for mine workers.

*Safety Measures.*—The amendment of the Mines Act since 1935 was almost always concerned with ensuring greater safety in mines. The growing danger from fires in the main coalfields led to the passing of an

amending act in 1936[1]. The measure was based on discussions which took place with representatives of coal-owners, mine managers and labour in New Delhi in February 1936. The most important change made was the addition to the Mines Act of a section giving the Government of India power to promulgate temporary regulations relating to safety without previous notice or publication. In addition, the amending act enlarged in certain respects the field that could be covered by regulations and the powers of the inspectorate to issue safety orders applicable to individual mines.

The Government appointed a Coal Mining Committee in 1936 which made several recommendations in regard to improving further safety measures in mines[2]. To give effect to some of the recommendations, the Indian Mines Act was amended in 1937 (Act XXIV of 1937) to make permanent the powers of the inspectorate to issue orders to individual mines where danger is apprehended, to permit the inspectorate to disclose evidence of danger to adjacent mines to persons likely to be affected, and to levy a duty on coal and coke to defray the cost of rescue stations[3]. A later amendment (Act XXIV of 1940) made the salaries of the manager, the supervisory staff and persons employed in connection with the raising and the lowering of the workers payable by the owner of the mines instead of by the coal raising contractors[4].

In order to safeguard the miners against the dangers involved in the existing methods of mining the main coalfields, the Coal Mines Safety (Stowing) Act (XIX) of 1939 was passed[5]. It levies a cess for the creation of a fund to finance stowing measures, and by an amendment (Act XI of 1940)[6] measures against fire in and inundation of mines may also be financed out of the fund. The qualification that the chairman of the stowing board should be in the service of the Crown was deleted by the Coal Mines Safety (Stowing) Amendment Ordinance (XXV) of 1942. The Coal Mines Safety (Stowing) Amendment Act (III) of 1944 further extended the safety provisions of the Act by empowering the board to execute protective measures under its own supervision where a mine was abandoned, its ownership was in dispute or the owner was not himself in a position to undertake protective measures[7].

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1. Act No. XI of 1936. *L.S.* 1936, Ind. 2.
2. *Report of the Coal Mining Committee*, 1937, Manager of Publications, Delhi.
3. *Gazette of India*, 11 December 1937, Part IV, pp. 55-56.
4. *Idem*, 13 April 1940 Part IV, p. 112.
5. *Idem*, 29 April 1939 Part IV, pp. 169-173.
6. *Idem*, 30 March 1940, Part IV, pp. 53-54.
7. *Idem*, 18 March 1944, Part IV, p. 17.

The Coal Mines Safety (Stowing) Act, 1939, was repealed in 1952 by the Coal Mines (Conservation and Safety) Ordinance, No. 1 of 1952[1], which provided for the setting up of a coal board for the purpose of maintenance of safety in coal mines and for the conservation of coal. The Ordinance was replaced in March 1952 by the Coal Mines (Conservation and Safety) Act, (XII of 1952) 1952[2].

*Women in Underground Work in Mines.*—Though Government had taken powers under the Indian Mines Act, 1901, which were renewed in the Mines Act, 1923, to make rules prohibiting, restricting, or regulating the employment of women below ground or on particular kinds of labour where such employment is attended by danger to the life, safety or health of such women, it was only on 7 March 1929[3] that Regulations were issued for the progressive elimination of women from underground work in mines. These Regulations would, in the normal course, have brought about complete exclusion in July 1939. The Government of India, however, issued a notification on 1 February 1937[4] prohibiting the employment of women underground in mines with effect from 1 July 1937, instead of 1 July 1939 as originally contemplated. But due to certain special circumstances, this date (1 July 1937) had to be postponed to 1 October 1937[5] ; from this later date, there was complete exclusion of women from underground work in mines. This enabled the Government of India to ratify on 25 March 1938 the International Labour Convention (No. 45) regarding prohibition of women from underground work in mines, adopted in 1935.

On 2 August 1943, the Government of India issued a notification[6] permitting the employment of women in underground work in coal mines in the Central Provinces as a measure of war emergency. This re-employment of women in underground work in mines was extended to Bengal and Bihar in November 1943[7] and in Orissa in December 1943[8]. In permitting this re-employment, the Government, however, stipulated that (i) no women shall

1. *Idem, Fxtraordinary*, 8 January 1952, Part II, Section 1, pp. 1-8.

2. *Idem, Extraordinary*, 4 March 1952, Part II, Section 1, pp. 77-84.

3. Notification No. M-1055 of the Department of Labour dated 7 March 1929; reproduced at pages 170-171 of the Annual Report of the Chief Inspector of Mines in India for the year ending 31 December 1929.

4. Notification No. M-1055 of the Department of Labour dated 1 February 1937, *Gazette of India*, 6 February 1937, Part I, pp. 208-209.

5. *The Statesman*, 15 June 1937.

6. Notification No. M. 4091 dated 2 August 1943 of the Department of Labour; *Gazette of India, Extraordinary* 2 August 1943, p. 554.

7. Notification No. M. 5731 dated 24 November 1943; *Gazette of India*, Part I, Section 1, 27 November 1943, p. 1284.

8. Notification No M. 5962 dated 4 December 1943; *Gazette of India, Extraordinary*, 4 December 1943, pp. 823-824.

be employed underground in galleries which are less than 5 1/2 feet in height; (ii) every woman employed underground shall be paid wages at the same rate as a man employed underground on similar work[1].

The prohibition was reimposed as from 1 February 1946[2] and the new Mines Act, 1952, continues the ban imposed on the employment of women underground.

### *Miners' Welfare*

Considerable attention has also been paid during the period under review to the provision of adequate welfare measures for the country's mine workers. As more than three-fourths of the total number were employed in coal mines[3], attention was naturally directed first to welfare measures in collieries, but soon thereafter a beginning was also made with regard to the provision of welfare facilities for workers engaged in mica mines.

The Indian Mines (Amendment) Ordinance (XVII) of 1945, authorised the Government of India to make rules regarding the maintenance, in mines where women were ordinarily employed, of suitable rooms exclusively for the use of their children under six years of age, and to prescribe the number and standards of such rooms[4]. A further amendment (Act II of 1946) conferred on the Central Government power to frame rules requiring the mineowners to provide and maintain, at or near the pit-head, bathing places equipped with shower baths and locker-rooms for the use of the men employed in the mine, and to provide similar separate facilities for the use of women miners, if any; and to prescribe the number of such places and rooms and the minimum standards to which they shall conform[5]. The Mines Creche Rules, 1946, framed by the Government under the provisions of the 1945 Ordinance, were published on 21 July 1946, and the Coal Mines Pit-head Bath Rules came into force on 1 July 1947.

The Coal Mines Labour Welfare Fund Ordinance (VII of 1944) promulgated by the Central Government on 31 January 1944 marked a new stage in welfare legislation in India as it introduced the principle of levying a cess on the output of an industry to finance welfare measures for the workers

1. The original figure of 6 feet was modified to 5½ feet in January 1944 : *Indian Labour Gazette*, Vol I, p. 136.

2. *Gazette of India*, 3 November 1945, Part I Section I, p. 1504.

3. In 1954 the daily average number of persons working in mines regulated by the Indian Mines Act was 568, 254 of whom 340, 964 were employed in coal mines.

4. *Gazette of India, Extraordinary*, 26 May 1945.

5. *Idem*, 9 March 1946, Part IV, pp. 1-2.

engaged in it. The Ordinance created a Coal Mines Labour Welfare Fund to promote the welfare of labour employed in the coal mining industry and empowered the Government of India to levy a cess amounting to not less than one and not more than four annas per ton on all coal and soft coke despatched by rail from collieries in British India, to finance the activities of the Fund. The Fund was to be utilised to meet expenditure on measures "necessary or expedient to promote the welfare of labour employed in the coal mining industry"; the Ordinance, however, specifically listed the following among the welfare measures on which the Fund could be spent : the provision or improvement of housing, water supplies, educational facilities, facilities for washing, recreation and transport to and from work; and the provision of medical facilities. Finally, the Ordinance empowered the Government to set up an Advisory Committee, on which owners and workers would have equal representation and which would include a woman member to advise the Government on matters relating to the administration and working of the Fund[1]. This Ordinance was replaced by the Coal Mines Labour Welfare Fund Act (XXXII) of 1947, which came into force on 14 June 1947[2]. This Act retained intact the main provisions of the earlier Ordinance, but with the following important changes :

(a) the minimum and maximum limits of the cess to be levied on each ton of coal and coke despatched from collieries were raised from one and four annas to four and eight annas respectively ;

(b) special attention has been devoted to housing and it has been provided that a minimum of at least one anna four pies of the cess collected on every ton of coal or coke (rising to not less than three annas eight pies when the cess is levied at the maximum rate of eight annas per ton) shall be carried over to a separate housing account maintained by the Fund; and

(c) where colliery owners maintain dispensary services for their labourers conforming to the standards prescribed by the Fund, they could now secure from the Fund grants-in-aid not exceeding an amount equivalent to eight pies per ton of coke or coal despatched from the colliery concerned.

In pursuance of the provisions of the above legislation, a cess at the rate of six annas per ton is now being levied and collected on all coal and coke despatched from collieries by rail and road, and an advisory committee

1. Cf. *L.S.*, 1944-Ind. 1.
2. *Idem*, 1947, Ind. 2.

for welfare measures in coal mines has been set up with seven Government officials, seven representatives of mineowners' associations and seven persons nominated by the Government of India to represent the interests of the workers as members, together with the Secretary to the Government of India in the Ministry of Labour as chairman[1].

The Act was amended in 1949[2] by which the functions of the Coal Mines Labour Housing Board were enlarged and it was vested with the control of various other building operations financed from the general welfare account of the fund.

Next to coal mining, mica mining employs the largest number of mine workers in India, and welfare measures would seem to be even more urgently needed in these mines than in collieries owing to the considerable number of women and children employed. Hence the adoption of the Mica Mines Labour Welfare Fund Act (XXII) of 1946, which provided for the levy of a cess on all export of mica from India at a rate not exceeding 6 1/4 per cent. *ad valorem*, the net proceeds of which are credited to a Mica Mines Labour Welfare Fund. The Central Government is empowered to utilise the Fund, among other purposes, for the betterment of the health conditions of mine workers and for the provision of improved amenities for them, such as increased water supplies and washing facilities, improved housing, higher nutrition standards, better educational and recreational facilities, and transportation to and from the place of work. It is also empowered to give grants to a local authority or to the management of a mica mine in aid of any approved scheme provided for by the Fund[3]. In exercise of the powers conferred by this Act, a cess at the rate of two and a half per cent. *ad valorem* is at present being collected for financing welfare measures in mica mines. By a notification of 2 January 1948, the Government of India framed rules for the administration of the Act and set up two advisory committees, including representatives of owners and workers, in Bihar and Madras, to advise it on matters arising out of the administration of the Act or the Fund[4]. Amendments to the rules were made in January 1952 to provide for the constitution of advisory committees for the States of Rajasthan and Ajmer and by

1. For an account of the working of the Coal Mines Labour Welfare Fund during 1955-56, see "*Annual Report on the Working of the Coal Mines Labour Welfare Fund*", published by the Ministry of Labour, Government of India.

2. Act No. XXVIII of 1940: *Gazette of India, Extraordinary* 20 April 1949, Part. IV, p. 133.

3. *Gazette of India*, 4 May 1946, Part IV, pp. 53-54; for an account of the activities financed from the Mica Mines Labour Welfare Fund for the year 1955-56, see *Gazette of India*, 8 June 1957, Part II, Section 3, pp. 1195-1209.

4. *Idem*, 10 January 1948, Part I, Section 1, pp. 58-60.

notifications dated 30 January 1952 an advisory committee for each of these States had been constituted[1].

*Appointment of a Tripartite Committee*

An even more interesting and significant development in this sphere was the setting up by the Government of India in 1948 of a tripartite Industrial Committee on Coal Mining constituted on lines similar to those of the various tripartite industrial committees of the I.L.O. This Committee —which is one of a chain of such committees on the I.L.O. model already established by the Government of India for the major industries of the country, such as cotton textiles, jute, plantations, cement and tanning and leather goods—consists of eight representatives of Governments, and four each of employers and workers. Protective labour legislation for securing better working and living conditions for the colliery workers has naturally figured prominently in the deliberations of the Committees, and at its first meeting held at Dhanbad on 23 and 24 January 1948, it approved a number of proposals for substantially revising the Indian Mines Act by providing for a reduction of the maximum permissible weekly hours of work in mines to fortyeight; better water supply and health measures in collieries and their inspection by a welfare commissioner; compulsory medical examination of young persons; first-aid appliances, both on the surface and underground, under the charge of qualified persons; maintenance of proper registers to facilitate the enforcement of conciliation awards; and a higher rate of pay for overtime work[2].

*The New Mines Act*

In order to bring the legislation relating to mine workers in line with that for factory workers, a new Mines Bill was introduced in Parliament on 8 December, 1949. The Select Committee of Parliament reported in February 1950 and the Bill was passed by Parliament on 15 February 1952[3]. The following are some of its salient features:

*Scope.*—Under previous legislation workshops run by a mine for the maintenance of machinery and plant in safe and efficient working order were subject to the Factories Act, 1948[4], which is administered by the State Governments. However, certain workers employed in workshops, such as fitters, blacksmiths, welders and electricians, who frequently work under-

1. *Idem*, 9 February 1952, Part II, Section 3, pp. 269-270.

2. *The Statesman* (Delhi), 24 and 25 January 1948.

3. For the text of the Act, see *L.S.*, 1952—Ind. 3; the Act came into force on 1 July 1952.

4. *L.S.*, 1948—Ind. 2.

ground for a part of their working hours, came within the scope of the old Mines Act while so employed. As it is inconvenient that the same personnel should be subject to two different Acts administered by two different authorities, all persons employed exclusively on work relating to mines are included within the scope of the new Act. For similar reasons the scope of the new Act has been widened to cover power stations which generate power used wholly in connection with work in mines.

*Inspection Staff.*—The main change in the provisions concerning inspection staff involves the appointment of certified surgeons who are to carry out prescribed duties in connection with the examination of young persons and of persons engaged in dangerous occupations or processes, and to exercise medical supervision in cases of occupational diseases and where young persons are employed on work which may impair their health.

*Health and Safety.*—Whereas the provisions in the old Act concerning health and sanitation were of a general nature, the new Act provides for specific arrangements in respect of the supply of drinking water and the installation of latrines and urinals, etc. It is also laid down that first-aid appliances shall be available underground and kept in the charge of qualified personnel.

Under the Act the Central Government is empowered to direct that the provisions of Chapters III and IV of the Factories Act, 1948, dealing respectively with health and safety, shall, subject to such exceptions as may be specified, apply to all mines and their precincts.

*Hours of Work.*—Under the new Act weekly hours for all employees, both surface workers and underground workers, are fixed at 48, and no worker is allowed to work more than nine hours a day on the surface or eight hours a day below ground. The provisions of the old Act authorised a 54-hour week and ten-hour day for surface work and a nine-hour day for underground work.

Except in the case of emergency involving serious risk to the safety of the mine or of the persons employed therein, no person is allowed to work more than ten hours on any day, inclusive of overtime, and the total number of hours of overtime must not exceed 50 in any quarter of a year. However, provision is made for the following exceptions: (1) subject to the previous approval of the chief inspector the daily maximum hours specified may be exceeded to facilitate a change of shifts ; and (2) an adult engaged in work which for technical reasons must be continuous throughout the day may be employed for 56 hours a week.

As regards overtime pay, while the old Act did not specify rates of pay for overtime, the new legislation provides that it shall be paid at a rate which is one-and-a-half times the ordinary rate of wages in the case of surface workers and twice the ordinary rate in the case of underground workers.

*Weekly Rest.*—No person employed in a mine is allowed to work more than six days a week. If a worker is deprived of one or more weekly days of rest as a result of the exemption provided for in the Act, he shall be allowed, within the month in which such days of rest were due to him or within the two months immediately following that month, an equal number of compensatory days of rest.

*Holidays with Pay.*—The Act contains a new chapter regarding holidays with pay. The qualifying period for a paid annual holiday is 12 months' continuous service and the length of the holiday is 14 consecutive days in the case of workers paid on a monthly basis and seven consecutive days in the case of workers paid by the week and workers employed below ground on a piece-rate basis. A worker paid on a monthly basis may carry over to the succeeding 12 months any leave not taken by him during a particular period of 12 months, but accumulated annual leave must not exceed a total of 28 days.

*Penalties.*—The only penalty imposed by previous legislation for contraventions of the Act took the form of a fine. Under the new A the penalty may take the form of a fine or imprisonment or both.

Another suggestion of the tripartite Industrial Committee on Coal Mining, namely, that a compulsory provident fund scheme should be introduced to provide for coal miners in their old age has also been given effect to. The Coal Mines Provident Fund and Bonus Schemes Ordinance (VII) of 1948 and the Coal Mines Provident Fund and Bonus Schemes Act passed by the Constituent Assembly of India (Legislative) together with the mines maternity benefit legislation introduced earlier in 1941, are reviewed later in this book under the chapter dealing with social security.

Mention should also be made here of the extension of the provisions of the Payment of Wages Act to coal mines in India. This is noticed in the chapter on wages.

# CHAPTER 5

## Shops and Offices

The origin of the idea of shops legislation in India and its progress during recent years provide an instance of the indirect influence of the I.L. Convention concerning hours of work in commerce and offices (1930) on Indian labour legislation. India's decision not to ratify this Convention was primarily due to its wide coverage which, under existing conditions, would have made effective implementation and enforcement difficult.

Despite this decision, however, the advent of provincial autonomy witnessed a strong organisational movement of shop assistants, press workers, etc., to better their conditions of work, and legislation to regulate conditions of work in shops, commercial establishments, restaurants and theatres was adopted by several provinces (now States) since 1939.

### *Central Legislation*

The Weekly Holidays Act[1] enacted by the Government of India in 1942 (Act XVIII) is the most elementary of these measures. It is permissive only, and becomes effective in a province, or in a specified area within a province (now State), only if the provincial Government by notification in the provincial gazette chooses to apply it. It merely provides for the grant of one paid weekly holiday to every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre. Provincial Governments are empowered, further to grant an additional half-day's holiday with pay each week.

The Act came into force in British Baluchistan, Ajmer-Merwara, the North-West Frontier Province and Bihar in 1943, in Madras in 1946 and in Mysore in 1951. Typical examples of the use of this Act by provincial Governments are notifications published by the Government of Bihar on 18 June 1947 extending the provisions of the Act to 17 towns in the province[2], and by the Government of Madras on 30 July 1946 extending them to more than 350 specified panchayats in the province[3]. At present the following States have notified its application to their States *viz.*, Ajmer, Coorg, Orissa, Rajasthan, Vindhya Pradesh and Mysore.

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1. *Gazette of India*, 11 April 1942, Part IV, pp. 31-33.
2. *Indian Labour Gazette*, August 1947, p. 104.
3. *Fort St. George Gazette*, 30 July 1946, Part I, pp. 525-526.

*State Legislation*

Among the State Governments, Bombay led the way in 1939, with its Shops and Establishments Act (XXIV)[1], which was soon followed by the Punjab Trade Employees Act, 1940, the Bengal Shops and Establishments Act, 1940, and the Sind Shops and Establishments Act, 1940. The Punjab Act was extended to Delhi in 1942, and similar legislation to regulate conditions of work in shops, etc., was enacted in 1947 in the Central Provinces and Berar (Shops and Establishments Act, 1947), the United Provinces (Shops and Commercial Establishments Act, 1947), Madras (Shops and Establishments Act, 1947) and the North-West Frontier Province (Trade Employees Act, 1947), in 1948 in Assam and Mysore (Shops and Establishments Act, 1948), in 1950 in Travancore-Cochin, in 1951 in Hyderabad, in 1952 in Madhya Bharat and in 1954 in Bihar and Delhi.

The Bombay Shops Act of 1939 was repealed and replaced in 1949[2] by a new Act which introduced a number of changes in the existing provisions.

In May 1949 an amending Act[3] was passed by the Government of Bombay to introduce certain minor changes. In the same year the Government of Madhya Pradesh amended[4] its Act to make provision for the registration of establishments and to make certain minor changes. The U.P. Shops Act was amended[5] in February 1949 to reduce the number of holidays which were allowed to shops and commercial employees. The Bengal Shops Act was amended[6] in December 1950 to provide for the regulation of the service conditions of young persons, for sick leave for employees and for adequate notice before dismissal of employees.

The Punjab Act was applied to Himachal Pradesh in 1951. The Government of Saurashtra adopted the Bombay Shops Act of 1939 and enforced it in the State with effect from 7 June 1949. However, as the Bombay Act was revised in 1949, the Government of Saurashtra introduced a Bill in the State Legislature, to adopt the new Bombay Act. This Bill was passed into an Act in early 1955 and was put into force with effect from 23 February 1955.

The main features of these Acts are briefly as follows:

1. *Bombay Government Gazette*, Part IV, pp. 623-638.
2. *Idem*, Part IV, 11 January 1949, pp. 1-24.
3. *Idem*, 9 May 1949, Part IV, pp. 110-120.
4. *Madhya Pradesh Gazette*, 6 May 1949, Part III, p. 393.
5. *Government Gazette of the Uttar Pradesh*, 5 February 1949, Part VIIA, p. 31.
6. *Calcutta Gazette*, 28 December 1950, Part III, pp. 99-101.

(1) They apply, in the first instance, only to certain cities, towns or areas, indicated in the Acts themselves. In every case, however, the provincial Government concerned is empowered to extend the application of the Act by notification. The Punjab Act empowers the Government to extend the provisions of the Act to any area, and the Bengal and Assam Acts to any area or to specified shops, or establishments or classes of shops or establishments in such area. The Bombay, Madhya Pradesh, and Madras Acts, on the other hand, empower the respective Governments to extend all or any of their provisions to any area, while the Uttar Pradesh Act goes even further and empowers the Government to extend all or any of its provisions to any area in respect of all or any specified class of shops or commercial establishments.

(2) Despite considerable differences as regards definitions, all the Acts cover, broadly, wage earners employed in shops, commercial establishments (including insurance and banking firms), restaurants, theatres, cinemas and other places of public amusement.

(3) All the Acts contain provisions in respect of opening (except in Assam) and closing hours, hours of work (daily, weekly or monthly), rest intervals, spreadover, overtime rates (except in Assam) and weekly holidays. While in some cases opening and closing hours are left to be fixed by the Government, in others they are fixed by the Act itself. The Uttar Pradesh and the Punjab Acts make a distinction between summer and winter and prescribe a later opening and an earlier closing hour during the winter months. The maximum permissible hours of work in shops and commercial establishments are shown in the following table :

HOURS OF WORK IN SHOPS AND COMMERCIAL ESTABLISHMENTS

| Province | Shops | | | Commercial establishments | |
|---|---|---|---|---|---|
| | Hours per day | Hours per week | Overtime hours per year | Hours per day | Hours per week |
| Assam | 9 | 50 | ... | ... | ... |
| Bihar | 9 | 48 | Hours of work not to exceed 10 per day and 60 per week. | 9 | 48 |
| West Bengal | 10 | 56 | 120 | ... | ... |
| Bombay | 9 | 48 | 3 hours a week | 9 | 48 |
| Madhya Pradesh | 9 | ... | 124 | 10 | 208 (per month) |
| Madras | 8 | 48 | ... | 8 | 48 |
| Punjab | 10 | 54 | 150 | 10 | 54 |
| Uttar Pradesh | 8 | ... | 120 | 8 | ... |
| Hyderabad | 8 | 48 | Hours of work not to exceed 10 per day and 50 per week. | 8 | 48 |
| Madhya Bharat | 9 | 48 | 3 hours a week. | 9 | 48 |
| Delhi | 9 | 48 | 150 | 9 | 48 |

As regards other establishments, the maximum permissible hours of work are fixed at ten in the day in Assam and West Bengal, at nine in the day in Bombay and Madhya Bharat, at nine a day and 48 in the week in Bihar and Delhi, at eight in the day in Madhya Pradesh and Uttar Pradesh, at eight in the day and 48 in the week in Madras and Hyderabad and at ten in the day and 54 in the week in the Punjab.

Provision has been made in all the Acts for granting a weekly holiday to employees. In Uttar Pradesh and Punjab the Acts provide that all establishments must be closed on one day in the week. Workers in shops are entitled to a weekly holiday of one full day in Assam, Bombay, Madhya Pradesh, Hyderabad, Madhya Bharat and Delhi, and of one and a half-days in West Bengal and Madras. Most of the Acts, again, stipulate a higher rate of pay for overtime work, namely, one and half times in Bombay, West Bengal, Madhya Pradesh and Madhya Bharat and twice the normal rate in Bihar, Madras, Delhi, Punjab and Uttar Pradesh.

(4) A very notable feature of this legislation is the relatively liberal scale on which all the Acts have provided for annual holidays with pay and the fact that the provisions are more liberal in the more recent Acts. The position in this respect in the various States is indicated in the following table:

| State | Privilege leave[1] | Casual leave[2] | Sick leave | Other kinds of leave |
|---|---|---|---|---|
| 1. Assam. | 16 days (cannot be accumulated). | 17 days | Maximum of one month on half pay after 12 months continuous employment. | 3 holidays for religious purposes[3] |
| 2. Bombay. | 14 days (can be accumulated up to 28 days)[4] | ... | ... | ... |
| 3. Bihar. | 1 day for every 20 days' work if an adult and 1 day for every 15 days' work if a child. The maximum number of days of leave which can be carried forward are 20 per adult and 15 per child[5]. | ... | ... | ... |
| 4. Madhya Pradesh. | 14 days (maximum of 14 days can be carried forward). | ... | ... | ... |
| 5. Madras. | 12 days (can be accumulated up to 24 days). | 12 days[6] | ... | ... |
| 6. Punjab. | 14 days (after one year's continuous service, 7 days after 6 months continuous service). | ... | ... | ... |

| | State | Privilege leave | Casual leave | Sick leave | Other kinds of leave |
|---|---|---|---|---|---|
| 7. | Uttar Pradesh. | 15 days (watchmen and care-takers 30 days). | 10 days | 15 days[8] after 6 months continuous service. | 3 gazetted holidays with pay. |
| 8. | West Bengal. | 14 days (can be accumulated up to 28 days). | 10 days | 14 days on half pay (can be accumulated 56 days)[6] | ... |
| 9. | Hyderabad. | 12 days (can be accumulated up to 24 days). | 12 days | 12 days | All gazetted holidays with pay. |
| 10. | Madhya Bharat. | One month (can be accumulated up to 3 months). | 14 days | ... | ... |
| 11. | Delhi. | 15 days[7] (can be accumulated up to 30 days). | 12 days[8] | ... | 3 national holidays. |

1. With full pay after 12 month's continuous service.

2. on full pay.

3. Although the Act does not state clearly whether these holidays should be with or without pay, it is learnt that it is becoming more or less a convention with employers to grant these holidays with pay.

4. After working for not less than270 days during a year.

5. After working for not less than 200 days in a calendar year.

6. On production of medical certificate.

7. Where an employee has completed a continuous period of 4 months, he shall be entitled to not less than 5 days for every such completed period. A watchman or caretaker who has been in continuous employment for a period of one year shall be entitled to not less than 30 days privilege leave.

8. Casual or sick leave for 12 days in a year.

(5) Most of the Acts include special provisions for the protection of children and young persons. The minimum age for admission to employment is fixed at 12 years in Assam, Bihar, Bombay, Madhya Pradesh, Madhya Bharat, Delhi and Hyderabad, and at 14 years in Madras and the Uttar Pradesh, but in the latter case children over 12 may be employed as apprentices. The maximum daily and weekly hours of work of young persons—defined as persons under 17 years of age in Bombay, West Bengal, Madhya Pradesh, and Madras—are fixed at six a day in Bombay and Delhi, seven and 40 per week in West Bengal, seven and 42 in Madras and seven and 36 in Madhya Pradesh. In the Punjab young persons under 14 years of age may not be employed in a shop or commercial establishment for more than seven hours in any day or 42 hours in any one week. In Bihar young persons between the ages of 14 and 18 may not be employed in an establishment for more than 7 hours a day and 42 hours per week. In Delhi persons between the ages of 12 and 18 are deemed to be young persons and their hours of work are fixed at 6 per day. In Uttar Pradesh children between 12 and 14 years employed as apprentices may not work more than six hours in any day.

Mention may also be made here of certain distinguishing features of certain Acts. In Bihar, Delhi, Madhya Bharat and Uttar Pradesh the Acts provide that the provisions of the Workmen's Compensation Act, *mutatis mutandis* shall apply to every employee of a shop or commercial establishment. In Bombay, Madras, Madhya Bharat, Mysore, Delhi and Travancore-Cochin the Acts include provisions relating to cleanliness, ventilation, lighting and precautions against fire in establishments covered by the Acts. In Madhya Bharat under the Act every employer is required to provide a provident fund for the benefit of every employee and to contribute to the fund an amount equal to the amount contributed by the employee.

*Proposed Legislation*

It will be clear from the above that the various provincial Shops Acts differ materially from each other as regards both scope and content. The adoption of a comprehensive central Act which will apply to all the States and enforce uniform conditions has therefore been engaging the attention of the Government of India for some time, and was approved in principle by the ninth session of Standing Labour Committee of the Tripartite Labour Organisation at New Delhi in July 1946.

The thirteenth session of the Standing Labour Committee held at New Delhi in July 1953 examined the question of having a central legislation for shops and commercial establishments. It decided that the Central Government should initiate legislation as a standard to which the States would have to conform. Such standards would be in the nature of a minimum so that those States whose standards were, in fact, more liberal could retain them. The salient provisions discussed at the meeting were as follows: hours of work of employees in shops and establishments to be nine a day and 48 a week; maximum limit including overtime not to exceed 10 hours in a day and the total hours of overtime not to exceed 50 for any quarter; wages for overtime at twice the ordinary rate of wages; at least one whole day in a week with pay as a holiday for rest; besides, provision for annual leave with wages calculated at the rate of one day for every 20 days of work performed by an adult during the previous period of 12 months subject to a minimum of ten days; prohibition of employment of children under 14 years of age in an establishment except as apprentices in specified employments and the employment of women during night and during a period of six weeks following delivery; registration of establishments, appointment, duties and powers of inspectors, penal clauses, etc.

# CHAPTER 6

## Transport

Prior to 1937, legislation relating to conditions of work in communications was limited to railways and port services. These related mainly to amendments to the Indian Railways Act, 1890, to implement the Hours of Work (Industry) Convention (No. 1) 1919, amendments to the Indian Ports Act, 1908, to prohibit the employment of children in handling goods in ports and the enactment of Indian Dock Labourers Act, 1934, regulating safety in docks and to implement the Protection Against Accidents (Dockers) Convention (Revised) (No. 32) 1932.

Since 1937 both the scope and content of the protective labour legislation in this sphere have been greatly extended. The more important of the measures adopted are the raising of the minimum age for employment of children in railways and docks from 12 to 15 years, the progressive extension of the Hours of Employment Regulations to all railways, the regulations adopted to promote the continuous employment of dock workers and elimination, as far as practicable, of the evils of casual employment, and the extension of the principle of statutory regulation of working conditions to workers engaged in motor transport.

### *Railway Workers*

Till 1930 conditions of work in railways were entirely determined by administrative decision of the Railway Boards as regards State-managed railways and of the respective administrations as regards the company-managed railways. Railway workshops, however, came under the Factories Act. In 1930 was adopted the Indian Railways (Amendment) Act, XIV of 1930[1], which added a chapter, Chapter VI A, to the Indian Railways Act of 1890. This Amending Act of 1930 was a direct result of the ratification by India of the Hours of Work (Industry) Convention, 1919.

The Act applied to such railway servants or classes of railway servants as the Central Government might prescribe. The hours of work of such railway servants other than those whose work had been declared to be essentially intermittent on the ground that it involved long periods of inaction, might not be employed for more than 60 hours a week on the average in any month ; railway servants whose work was essentially intermittent might not

1. *Gazette of India*, 29 March 1930, Part IV, pp. 49-50.

be employed for more than 84 hours in any week. Provision was made for temporary exceptions to the limitations in cases of emergency and exceptional pressure of work, subject to the payment of an overtime rate of one-and-a-quarter times the ordinary rate of pay. A weekly rest of not less than 24 consecutive hours should be granted each week commencing on Sunday to railway servants covered by the Act, with the exception of those whose work was essentially intermittent or to whom, under rules made by the Governor-General in Council, prescribed periods of rest on a scale less than the above may be granted.

The power to make rules under the Act was granted to the Governor-General in Council and, in exercise of this power, the Railway Servants' Hours of Employment Rules of 1931 were issued[1]. These rules provided for the limitation of hours of work and for the grant of periodical rests to certain classes of railway servants, but excluded from their operation: (a) running staff, namely, drivers, guards and others who habitually work on running trains; (b) watchmen, watermen, sweepers and gatekeepers whose employment may be declared to be intermittent and of a specially light character; (c) persons in positions of supervision or management or in confidential employment; (d) persons employed in factories or mines coming within the scope of the Factories and Mines Acts. Exceptions to the weekly rest provisions were made for the permanent way and engineering works staff, who were granted one period of rest of not less than 48 hours or two periods of not less than 24 hours in every month.

*Wartime Legislation*

During the war, due to pressure of work and the depletion of the normal strength of staff, the Government of India promulgated in 1942 the Railways (Hours of Employment) Ordinance, 1942 (XLV of 1942)[2], according to which the Central Government was empowered to suspend the rules relating to the hours of work of railway servants, but for work beyond the maximum number of hours permitted under the Act, the rate of pay must not be less than one and a half times the ordinary rate.

The Railways Employment of Military Personnel Ordinance, 1942, (LIII of 1942)[3] regulated the employment of members of the army in the working and management of railways. In the case of such personnel, the Indian Railways Act and the Rules made thereunder were made applicable, except the provisions relating to hours of employment.

1. *Gazette of India*, 1 January 1931, Part IV.
2. *Idem, Extraordinary*, 21 August 1942, pp. 944.
3. *Idem, Extraordinary*, 8 October 1942, pp. 1019-20.

In 1946 an industrial dispute arose between the nine Government Railway administrations and their respective employees about the hours of work, periods of rest, etc. laid down in Chapter VI A of the Indian Railways Act, 1890. The matter was by consent made the subject of adjudication by the Hon'ble Mr. Justice Rajadhyaksha. The Adjudicator gave his award in 1947 and the Government of India accepted the award in respect of hours of work, periods of rest and leave reserves. The chief changes accepted in consequence of the award in respect of hours of work and periods of rest were (1) an all round curtailment of hours of work; (2) the introduction of a new category of workers, namely, intensive workers; (3) a radical change in the definition of intermittent workers; (4) a general liberalisation of periodic rest and bringing more categories of workers within its purview; and (5) the inclusion of running staff within the scope of the provisions.

To implement the changes, the Government of India superseded the old Railway Servants (Hours of Employment) Rules, 1931, by a new set of rules in 1951[1], under which all railway servants are divided into four categories: 'intensive', 'essentially intermittent', 'excluded' and 'continuous'. The limits of hours of work fixed are 45 hours per week for 'intensive' staff, 54 hours a week for 'continuous' workers and 75 hours per week for 'essentially intermittent' workers. The rules also prescribe that 'intensive', and 'continuous' workers should be given a periodic rest of 30 consecutive hours a week, 'essentially intermittent' workers a weekly rest of 24 consecutive hours including a full night, and 'excluded' workers a rest period of 48 consecutive hours in a month or one period of 24 consecutive hours in each fortnight. For running staff, the periodic rest should consist of four periods of at least 30 consecutive hours each or five periods of not less than 22 consecutive hours each a month.

With a view to giving statutory force to these provisions the Government of India introduced in the Rajya Sabha on 25 August 1953 an amending Bill[2] to the Indian Railway Act, 1890, incorporating the changes recommended by the Adjudicator's award. The Bill as passed by Parliament was gazetted as Act 59 of 1956[3]. The Act substitutes a new chapter for Chapter VI A of Act IX of 1890 embodying changes in hours of work, periods of rest, etc., of railwaymen suggested by the Adjudicator's award in 1947.

The administration of the Hours of Employment Regulations is the

1. The Railway Servants (Hours of Employment) Rules, 1951, Notification No. SRO 450 dated 26 March 1951, *Gazette of India*, 31 March 1951, Part II, Section 3, pp. 519-520. The rules came into force on 1 April 1951.

2. *Gazette of India, Extraordinary*, Part II, Sec. 2, 25 August 1953.

3. *Idem, Extraordinary*, Part II, Section 1, 18 September 1956, pp. 942-946.

responsibility of the Chief Labour Commissioner (Central). By a notification issued in October 1952, the Central Government appointed the Chief Labour Commissioner (Central), all Regional Labour Commissioners (Central) and Conciliation Officers (Central) to be Supervisors of Railway Labour.

*Minimum Age of Employment*

The Employment of Children Act, 1938, Act XXVI of 1938, was adopted to prohibit the employment of children under 15 in occupations connected with the transport of goods, passengers or mails on railways in addition to work in the handling of goods at docks, wharves or quays.

The Act was amended in 1951 to give effect to the I.L.O. Convention (No. 90) relating to night work of young persons in industry which was ratified by India. The Employment of Children (Amendment) Act, 1951 (Act XLVIII of 1952)[1], prohibits, *inter alia*, the employment of children under 15 years of age in any occupation connected with the transport of passengers, goods or mails, by railway or connected with a port authority within the limits of any port. It also prohibits the employment of young persons between 15 and 17 years of age during the night in railways and ports. The Act also required railway administrations to maintain registers showing names and dates of birth of children below the age of 17 employed by them, their periods of work, and rest intervals, etc.

*Ports and Docks*

*The Indian Ports Act.*—Until 1934 the only provisions relating to labour in Indian ports were contained in the Indian Ports Act. First enacted in 1889, this Act and subsequent amendments were consolidated by Act XV of 1908, which was further amended in 1922 and 1931. Up to 1922 the provisions for the regulation of labour conditions were confined to the empowering of provincial Governments to regulate the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in port. By the amending Act of 1922 provincial Governments were required to frame rules prohibiting the employment of children under 12 years of age upon the handling of goods at piers, jetties, landing-places, wharves, quays, docks, warehouses and sheds.[2] This amendment did not, however, prevent the employment of children below the prescribed age in coaling ships, and this object was achieved by the amending Act of

1. *Gazette of India, Extraordinary*, 3 September 1951, Part II, Section 1, pp. 300-302.
2. Act No. XX of 1922, *L.S.*, 1922, Ind. 3.

1931, which prohibited the employment of children under 12 years of age in handling goods anywhere within the ports to which the Act applies.[1]

Considering that work in handling goods in ports was unsuitable for children and a system of half-time working was not practicable, the Royal Commission on Labour recommended that the minimum age for employment of children in ports should be raised to 14 years, and that the factory inspectors should be entrusted with securing the observance of the law in this respect.[2] The Commission also considered that the limitation of hours of works of dockers is necessary and recommended that the normal daily hours prescribed by the law should be fixed at nine, but that overtime should be allowed up to a maximum of three additional hours on any one day, subject to the payment of overtime at an increased rate of at least $33\frac{1}{3}$ per cent. over the ordinary rates.

The twentythird session of the International Labour Conference adopted in 1937 the Minimum Age (Industry) Convention (Revised) (No. 59). The Convention fixed 13 years in India as the minimum age below which children should not be employed for work in the transport of passengers or goods or mails, by rail, or in the handling of goods at docks, wharves or quays. A Bill[3] was introduced in the Central Legislature expressly designed to give effect to the Convention. The Bill sought to prohibit the employment of children under 15 in occupations connected with the transport of goods, passengers or mails on railways and to raise the minimum age for handling of goods in docks from 12, the age fixed by section 6 (1A) of the Indian ports Act, 1908, to 14 the age recommended by the Royal Commission on Labour. The Assembly adopted an amendment providing that the minimum age for employment in ports be also 15 instead of 14 as provided in the Bill.[4] The Bill was passed by the Assembly on 20 September 1938 and by the Council on 22 September 1938 and became law (The Employment of Children Act, 1938) as Act XXVI of 1938.[5]

*Dockers*

As a result of the decision of the Government of India to ratifiy the International Labour Convention No. 32 concerning protection against accidents (dockers) (revised), 1932, the Indian Dock Labourers Bill was introduced

1. Act No. XI of 1931—an Act further to amend the Indian Ports Act, 1908, for certain purposes.

2. *Report of the Royal Commission on Labour in India*, p. 189.

3. The Employment of Children Bill, *Gazette of India*, 20 August 1938, Part IV, pp. 283-284.

4. *Legislative Assembly Debates*, 20 September 1938, pp. 2806-07.

5. *L.S.*, 1938-Ind. 5.

in the legislature in September 1933. The Bill was passed in 1934 as Act IX of 1934. The Act empowers the Central Government to make regulations on the safety requirements detailed in the Convention. The Act and the regulations issued under it are substantially identical with those of the Convention (No. 32) concerning protection against accidents to workers employed in loading and unloading ships.

Early in 1947, the Government of India ratified Convention No. 32 (Revised) concerning the protection of dock workers against accidents, and the Indian Dock Labourers Regulations, 1948[1], framed under the Indian Dock Labourers Act, 1934, to implement the Convention, came into force in India on 10 February 1948. These rules prescribe the duties of the inspectors to be appointed by the Government and lay down in detail the various safety measures to be adopted by (1) the authority in charge of the management and control of a dock, wharf or quay; (2) the owner, master, officer in charge or agents of the ship; (3) the owner of the machinery or plant used in the loading or unloading of cargo or fuel; and (4) the person who by himself, his agents or employees, engages in the loading or unloading of cargo or fuel.

For long, one of the main labour problems in India's ports has been due to the fact that the available dock labour generally exceeded the minimum requirements and to the consequent widespread unemployment or underemployment among dock workers. As far back as 1931 the Royal Commission on Labour in India had recommended that a policy or decasualisation should be adopted in the docks in order "to regulate the numbers of dock labourers in accordance with requirements and to ensure that the distribution of employment depends not on the caprice of intermediaries, but on a system which, as far as possible, gives all efficient men an equal share". However, subsequent attempts to induce port trusts to formulate schemes of decasualisation on a voluntary basis did not meet with much success, and a scheme of compulsory registration formulated in 1939 had to be shelved because of the outbreak of war.

The Dock Workers (Regulation of Employment) Act (IX) of 1948[3], which received the assent of the Governor-General of India in March 1948, empowers the Government of India in respect of the major ports, and the provincial Governments in respect of other ports, to frame a scheme for the registration of dock workers with a view to securing greater regularity of

1. *Gazette of India*, 17 January 1948, Part I, Section 1, pp. 88-89.
2. *L.S.*, 1948-Ind. 1.
3. *L.S.*, 1948-Ind. 3.

employment for them and for regulating the employment of all dock workers, registered and non-registered, in ports. Such a scheme may provide, *inter alia*, for the satisfactory regulation of a variety of subjects connected with the conditions of life and work of dock workers; the recruitment and entry into the scheme of all dock workers; the terms and conditions of employment in docks, including rates of remuneration, hours of work and holidays; the training and welfare of dock workers; the enforcement of adequate health and safety measures in docks; and payment to registered workers of a minimum pay for days on which work may not be available to them. The Act also empowers the appropriate Government to constitute a tripartite advisory committee, consisting of not more than 15 members representing Government, dock workers and their employers in equal proportion, to advise it in the framing and administration of schemes formulated under the Act[1].

Under the Act, a "Dock Workers' Regulation of Employment Scheme" has been framed for dock workers in the ports of Bombay[2], Calcutta[3], and Madras[4]. The objects of the schemes are to ensure greater regularity of employment for dock workers and to ensure that an adequate number of workers is available. Under the scheme, a Dock Labour Board will be appointed consisting of representatives of Government, workers and employers. The Board will have an executive officer who will maintain an employers' register and a workers' register and allocate registered workers to registered employers making the fullest possible use of the reserve pool. While all workers in the employment of the registered stevedores at the commencement of the scheme are eligible for registration, fresh recruitment to the reserve pool will be made by a registration committee on the basis of age, physical fitness, capacity and experience of the candidates. The workers thus recruited will be on probation for three months before they are registered on a permanent basis. The scheme also provides for the appointment of an Appeal Tribunal to hear and dispose of apppeals from the orders of the Board, the Administrative Body or the Special Officer as the case may be.

The working of these schemes evoked a number of complaints. The Central Government, on the recommendation of the Dock Workers Advisory

1. *Gazette of India, Extraordinary*, 4 March 1948, Part IV, pp. 31-34.
2. For the text of the Scheme, see *Gazette of India*, 27 January 1951, Part II, Section 3, pp. 118-128.
3. For the text of the scheme, see *Gazette of India*, 13 October 1951, Part II, Section 3, pp. 1845-1856.
4. For the text of the Scheme, see *Gazette of India*, 8 March 1952, Part II, Section 3, pp. 388-398.

Committee, appointed in January 1955 an Enquiry Committee to report on the working of these schemes and to recommend any necessary modifications in the schemes. The Committee in its report observed that there was a progressive deterioration in the turn round of ships particularly in the ports of Bombay and Calcutta due to the decline in the effective output of labour. To tackle these matters effectively, the Committee made a number of recommendations, the more important of which are as follows: (1) in order to ensure reasonable output from workers wages must be linked with productivity and a system of 'payment by results' should replace the present system of 'time rate wages'. There should be provision for incentive bonus for output above the standard rate. To prevent "sweating" the boards may prescribe the maximum beyond which no incentive bonus should be paid. (2) The minimum number of days for which guaranteed minimum wages are payable should be increased progressively from the present 12 days to 21 days in a month. (3) The dock labour boards should be concerned only with matters of policy and the responsibility to implement their decisions should rest on the chairman, who should, for this purpose, be given administrative and executive powers. (4) To assist the chairman, there should be a whole-time deputy chairman in Bombay and Calcutta and an executive officer in Madras, who will exercise all disciplinary powers except those especially vested in the chairman for use during an emergency or 'go-slow'. (5) The employers should be allowed to take more and more workers in the monthly registers from the reserve pool as this would increase the number of workers on regular employment and also improve employer-employee relations. (6) Before any further categories of workers are decasualised, the Board should adopt a procedure for 'listing' the workers in those categories and their employers and necessary rules should be framed for the purpose.

Accepting the main recommendations of the Enquiry Committee the Central Government decided to introduce the system of payment by results among dock workers and revised schemes were made for the ports of Calcutta, Bombay and Madras[1]. The schemes deal with constitution and functions of the dock labour boards and administrative bodies, duties and responsibilities of the officers of these bodies, maintenance of registers, registration, classification, medical examination, promotion and transfer of workers, provision of training facilities and maintenance of service record of registered workers, payment of guaranteed minimum wages, attendance wages and disappointment money to registered workers, obligations of registered employers and workers, etc.

1. *Gazette of India, Extraordinary*, Part II, Section 3, 9 October 1956, pp. 2039-2062; *ibid.*, 8 November 1956, pp. 2383-2406; *ibid.*, 23 October 1956, pp. 2085-2107.

*Other Safety Measures*

As a result of the ratification of the International Labour Convention (No. 27) concerning the marking of weight on packages transported by vessels, (1929), measures were taken by the authorities of the ports in India to implement the Convention. In the ports, packages or other objects weighing more than one metric ton may not be loaded unless the weight is marked on them. Under the regulations in force in the ports, the obligation for having the weight marked falls on the consigner.

With a view to give statutory force to the provisions of the Convention, the Government of India introduced in Parliament on 11 August 1950, a Bill concerning the marking of the weight on heavy packages transported by vessels. The Bill as passed by Parliament was gazetted on 26 June 1951 as Act No. XXXIV of 1951[1]. The Act requires that every person consigning a heavy package, the gross weight of which is one thousand kilogrammes or more for transport by sea or inland waterway, should mark thereon plainly and durably the gross weight of the package. Rules were made under the Act in October 1951. The rules[2], which came into force on 1 November 1951, require that the gross weight of a heavy package shall be marked thereon in metric tons, kilogrammes, standard pounds or standard maunds, in the English and the regional language, with a kind of paint which is not easily effaceable.

*Motor Transport Workers*

The principle of the stautory regulation of conditions of work was extended to a new class of transport workers, namely, those engaged in motor transport by the Motor Vehicles Act (IV) of 1939. Sections 4, 14 and 64 of the Act regulate the minimum age of employment, hours of work and rest period of motor drivers. The Act prohibits the employment of any person under 18 years as a driver of a motor vehicle, and any person under 20 as a driver of a transport vehicle, except in the employment of Central Government, in which case the minimum is 18 years. It limits the hours of work in the case of transport vehicles to nine in the day and 54 in the week and provides for a rest period of at least half an hour for five hours of continuous work[3].

It will be seen that the Act regulates the hours of work only of drivers and leaves out of its scope other classes of transport workers such as atten-

1. *Gazette of India, Extraordinary*, 26 June 1951, Part II Section 1, pp. 211-212.
2. *Idem, Extraordinary*, 29 October 1951, Part II, Section 3, pp. 1255-1256.
3. *Idem*, 25 February 1939, Part IV, pp. 75-76.

dants, conductors, cleaners and inspectors. The Factories Act, 1948, on the other hand, applies to workers employed in workshops but does not cover traffic personnel who constitute the majority of transport employees[1]. Some other labour enactments like the Payment of Wages Act, 1936, the Workmen's Compensation Act, 1923, have been applied in some States to certain classes of motor transport workers. The Minimum Wages Act, 1948, covers employees in public motor transport as a whole. It provides for fixation of minimum wages and payment for overtime work. A normal working day fixed under the Act consists of nine hours for an adult and four and a half hours for a child. The normal weekly hours of work have been fixed at 48 with provision for a weekly day of rest. The Act does not, however, cover matters like the minimum age of employment, holidays with pay, etc. It will thus be seen that there is no independent legislation at present applicable to road transport workers as a whole or to regulate the various aspects of their conditions of employment, work and wages.

The first All-India Conference of State Transport Workers held at Delhi in March 1955 recommended that central legislation should be undertaken to protect and secure the rights of transport workers and to improve and raise their standard of living and service conditions. The question of enacting separate and comprehensive legislation for motor transport workers was considered at the 15th Session of the Standing Labour Committee held at New Delhi in April 1956. The Committee emphasised the need for undertaking legislation for transport workers and recommended that the Government of India should draw up legislation and appoint a committee for the examination of the same. A committee under the chairmanship of the Chief Adviser, Factories, has been set up to advise on the details of the proposed legislation.

1. According to the 1951 Census the total number of persons engaged in road transport (excluding those employed on railways) was about 893,000 of whom 389,000 come under the category of employees.

## CHAPTER 7

### Wages

The first suggestion for legislation in regard to payment of wages was made in 1925 in a private member's Bill called the Weekly Payment Bill which was brought before the Legislative Assembly. At that time, wages were paid on varying periods though the monthly system was most prevalent. The Bill sought to remedy some of the evils of withholding wages, delays in paying wages and making deductions from wages in respect of fines. Criticism and opposition to the Bill was directed against interference with the existing period of payment. The Bill was withdrawn on the assurance that the question was under consideration by Government.

In the following year, the Government of India invited opinions from local Governments and the public on the advisability of legislation ; and the question also came under the examination of the Royal Commission on Labour which made a number of recommendations on the subject[1]. It was, however, only by April 1936 that legislation was adopted on the subject.

*The Payment of Wages Act, IV of* 1936[2].—The Act follows closely the recommendations of the Royal Commission. It applies in the first instance to the payment of wages to persons employed in factories and on railways, but provincial Governments are empowered to extend the Act in full or in part to any class of persons employed in any industrial establishment or group of establishments. The Act applies only to wages averaging Rs. 200 a month or less. Both the recommendations of the Royal Commission and the original Bill had suggested Rs. 100 as the limit but it was raised to Rs. 200 by the Select Committee on the Bill.

The employer or his nominee is held responsible for the payment of wages to persons employed by him. The persons responsible for payment of wages must fix the wage-periods in respect of which wages are payable; no wage period should exceed one month. In the case of establishments or undertakings employing less than 1,000 persons, wages must be paid before the expiry of the seventh day after the last day of the wage-period in respect of which the wages are payable, in other cases, before the expiry of the tenth day. Discharged workers must be paid off before the expiry of the

1. *See* page 236 *et seq* of the Report of the Commission. These related, *inter alia*, to regulation of fines and deductions from wages, prevention of delays in the payment of wages and the regulation of the periods of wage-payment.

2. *Gazette of India*, Part IV, 2 May 1936, pp. 21-29.

second working day from the day of discharge. All wages shall be paid in current coin or currency notes or in both.

Deductions from wages are permissible only in certain authorised cases including (a) fines; (b) deductions for absence from duty; (c) deductions for damage or loss of goods or for loss of money where such damage or loss is directly attributable to neglect or default; (d) deductions for house accommodation supplied by the employer; and (e) deductions for authorised amenities and services supplied by the employer.

Fines may only be imposed for acts and omissions specified in notices approved by the competent authority; they may not be imposed on children under 15 years of age; the total amount of fine may not exceed an amount equal to half-an-anna in the the rupee (*i.e.* one thirty-second part of the wages payable in respect of the wage-period); no fine may be recovered by instalments or after the expiry of sixty days from the day of the act or omission for which it was imposed; fines must be recorded in a register and the sums obtained must be applied to purposes beneficial to the persons employed in the undertaking.

The amount of deductions for absence from duty may not exceed a sum which bears the same proportionate relationship to the wages payable in respect of the wage-period as the period of absence does to such wage-period; except that where ten or more persons acting in concert absent themselves without giving due notice and without reasonable cause the deduction may include the amount of wages that would have been payable during the period of notice up to a maximum of eight days' wages. By an amending Act, No. XXII of 1937, employers were further empowered to withhold wages in the case of "stay-in" strikes.[1]

Claims on account of either of deductions or of delay in the payment of wages are dealt with by a special authority, which has power to order payment to the claimant of the sum wrongfully withheld plus compensation up to ten times the sum in the case of deductions and Rs. 10 in the case of delay.

Infringements of the law are liable to prosecution, but such prosecutions cannot be instituted unless a successful claim has been made under the provisions mentioned above, and the authority appointed under those provisions or the appellate court considers a prosecution to be warranted.

1. Formal amendments to the Act were made by another amending Act, No. XX of 1937.

The Act was slightly amended in 1937 (Act XXII) in order to empower employers to withhold wages in the case of a "sitdown" strike, and again by an Ordinance (III) of 1940 to permit deductions from wages for the purpose of investing in war savings schemes approved by the appropriate Government. These, however, were minor amendments which added very little to the substance of the protection enjoyed by labour.

The real achievements in the sphere of wages legislation during the last two decades have been the progressive extension of the provisions of the Payment of Wages Act to cover new classes of wage earners employed in industrial establishments, and the adoption of a Minimum Wages Act, 1948, which for the first time in India, provided for the statutory fixation of minimum rates of wages in a number of employments, including plantations and agriculture.

In 1938, the provisions of the Payment of Wages Act were extended by the Government of the Central Provinces and Berar (Madhya Pradesh) to establishments engaged in *bidi* making, shellac manufacture and leather tanning in certain districts of the province to which the Central Provinces Unregulated Factories Act, 1937, was applicable. In 1942, Madras, and Orissa extended the Act to all industrial establishments employing ten or more workers. The provisions of the Act were extended in January 1948[1] to coal mines and in June 1951[2] to all mines to which the Indian Mines Act applies.

In the States the Act has been applied to motor omnibus services in Assam, Andhra, Bihar, West Bengal, Madras, Mysore, Tripura, Coorg, Delhi and the Punjab; tramways in West Bengal, Madras, Delhi and Tripura; plantations in Assam, West Bengal, Madras, Coorg, Travancore-Cochin, Bihar, Mysore, the Punjab and Tripura; inland steam navigation services in Bihar and Assam; printing presses in U.P.; Government transport concerns and private transport companies in the Punjab; motor goods transport services in Delhi; docks, wharves or jetties in Assam, Andhra and West Bengal[3]; industrial establishments declared to be factories under Section 85 of the Factories Act, 1948 in Bombay and Madras; quarries in the Punjab; motor vehicles plying under stage carriage permits and public carriers' permits in Orissa; Bombay docks; and workshops or other establish-

1. *Gazette of India*, 3 January 1948, Part I, Section 1, p. 44.
2. *Idem*, 31 March 1951, Part II, Section 3, p. 537.
3. West Bengal Government notification No. 85-Lab./49/54 dated 11th January 1955. Under this notification the Act was also extended to persons employed on work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving the Port of Calcutta.

ments in which articles are produced, adapted or manufactured with a view to their use, transport or sale in the Punjab and Tripura; tramways services connected with the Mysore Iron and Steel Works, Bhadravati, bamboo forest work establishments in Orissa[1] and to all establishments in the areas within the Greater Bombay, Ahmedabad, Poona and Municipal Boroughs of Sholapur, Surat, Belgaum, Hubli, Kolhapur and Baroda to which the Bombay Shops and Establishments Act, 1948, applies[2].

The Government of Bombay adopted several amending Acts to amend the Payment of Wages Act in its application to the State of Bombay. The amending Act of 1953[3] adds certain provisions to the Payment of Wages Act to make the Act more effective in its purpose. One of the amendments makes both the employer and the manager or person in control of an industrial establishment liable jointly and severally for the recovery of wages. Another amendment provides that when the amount of any bonus payable to an employee exceeds an amount equal to one-fourth of his earnings for the year to which the bonus relates, such excess shall be paid or invested in the manner prescribed.

The amending Act of 1954[4] lays down that the amount due may be recovered by the authority appointed under the Act as an arrear of land revenue. It also adds a new Section 17A to grant similar facilities to employees in respect of court fees in the case of appeal proceedings as granted under Section 15A of the Act. The amending Act enacted in 1955 Payment of Wages (Bombay Amendment) Act, 1955 (No. XLVIII of 1955[5]) amends the definition of "Plantation" in the Act so as to cover sugar cane farms attached to sugar factories. It also authorises (1) the State Government to appoint more than one authority for the purpose of deciding claims, (2) representative unions registered under the Bombay Industrial Relations Act, 1946, to make applications to the authorities under Section 15 in the same way as an Inspector without obtaining authority from the persons on whose behalf the application is made, and (3) authorities appointed under the Act to direct payment of compensation in cases where the amount deducted or the delayed wages are paid by the employer to the employee before the disposal of the application. The

1. Notification No. 1543-IW/9/54 Lab. dated 11th March 1955.
2. Extended with effect from 1 April 1955.
3. Bombay Act No. LXII of 1953, *Bombay Government Gazette*, Part IV, 27 November 1953, pp. 256-259.
4. Act No. LXX of 1954, *Bombay Government Gazette*, Part IV, 18 November 1954, p. 280.
5. *Bombay Government Gazette*, Part IV, 8 December 1955, pp. 191-193.

amending Act[1] passed in June 1956 authorises deductions from wages, rent for accommodation provided by State or other public bodies.

The Government of Madhya Bharat passed the Payment of Wages (Madhya Bharat Amendment) Act in 1955 to permit deduction from wages for certain purposes.

The working of the Payment of Wages Act has shown that there are some practical difficulties which need to be rectified. Some of the important changes which are under the consideration of the Government relate *inter alia* to (1) application of the Act to contract labour, (2) raising of the wage limit from Rs. 200 to Rs. 500, (3) extension of the Act to the construction industry, and (4) revision of the definition of wages.

The Act, however, seeks only to ensure the regular payment of wages and to prevent the exploitation of the wage earner by arbitrary deductions and fines; it does little to help the worker with no bargaining power to secure a living wage. This need has been filled by the Minimum Wages Act, 1948, which may rightly be described as a new landmark in Indian labour legislation.

*The Minimum Wages Act.*

The question of establishing statutory wage-fixing machinery in India was discussed at the third and fourth meetings of the Standing Labour Committee held in May 1943, and January 1944, respectively, and at successive sessions of the Tripartite Labour Conference in September 1943, October 1944 and November 1945. The last of these approved in principle the enactment of minimum wages legislation.

On 11 April 1946, a Minimum Wages Bill was introduced but the passage of the Bill was considerably delayed by the constitutional changes in India. It reached the statute book only in March 1948.

The Minimum Wages Act (XI) of 1948 covers all the States of India except the State of Jammu and Kashmir. It applies to a number of employments which are listed in a schedule appended to the Act and may be extended by the appropriate Government, Central or State, as the case may be, to any employment in respect of which it is of opinion that minimum rates of wages should be fixed under the Act. The following employments are listed in Part I of the schedule appended to the Act.

.....employment in any woollen carpet making or shawl weaving establishment; employment in any rice mill, flour mill, or dal (pulses) mill;

1. *Idem*, Part IV, 21 June 1956, pp. 150-151.

employment in any tobacco (including *bidi* making) manufactory; employment in any plantation growing cinchona, rubber, tea or coffee; employment in any oil mill; employment under any local authority; employment on road construction or in building operations; employment in any stone breaking or stone crushing; employment in any lac manufactory; employment in any mica works ; employment in public motor transport ; and employment in tanneries and leather manufactories.

Employment in agriculture constitutes part II of the schedule. The Act applies not only to regular employees, but also to outworkers, in the scheduled employments, to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person.

The Act requires the appropriate Government to fix, before the expiry of three years from the commencement of the Act[1], in the case of employment in agriculture, and of two years in any other case, the minimum rates of wages payable to employees employed in all scheduled employments It further requires the appropriate authority to review at such intervals as it may think fit, but not exceeding five years, the minimum rates of wages fixed and to revise them, if necessary. Where in respect of any scheduled employment the appropriate Government has fixed and notified minimum rates of wages, the employer is bound by law to pay to every employee engaged in the scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employee in that emyloyment.

As regards the machinery for fixing minimum rates of wages, in the initial fixation of such minimum rates in respect of any employment, the appropriate Government shall either appoint a committee to hold enquiries and advise it, with such subcommittees for different localities as it may deem expedient to appoint to assist such committee or publish its own proposals, by notification in the official Gazette, for the information of persons likely to be affected thereby, and shall fix the minimum rates of wages after considering the advice of the Committee or the representations received on its own proposals as the case may be. For the revision of such minimum rates, however, the appointment of and prior consultation with advisory committees and advisory subcommittees is obligatory on the Government. For the purpose of co-ordinating the work of the committees, subcommittees, advisory committees, and advisory subcommittees appointed to help in the fixation

1. The Act came into force on 15 March 1948.

and revision of minimum rates of wages and generally advising the Government in the matter of fixing and revising minimum rates of wages, the appropriate Government is required to appoint an advisory board. The Act further requires the Central Government to set up a Central Advisory Board for the purpose of advising the Central and State Governments in matters relating to the fixation and revision of minimum rates of wages and for coordinating the work of the advisory boards. In the various committees, advisory subcommittees, and the advisory boards envisaged in the Act, employers and employees in the scheduled employments are to be represented by an equal number of members, and independent persons also are to be nominated, their number not to exceed one-third of the total number of members.

In regard to any scheduled employment in respect of which minimum rates of wages have been fixed under the Act, the appropriate Government is also empowered (a) to fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals; (b) to provide for a day of rest in every period of seven days, which shall be allowed to all employees or to any specified class of employees, and for the payment of remuneration in respect of such days of rest; and (c) to provide for payment for work on a day of rest at a rate not less than the overtime rate.

Finally, the Act empowers the Central Government to give directions to a State Government in the matter of enforcement in the State of the provisions of the Act[1].

As the Central Government as well as most of the State Governments were unable to fix minimum rates of wages for the employments specified in the Act by the stipulated date, the Government of India promulgated the Minimum Wages (Extension of Time) Ordinance (No. XVII) in June 1950 extending for one year the stipulated date for the fixing of minimum rates of wages in respect of employments other than agriculture (in the case of employments subsequently included in the Schedule by a notification under the provisions of the Act, two years from the date of such notification). The Act (No. LVI of 1950)[2] to replace the Ordinance was passed by Parliament in Augut 1950. By Act No. XVI of 1951[3] the period was further extended to 31 March 1952 for employments other than agriculture and 31 December 1953 for agricultural labour.

1. Cf. *L.S.* 1948-Ind. 2.
2. *Gazette of India, Extraordinary*, 23 August 1950, Part II, Section 1, pp. 224-225.
3. *Idem, Extraordinary*, 24 April 1951, Part II, Section 1, p. 71.

Under the provisions of the Act various State Governments have fixed minimum rates of wages for workers employed in the scheduled employments.[1] In some States[2], certain specified employments were brought under the coverage of the Act and minimum rates of wages were fixed for workers employed in such employments. As regards employment in agriculture, minimum rates of wages have been fixed for the whole State in the States of Ajmer, Coorg, Delhi, Kutch (farms below 5 acres have been excluded), Orissa, PEPSU, Punjab, Rajasthan and Tripura. In the States of Assam, Bihar, Bombay, West Bengal, Mysore and Madhya Pradesh minimum rates of wages have been fixed in certain specified areas.

As some of the State Governments were unable to fix minimum rates of wages for the employments specified in the Act by the extended date, the Central Government adopted in May 1954 an amending Act[3], providing that the appropriate Government shall fix the minimum rates of wages for persons employed in the employments specified in the schedules before 31 December 1954. The enactment further provides that the appropriate Government may, if it is of opinion that having regard to the terms and conditions of service applicable it is not necessary to fix minimum rates of wages in respect of any class of employees who are in receipt of wages exceeding the limit as may be prescribed, direct that the provisions of the Act shall not apply in relation to such employees.

This time limit for the fixation of minimum rates of wages is proposed to be extended to 31 December 1959 by a Bill[4] introduced in Parliament on 26 November 1956. Opportunity has been taken to make certain other amendments considered necessary in the light of the working of the Act. At present under the Act minimum rates of wages fixed should be reviewed and revised, if necessary, at intervals not exceeding five years. In some cases, it was not possible to review the rates of wages within that period. One of the amendments removes this difficulty. Other amendments either seek to clarify points of doubt or to remove difficulties experienced in the working of the Act.

1. For details, see *Indian Labour Year Book*, 1954-55, pp. 218-225.

2. The following employments were added to the Schedule of the Act by the State Governments concerned. *Ajmer* (1) cotton textiles, (2) wool cleaning, pressing and baling, (3) printing presses ; *Bombay* (1) salt pan industry, (2) hotels, restaurants and eating houses; *Coorg* cardamom malais ; *Delhi* (1) printing presses, (2) foundries, (3) automobile engineering including servicing and repair workshops, (4) other metal working establishments ; *Hyderabad* (1) button manufacture, (2) cotton ginning and pressing ; *Madhya Pradesh* (1) cement, (2) glass; (3) potteries ; *Mysore* ceramic industry ; *Orissa* gudakha making ; *Punjab* textile industry ; *Saurashtra* salt pan industry ; *Travancore-Cohin* (1) cashewnut industry, (1) coir industry (3) water transport other than motor boat transport, (4) cardamom plantations, (5) salt pans.

3. *Gazette of India, Extraordinary*, Part II, Section 1, 21 May 1954, pp. 171-173

4. *Idem, Extraordinary*, Part II, Section 2, 26 November 1956, pp. 1009-1019.

*Fair Wages*

Simultaneously with legislation to provide protection against wages being pushed below a prescribed minimum, the Government also considered the question of establishment of machinery, central, regional and functional, for the study and determination of fair wages. The Central Advisory Council set up as a result of the Industrial Truce Resolution, 1947, appointed a Committee on Fair Wages. On the basis of the recommendations of the Committee[1] the Fair Wages Bill was introduced in Parliament in August 1950. The Bill[2] sought to fix fair rates of wages for workers employed, in the first instance, in factories and mines and to create the necessary machinery for its determination and enforcement. For this purpose, the Bill contemplated the setting up of tripartite wages boards, co-ordinated by an all-India appellate body. There were also provisions in the Bill relating to the fixation of wage differentials, the calculation of overtime, the principle of equal pay for equal work for men and women and the revision of fair rates of wages from time to time. The Bill, however, lapsed with the dissolution of the Provisional Parliament.

1. *Report of the Committee on Fair Wages:* Manager of Publications, Delhi, 1949.
2. *Gazette of India,* 19 August 1950

# CHAPTER 8

# TRADE UNIONS AND TRADE DISPUTES

## A: Trade Union Legislation

The first step towards the enactment of trade union legislation was taken on 1 March 1921 when a resolution calling for such legislation was moved in the Legislative Assembly. Acting on this resolution, the Government consulted provincial Governments and interests concerned, and introduced legislation which was adopted in 1926 as the Indian Trade Unions Act (XVI of 1926).

Under this Act, provincial Governments are required to appoint a person to be the registrar of trade unions in the province. This Act differs from British and Dominion legislation on the subject mainly in the fact that the application of its provisions is confined to those unions which seek registration under it. The registration of unions is optional, but in order to be registered, unions must comply with various requirements in regard to the drafting of their rules. The Act limits and defines the purposes for which the general funds of a registered union may be spent, and permits the constitution of a separate optional fund for the promotion of the civic and political interests of the union's members; the accounts of a registered trade union must be audited and a statement forwarded annually to the registrar. It is provided that not less than half of the officers of a registered union must be persons actually engaged or employed in an industry with which the union is connected, but this provision may be declared by provincial Governments not to apply to any trade union or class of trade unions. The Act protects officers and members of a registered trade union against criminal proceedings in respect of any agreement for the purpose of furthering any legal object of the union. No civil action can be brought against a union in respect of any act done in contemplation or furthering of a trade dispute on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of another person. A union cannot be sued in respect of tortious acts of its agents if committed without the knowledge of, or contrary to express instructions given by, the executive of the union. An agreement between the members of a registered trade union is not void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade.

In 1928 the Act was amended by Act XV of 1928 to facilitate the procedure of appeal against decisions of the registrar refusing to register a trade union or withdrawing a certificate of registration[1].

The Royal Commission on Labour examined the working of the Act and found that the Act had "helped to give trade unions stability and an enhanced sense of responsibility"[2]. It recommended, *inter alia*, that (1) the Act should be re-examined in not more than three years' time; that all limitations imposed on the activities of registered unions and their officers and members should be reconsidered so as to ensure that the conditions attached to registration are not such as to prevent any well conducted *bonafide* union from applying for registration; (2) that all unions should be able to secure free of charge the conduct of their audit by officials of Government; (3) that the minimum number of members of trade union executives who must be actually engaged or employed in the industry to which the union relates should be raised to two-thirds; and (4) that trade unions should not be precluded from initiating and carrying on co-operative societies. According to the Third Report (1934) on action taken on the Commission's recommendations, the Government of India reserved the first recommendation for future consideration. As regards the second, the Government did not consider legislation necessary; the recommendation was commended to provincial Governments, some of which adopted it. Action was promised on the third recommendation when the Trade Unions Act was amended next and the fourth recommendation was rejected.

The Indian Trade Unions Act, 1926, as adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, had vested in the Central Government the powers of the provincial Governments in respect of trade unions whose objects are not confined to one province. This arrangement was found unsatisfactory and, after discussion in the First Labour Ministers' Conference (January 1940), the Government of India issued a notification in 1941[3], delegating its powers in respect of a union whose objects were confined to more than one province, to be exercised by that Government in whose province the registered office of the Union was situated.

*Recognition of trade unions.*—Though the Indian Trade Unions Act, 1926, provided for the registration of trade unions complying with various specified requirements, it imposed no obligation on employers to recognise and deal with such registered unions. The Royal Commission on Labour

1. *L.S.*, 1928-Ind. 2.
2. Report of the Commission, p. 331.
3. Notification No. L. 3006 dated 16 January 1941, *Gazette of India*, 18 January 1941, Part I, p. 108.

in India, which reported in 1931, pleaded for the recognition of unions by employers in spirit as well as in letter. But throughout the 'thirties the question of recognition proved to be a recurring cause of friction between employers and organised labour, and the advisability of amending the Trade Unions Act, with a view to imposing on employers a statutory obligation to recognise and deal with trade unions satisfying certain prescribed conditions, figured prominently on the agenda of successive Labour Ministers' Conferences held in 1940 and 1941 and of the meetings of the Standing Labour Committee (1944) and the Indian Labour Conference (1945). The result was the adoption of the Indian Trade Unions (Amendment) Act (XLV) of 1947, which provided for the compulsory recognition by employers of representative trade unions by order of a labour court. The Amendment Act has not, however, come into force.

The amending Act provides for recognition of trade unions by employers to be decided in cases of dispute, by Labour Courts set up under the Act, one of the conditions for such recognition being that the union applying for recognition should be representative of all workers in the concerned establishment or industry. A registered trade union which has applied to an employer for recognition, but has failed to obtain it within a period of three months, may apply in writing to the labour court (to be set up under the Act) for recognition by the employer, setting out such particulars as may be prescribed. If after due investigation the labour court finds that the trade union concerned satisfies the conditions for recognition laid down in the Act and is fit to be recognised by the employer, it must issue an order directing such recognition. The Act confers on the executive of a recognised trade union the right to negotiate with employers in respect of matters connected with the employment or non-employment, terms of employment and the conditions of work of all or any of its members. Finally, the Act defines certain practices as unfair on the part of a recognised trade union and certain others as unfair on the part of an employer, and requires both to desist from such practices under threat of withdrawal of recognition on application to the labour court by the registrar or the employer in the case of the former, and a fine of up to 1,000 rupees in the case of the latter. Unfair practices include participation, support or instigation of an irregular strike, submission of returns containing false statements, discharge or discrimination against any officer of a recognised trade union and interference with the formation or administration of any trade union.

The Act, however, does not provide for the inspection of books of trade unions by the registrar of trade unions. This was commented upon by the Chief Labour Commissioner (Central) in his report on the enquiry into the representative character of the All-India Trade Union Congress

and the Indian Federation of Labour. He suggested that if the trade unions were to develop on healthy lines it was necessary that some provisions should be made in the Act for periodical inspection of registers, records and accounts books of trade unions by the registrar or by other persons deputed by him. The matter was discussed at the 11th session of the Standing Labour Committee in January 1949. On the basis of these discussions the Trade Unions Bill[1] was introduced in Parliament in February 1950.

Though the Bill was primarily a consolidating measure, it included some new provisions: (1) the armed forces and the police were excluded from the scope of the Bill; (2) trade unions of civil servants were not permitted to have outsiders on their executive boards, nor were they entitled to compulsory recognition if they included non-civil servants or were affiliated to a federation which included non-civil servants; (3) the conditions entitling a trade union to registration were elaborated; (4) the number of "outsiders" in the executive of a general trade union was reduced to four or one fourth of the total number, whichever was less; (5) labour courts were enabled to settle disputes regarding the election of office bearers. The Bill, however, lapsed with the dissolution of Parliament.

The Government of Bombay amended in June 1956, the Indian Trade Unions Act, 1926, in its application to the State of Bombay. The Indian Trade Unions (Bombay Amendment) Act, 1956[2], amends section 33 of the Act of 1926 in order to enable the Registrar of Trade Unions to make complaints in respect of offences under section 31(2) within six months of the date on which the offence came to his knowledge.

## B: Trade Disputes Legislation

*Legislation prior to 1937.*

Up to 1932 there remained on the statute book the Employers and Workmen (Disputes) Act passed in 1860. This Act, an enabling measure, was designed to secure settlement of wage disputes by magistrates summarily; it also provided for penal sanctions for breaches of contract by workers. The Royal Commission found that the Act had everywhere ceased to be used, and it was subsequently repealed by Act No. II of 1932.

Meanwhile the expediency of legislation for the settlement of industrial disputes was the subject of investigations by the Governments of Bengal and Bombay in 1921 and 1922, and the Government of India

1. *Gazette of India*, 4 March 1950, Part V, pp. 132-149.
2. Act No. XXXII of 1956, *Bombay Government Gazette*, Part IV, 14 June 1956, p. 140.

prepared a Bill relating to such disputes in 1924. It was not, however, until 1929 that the Trade Disputes Act was passed, providing for investigation and settlement of trade disputes[1]. The life of the Act which was originally fixed at five years, was prolonged by an Act passed in April 1934.[2]

The main object of the Act was to make provisions for the establishment of courts of enquiry and boards of conciliation with a view to investigating and settling trade disputes respectively. The Act prohibited strikes or lock-outs without notice in public utility services; it also made illegal any strike or lock-out which had any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or the employers locking out were engaged, and was designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby compel Government to take or abstain from any particular course of action.

The Act was examined by the Royal Commission on Labour, which suggested that the question of providing means for the impartial examination of disputes in public utility services and the possibility of estabilishing permanent courts in the place of *ad hoc* tribunals under the Act should be examined, and that Local Governments should appoint officers to undertake the work of conciliation and to bring the parties privately to agreement[3]. Even though the Government of India accepted these recommendations[4], further action could not be taken before the Act was made permanent in 1934[5].

In the same year (1934) an important provincial measure was passed, the Bombay Trade Disputes Conciliation Act, the object of which was to make further provisions for the settlement of trade disputes by conciliation and for certain other purposes[6]. It named the Commissioner of Labour as *ex officio* Chief Conciliator of the Province, empowered the Government to appoint suitable persons as special or assistant conciliators and authorised the conciliators to initiate conciliation proceedings in cases where a trade dispute either existed or was apprehended. The Act further provided for the appointment of a Government Labour Officer to look after the interests

1. Act No. VII of 1929, *L.S.* 1929, Ind. 2.
2. *Gazette of India*, 5 May 1934, Part IV, p. 45.
3. *Report of the Royal Commission on Labour in India*, pp. 346-348.
4. In accordance with another suggestion of the Commission, the Act was amended by Act XIX of 1932 for the propose of protecting member of courts of enquiry or of boards of conciliation from prosecution in regard to disclosure of confidential information relating to trade unions or individual business.
5. By Act XIII 1934.
6. Bombay Act No. IX of 1934, *L.S.*, 1934, Ind. 4.

of labour in industry and to promote closer contact between employers and workers.

*Legislation since* 1937.

Since 1937 the scope of trade disputes legislation has been considerably extended both at the centre and in a number of provinces, and substantial progress has been made in building up a permanent machinery for the speedy and amicable settlement of industrial disputes. The more important among the new principles which have been incorporated in the legislation are the following : compulsory arbitration in public utility services, including the enforcement of arbitration awards; prohibition of strikes and lockouts during the pendency of conciliation and arbitration proceedings and of arbitration awards enforced by Government order; the prescription of specific time limits for various stages of conciliation and arbitration proceedings to eliminate delays; the imposition of an obligation on employers in certain States to recognise and deal with representative trade unions which satisfy certain statutory conditions relating to their constitution and membership; and the setting up of joint works committees to provide machinery for mutual consultation between employers and workers.

*Central Legislation*—A Bill to amend the Trade Disputes Act was introduced in the Central Legislature in 1936 to implement the suggestion of the Royal Commission on Labour and was adopted as Act XI of 1938[1]. The amending Act provided for the appointment of conciliation officers charged with the duty of mediating in or promoting the settlement of trade disputes. Besides extending the term "trade disputes" to cover differences between employers and employees or between workmen and workmen the Act also included water transport and tramways under public utility services and made the provisions concerning illegal strikes and lockouts less restrictive. Suggestions further to amend the Act were made at the first and second sessions of the Labour Ministers' Conference in 1940 and 1941 but the law relating to trade disputes remained unchanged until January 1942, when the imperative need to prevent the war effort from being held up by industrial strife forced the Government to introduce a more definite method for the settlement of industrial disputes than that provided by the 1929 Act.

In January 1942, the Government of India, by a notification added Rule 81 A to the Defence of India Rules in order to restrain strikes and lockouts. This empowered Government to make general or, to suit local

1. Cf. *L.S.*, 1938-Ind. 1.

requirements, special orders to prohibit strikes or lockouts, to refer any dispute for conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators. In May of the same year, another notification was issued, vesting much the same powers in the provincial Governments, and in August an Order was promulgated prohibiting strikes and lockouts without 14 days' previous notice[1]. Strikes and lockouts were also prohibited when a trade dispute was referred to a statutory enquiry or for conciliation or adjudication during the entire period of the proceedings and for two months thereafter. In April 1943, the Defence of India Rules were further amended, and concerted cessation of work or refusal to work by a body of persons in a place of work except in furtherance of a trade dispute with which they were directly connected, was prohibited. Provincial Governments were empowered to take all necessary measures to prevent such cessation of work in establishments in which 100 or more persons were employed and to open and work all such establishments which had been closed down for reasons other than those relating to a trade dispute in them.

This emergency war legislation ceased to be operative from 30 September 1946[2]. War time experience of the working of the rule, however had convinced the Government that the rule was extremely useful and that its incorporation in the permanent labour law of the country would do much to check the industrial unrest which was gaining momentum owing to the stress of post-war industrial readjustments. The main provisions of the Defence of India Rule 81A in so far as they related to public utility services, were therefore retained intact in the Industrial Disputes Act (XIV) of 1947, which on 1 April 1947 replaced the Trade Disputes Act of 1929, and is, in its basic form, currently in force.

While retaining most of the provisions of the earlier law, the new Act introduces two new institutions for the prevention and settlement of industrial disputes: works committees consisting of representatives of employers and workers; and industrial tribunals consisting of one or more members possessing qualifications ordinarily required for appointment as judges of a High Court. Power is given to the appropriate Government to require works committees to be constituted in every industrial establishment employing 100 workers or more, in order to remove causes of friction between employers and workers in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them.

1. *Idem*, 1942-Ind. 4.

2. Pending the enactment of the Industrial Disputes Act, the provisions of the Defence of India Rule 81A were kept in force for a further period of six months by the Emergency Provisions (Continuance) Ordinance, 1946.

A reference to an industrial tribunal will lie where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year.

The Act also seeks to give a new orientation to the entire conciliation machinery. Prior resort to the conciliation machinery provided under the Act is made obligatory in all disputes in public utility services, and is optional in the case of other disputes. With a view to expediting conciliation proceedings, time limits have been prescribed for their conclusion—14 days in the case of conciliation by a conciliation officer, and two months in that of conciliation by a board reckoned from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties; where no period has been agreed upon, it will be binding for a period of six months, and thereafter until revoked by two months' notice given by either party to the dispute.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings, of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate Government. Finally, the Act empowers the appropriate Government to declare, if public interest or emergency so requires, any of the following industries to be a public utility service for the purposes of the Act, for a period not exceeding six months: transport (other than railways) for the carriage of passengers or goods, by land, water or air; coal; cotton textiles; food stuffs; and iron and steel[1].

Rules, orders or notifications requiring the larger industrial establishments to set up works committees have already been issued by the Government of India and most of the State Governments[2]. It is interesting to note that State Governments have made considerable use of the powers granted to them under the Act to declare specified industries to be public utility services for specified periods.

1. Cf. *L.S.*, 1947-Ind. 1.

2. During the year 1955-56 more than 715 works committees were functioning in the central sphere. Of the 1927 committees functioning in the State during 1954-55, 1660 were in Part A States, 125 in Part B States and 142 in Part C States. According to industry-wise classification, the largest number of works committees, namely 989 was in 'manufacturing group' and plantations accounted for 563 committees.

A series of amendments were made to the Act during the period 1949-56 to supplement the provisions of the Act and to meet certain special requirements. These related to, among other matters, inclusion of banking and insurance companies in the list of undertakings for which the Central Government alone was competent to constitute boards, courts of tribunals, power of the tribunals to hear complaints regarding alteration in the service conditions of workers during pendency of proceeding, payment of compensation to workmen in the event of their layoff or retrenchment, substitution of the existing system of tribunals by a three-tier system of original tribunals and amendments to provisions relating to lay-off and retrenchment compensation.

*Industrial Disputes (Banking and Insurance Companies) Act*, 1949. The working of the Industrial Disputes Act revealed that piece-meal adjudication in disputes relating to concerns having branches in more than one State by tribunals appointed by provincial Governments and lack of uniformity in awards created considerable difficulties for the employers, e.g. in the case of banking and insurance companies. To remedy this defect the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949)[1], was promulgated in April 1949, amending the Act in order to include banking and insurance companies in the list of undertakings for which the Central Government alone was competent to constitute boards, courts or tribunals. A second Ordinance (No. XXVIII) was promulgated on 29 October 1949[2] validating action taken under the first Ordinance; this Ordinance was replaced in December 1949 by Act LIV of 1949[3].

*The Industrial Disputes (Appellate Tribunal) Act*, 1950. Need was felt for the setting up a central appellate authority which, by its decisions, would co-ordinate the activities of the large number of industrial tribunals set up by the Central and State Governments. The Government of India, therefore, introduced in Parliament on 9 December 1949 the Industrial Disputes (Appellate Tribunal) Bill providing for the setting up of an appellate tribunal in relation to industrial disputes and certain other incidental matters. Appeals will lie to the Tribunal only in matters involving finance, classification by grades, retrenchment of staff and questions of law. The Bill was passed by Parliament on 11 April 1950 and became Act XLVIII of 1950[4]. The Act also made certain consequential

1. *Gazette of India, Extraordinary*, 30 April 1949, pp. 749-750.
2. *Idem, Extraordinary*, 29 October 1949, p. 2109.
3. *Idem, Extraordinary*, 15 December 1949, Part IV, pp. 176-177.
4. Cf. *LS.* 1950-Ind. 1: The Act has since been repealed by Central Act No. 36 of 1956.

amendments to the Industrial Disputes Act, 1947. These related, among others, to duties of tribunals, commencement and duration of awards, and prohibition of changes in conditions of service of workers.

According to one amendment an award shall be normally in operation for one year. But the appropriate Government may reduce or extend the period of operation by any period not exceeding one year at a time and the total period of operation of any award should not exceed three years from the date on which it came into operation. Another amendment provides that all awards of tribunals become binding on the parties on the expiry of 30 days from the date of their publication, and where there is no provision for publication, on the expiry of 30 days from the date on which they are made. Provision has been made for the disposal of complaints by workers regarding alteration of conditions of service to their prejudice during the pendency of proceedings before a tribunal. A new section has been added authorising employees aggrieved by alteration of conditions of service to lodge a complaint with the tribunal and empowers the tribunal to deal with the complaint as if it were a dispute referred to or pending before it.

*Industrial Disputes (Amendment and Temporary Provisions) Act*, 1951. As a result of the decision[1] of the Supreme Court invalidating the award of the All India Bank Disputes Tribunal (Sen Tribunal), the Industrial Disputes (Amendment and Temporary Provisions) Act[2] was passed in June 1951, which regulated such matters as the filling of vacancies in the tribunals.

*Industrial Disputes (Amendment) Act*, 1952. Important amendments were made to section 10 of the Act by the Industrial Disputes (Amendment) Ordinance (IX of 1951)[3] promulgated on 5 December 1951. The section as amended empowers the appropriate Government to include within the scope of a general adjudication even units in which no disputes might actually exist. While the old section 10 gave power to the Government to refer an industrial dispute to a tribunal for adjudication, under the amended Act "any matter appearing to be connected with or relevant to, the dispute"—in the opinion of the Govern-

1. *United Commercial Bank Ltd., V. Workmen*, 1951 Labour Law Journal p. 621.

2. Act XL of 1951; *Gazette of India, Extraordinary*, 27 June 1951 Part II Section 1. pp. 213-216.

3. *Idem, Extraordinary*, 5 December 1951, Part II, Section 1, pp. 529-530.

ment—can also be referred to for adjudication. The Ordinance was replaced by Act No. XVIII of 1952[1].

*Industrial Disputes (Amendment) Act*, 1953. An important enactment in the sphere of industrial disputes is the Industrial Disputes (Amendment) Act, 1953, providing for compensation to workers in the event of their lay-off or retrenchment. The subject of compensation for involuntary unemployment was considered by the 13th session of the Standing Labour Committee in view of the increase in the tendency to lay-off workers in various fields of employment. The Committee adopted an agreed formula for the payment of compensation for involuntary unemployment according to which compensation to the extent of 50 per cent. of the basic wage and dearness allowance would be payable to workers during the period of involuntary unemployment, the duration of such benefit being restricted to 45 days in a year.

A crisis developed in the textile industry in October 1953, as a result of accumulation of stocks and consequent threat of closure of mills involving lay-off or retrenchment of workers. With a view to assisting the industry the Central Government issued a series of Ordinances. The Industrial Disputes (Amendment) Ordinance (No. 5 of 1953)[2] provided for the payment of compensation for lay-off or retrenchment and for the regulation of lay-off on the lines of the agreement entered into between employers' and workers' representatives at the 13th session of the Standing Labour Committee.

The Ordinance was subsequently replaced by regular legislation, as Act No. 43 of 1953[3]. The Act which came into force on 24 October 1953 inserts a new chapter VA to the principal Act and adds certain definitions. According to the provisions of the new chapter which apply to workers in factories and mines, whenever a workman other than a *badli* workman or a casual workman in an industrial establishment who has completed not less than one year of continuous service under an employer is laid off, he shall be paid by the employer compensation equal to fifty per cent. of the basic wage and dearness allowance for all days during which he is so laid off. Such compensation shall not be for more than 45 days except if during any period of 12 months a workman has been paid compensation for 45 days and during the same period of 45 days he is again laid off for further continuous periods of more than one week at a time, he shall, unless there is agree-

1. *Idem, Extraordinary*, 5 March 1952, Part II, Section 1, pp. 95-97.
2. *Idem, Extraordinary*, Part II, Section 1, 24 October 1953, pp, 365-370.
3. *Idem, Extraordinary*, Part II, Section 1, 24 December 1953, pp. 433-439.

ment to the contrary between him and the employer, be paid compensation at the same rate for all the days during such subsequent periods of lay-off. The Act also prescribes the conditions precedent to retrenchment of workmen (such as one month's notice, compensation equivalent to 15 days' average wage for every completed year of service) and the procedure for retrenchment.

*Industrial Disputes (Amendment) Act*, 1954. The fifth session of the Industrial Committee on Plantations held in January 1954 recommended that steps should be taken to apply the provisions of the Industrial Disputes (Amendment) Act of 1953 relating to lay-off to the plantation industry with effect from 1 April 1954. Accordingly, the provisions of lay-off benefits were extended to plantation workers with effect from 1 April 1954 by Act XLVIII of 1954[1].

*Industrial Disputes (Amendment and Miscellaneous Provisions) Act*, 1956. An Act further to amend the Industrial Disputes Act, 1947, the Industrial Employment (Standing Orders) Act, 1946, and to repeal the Industrial Disputes (Appellate Tribunal) Act, 1950, received the assent of the President on 28 August 1956 and was gazetted as Act No. 36 of 1956[2]. The salient amendments made are:

(1) The Amendment Act enlarges the definition of 'workman' in section 2(s) of the Industrial Disputes Act, 1947, to cover supervisory personnel whose emoluments do not exceed 500 rupees per mensem, and also technical personnel.

(2) It repeals the Industrial Disputes (Appellate Tribunal) Act, 1950, and substitutes the present system of tribunals by a three-tier system of original tribunals, namely labour courts, industrial tribunals and national tribunals, manned by personnel of appropriate qualifications. References to the national tribunals are to be made by the Central Government and to cover such disputes which involve questions of national importance or which are of such a nature that establishments situated in more than one State are likely to be interested in or affected by the disputes. Matters of jurisdiction of labour courts and industrial tribunals are prescribed in the second and third schedules to the Act. Provision is also made for voluntary reference of disputes to arbitration by the parties themselves by written agreements and for the enforcement of agreements between employers and workmen otherwise than in the course of conciliation.

1. *Idem, Extraordinary*, Part II, Section 1, 24 December, 1954, p. 418.
2. *Idem, Extraordinary*, Part II, Section 1, 28 August 1956, pp. 723-745.

(3) A new chapter IIA, provides that the employer shall not introduce any change in respect of certain matters relating to conditions of employment specified in the Fourth Schedule to the Act without giving the workman concerned 21 days' notice of his intention to do so.

(4) The existing section 33 prohibiting any change in the conditions of service of workmen during the pendency of any conciliation proceeding or proceeding before a tribunal except with the written permission of the the authority concerned is replaced by a new section. While continuing the protection available by the above provision to workmen in regard to any matter or misconduct connected with the dispute, further provision is made that where during pendency of any proceedings an employer finds it necessary to proceed against any workmen in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Orders applicable to the workmen. If such action involves dismissal or discharge, the employer must pay the workmen wages for one month and simultaneously apply to the authority for approval of such action. A limited number of representatives of the workers are given protection in all matters whether connected with the dispute or otherwise.

(5) Another amendment replaces the existing first schedule to the Act listing five industries which may be declared to be public utility services under the Act by a new schedule listing ten industries. These are : (1) transport (other than railways) for the carriage of passenger or goods, by land, water or air; (2) banking; (3) cement; (4) coal; (5) cotton textiles; (6) foodstuffs: (7) iron and steel; (8) defence establishments; (9) service in hospitals and dispensaries; and (10) fire brigade service.

*Industrial Disputes (Amendment) Act*, 1956. Doubts were raised whether retrenchment compensation under the Industrial Disputes Act, 1947, was payable by reason of change of employers and whether a workman laid off for more than 45 days continuously was entitled to lay-off compensation for any period beyond the first 45 days. To remove these doubts and to clarify the law relating to lay-off and retrenchment compensation, Act No. 41 of 1956[1] was adopted.

Under the Act of 1947 as amended by the above Amendment Act, lay-off compensation payable to a workman during any period of 12 months is limited to 45 days. If during any period of twelve months, a workman is laid off for more than fortyfive days, whether continuously or intermittently, and lay-off after expiry of the first fortyfive days comprises

1. *Gazette of India, Extraordinay*, Part II, Section 1, 4 September 1956, pp, 839-841.

continuous periods of one week or more, the workman shall, unless there is any agreement to the contrary between him ande themployer, be paid compensation for all the days comprised in every such subsequent period of lay-off for one week or more. It shall be lawful for the employer to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first fortyfive days of lay-off and when he does so, any compensation paid to the workman for having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchment.

The Amendment Act also prescribes the conditions under which retrenchment compensation is payable when the ownership or management of the undertaking is transferred.

*Industrial Disputes (Amendment) Ordinance*, 1957. In a judgment delivered on 27 November 1956, the Supreme Court held that no retrenchment compensation was payable under section 25 of the Industrial Disputes Act, 1947, to a workman whose services were terminated by an employer on a real and '*bona fide*' closure of business or when termination occurred as a result of transfer of ownership from one employer to another. Consequently a number of undertakings particularly in Ahmedabad, Kanpur and West Bengal closed down or put up notices of closures for one reason or another rendering unemployed large numbers of workmen without any compensation. As this caused serious hardship to workers, the Government of India promulgated an Ordinance[1] on 27 April 1957, with retrospective effect from 1 December 1956, providing that retrenchment compensation will be payable in '*bona fide*' closure or transfer of an undertaking.

The Ordinance further provided that in the case of the transfer of an undertaking, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. In the case of the closure of business on account of circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein.

The Ordinance was replaced in June 1947 by Central Act 18 of 1957[2].

1. *Gazette of India, Extraordinary*, Part II, Section 2, 27 April 1957, p. 161.
2. *Idem, Extraordinary*, Part II, Section 1, 8 June 1957, pp. 213-215.

Some of the State Governments have amended the Industrial Disputes Act, 1947, in its application to their States. Amending Acts to the Central Act of 1947 were adopted by the Governments of Mysore, Punjab and Saurashtra. While the Punjab and Mysore Acts are mainly procedural, the Saurashtra enactment[1] enables employers and workers to resort to voluntary arbitration and provides for registration of such arbitration agreements.

## State Legislation

Some of the States—Bombay, Madhya Pradesh and Uttar Pradesh—have adopted trade disputes laws to supplement the provisions of the Central Act of 1947.

### *Bombay*

Bombay was the first State to pass an Act to make further provision for the settlement of trade disputes by conciliation and for certain other purposes. The Bombay Trade Disputes Conciliation Act, 1934 (IX of 1934)[2] which came into force on 13 October 1934, was made applicable, in the first instance, to the textile industry in Bombay city and the Bombay suburban district only. The Act provided for the appointment of a Government labour officer to look after the interests of labour in the industry and to promote closer contact between employers and workers. It also provided for the creation of a conciliation board with the Commissioner of Labour as *ex officio* Chief Conciliator and empowered the Government to appoint suitable persons as special or assistant commissioners.

In 1938 the Act was replaced by a much more comprehensive Act, the Bombay Industrial Disputes Act (XXV)[3]. This Act which was applied to the cotton textile industry throughout the province and to the silk and woollen textile and hosiery industries in specified areas, made it obligatory on the parties to a dispute to endeavour to obtain a settlement by conciliation before resorting to a strike or lockout. Every employer coming under the provisions of the Act was required to submit for the approval of the Commissioner of Labour standing orders relating to the discipline and working of his establishment. An employer who desired to make a change in the standing orders or in working conditions had to give notice to the competent authorities and to the "representative of employees". Employees desiring changes had similarly to give notice to the employer through the representa-

1. *Saurashtra Government Gazette, Extraordinary*, 14 December 1953.
2. *L.S.* 1934-Ind. 4.
3. *L.S.*, 1939-Ind. 1.

tive of employees, who was required to forward a copy of the notice to the Government authorities.

In case the parties did not agree and the official conciliator failed to settle the dispute, the Government could refer the dispute to a board of conciliation consisting of a chairman and an equal number of members selected from panels representing the interests of the employers and the employees respectively. Machinery was provided for the settlement of disputes by arbitration when both parties agreed to such arbitration, and a Court of Industrial Arbitration was created to decide, *inter alia*, questions of law and to determine appeals in various cases arising out of the operation of the Act. Finally, the Act contained a novel provision for the registration of unions which had been recognised by the employers concerned or which fulfilled certain requirements as regards membership, and conferred upon them various rights in connection with representation on behalf of the workers.

Three amending Acts modifying the provisions of the above Act were passed between 1938 and 1947. Those of 1941(X) and 1942 (XVI) were emergency measures designed to meet the wartime need for unrestricted production. The first of these empowered the Government to refer an industrial dispute to the Court of Industrial Arbitration if considered that the dispute would lead to serious outbreaks of disorder, adversely affect the industry concerned, or cause prolonged hardship to a large section of the community; the second exempted employers from notifying changes regarding hours of work and rest periods which were authorised by the Government as a war measure. A third Amending Act (XIX) of 1945 gave the labour officer appointed by Government power to convene a meeting of the workers on the premises where they were employed, and required the employer, if he was ordered to do so by the labour officer, to affix a written announcement of the meeting at such conspicuous place in his premises as were specified in the order[1].

In 1947 the entire Act was repealed and replaced by the Bombay Industrial Relations Act (XI) of 1947[2] with a view to providing for the quicker and more efficient disposal of industrial disputes and giving a greater impetus to labour to organise itself[3]. The most important changes intro-

1. *Bombay Government Gazette*, 3 November 1945, Part IV, pp. 170-171.

2. *Idem*, 15 April 1947, Part IV, pp. 52-100. See also *International Labour Review*, Vol. LVII, Nos. 1-2, Jan.-February 1948, pp. 67-72.

3. "Statement of Objects and Reasons" *Bombay Government Gazette*, 6 September 1946, Part V, pp. 161-210.

duced by this new Act were (a) the creation of a new class of "approved" unions, which are invested with substantial privileges in return for their undertaking a set of corresponding obligations, the most important among these being an obligation to submit disputes for arbitration upon the failure of conciliation and not to sanction or resort to a strike until the provisions of the Act have been exhausted and a majority of its members have voted in favour of such a strike; (b) the setting up, for the first time in India, of labour courts to ensure quick and impartial decisions in references regarding illegal changes in standing orders or conditions of work; and (c) provision for the setting up of joint committees consisting of equal number of employers and employee representatives, in the various occupations and undertakings in an industry.

The Act applies to all industries covered by the 1938 Act and was extended by a notification of 8 January, 1948, to the sugar industry[1]. Its object is to regulate all matters included in relations between employer and employees, and it defines accordingly the status of trade union, establishes schedules of industrial matters controlled by standing orders and collective bargaining and provides comprehensive facilities for the settlement of industrial disputes by means of negotiation between the representatives of employers and employees, conciliation authorities, labour courts, voluntary arbitration, and, in some instances, compulsory arbitration. Agreements, settlements reached through conciliation and arbitration awards are declared to be binding and protective measures are provided to safeguard the rights of employees engaged in legitimate trade union activities.

The protective provisions of the Act have recently been strengthened still further by a series of amendments. An Amending Act (XLIII) of 1948 conferred additional powers on the provincial Government and empowered it to set up wage boards for different industries in the province and a provincial wage board for all the industries together, and to direct the constitution of a joint committee for an undertaking or occupation even without the employer's consent when the registered trade union for the industry for the local area concerned asks for such a joint committee. Another new provision introduced by the amending Act sought to facilitate the speedy settlement of disputes by enabling a registered union which was representative of the employees and the rules of which provided that it should neither sanction nor resort to a strike unless all the methods available under the Act for the settlement of an industial dispute had been exhausted, to drop

1. *Idem, Extraordinary*, 9 January 1948. p. 163; the Act has been extended to the silk industry since 15 November 1948, to electricity supply industries since 1 December 1948, to the textile processing industry since 1 January 1949, and to woollen textile industry since 15 June 1950.

the intermediate stage of conciliation altogether and apply direct to the industrial court for arbitration[1].

A second Amending Act passed in December 1948 (Act No. LXXIV) of 1948[2] introduced some improvements in the Act and removed certain difficulties experienced in the administration of the Act. The more important of these were: (1) in order to relieve congestion of work in the industrial court, power was taken to transfer cases, on the recommendation of the industrial court, from the industrial court, to such wage boards as had the necessary powers of disposal; (2) where stoppages or closures of work were caused in relation to an industrial dispute but under the guise of a protest against a course of action taken or not taken by the Government, such stoppages and closures were made illegal; and (3) provision was made for the modification of an award, provided the award had run a life of one year, to enable parties to apply for modification of the whole or part of an award instead of terminating it by a notice.

Another Amending Act was enacted in December 1949 (Act LV of 1949)[3], by which a representative union was made the sole collective bargaining agency in all proceedings where it was entitled to appear; and it was laid down that an agreement with a representative union in the course of proceedings in industrial disputes should be made effective by an award according to its terms.

The Act was amended in November 1953 by Bombay Act No. LXIII of 1953.[4] One of the amendments widens the definition of the term 'employee' so as to bring persons employed primarily in a managerial, administrative, supervisory or technical capacity and drawing a basic pay of less than 350 rupees per month within the purview of the Act. In order to avoid multiplicity of proceedings in various courts, another amendment empowers the industrial court, labour courts and wage boards to decide all connected matters arising out of industrial matters or disputes referred to them.

Two further Amending Acts were enacted in 1955 and 1956 for removal of certain defects in the Act. The Bombay High Court in a judgement held that under sec. 114 of the Act a registered agreement, submission or award to which a registered union was a party was binding only on the members of the union and not on the other employees. To bind all employe-

1. *Idem*, 24 March 1948, Part IV, pp. 182-194.
2. *Idem*, 31 December 1948, Part IV, pp. 740-746.
3. *Idem*, 10 December 1949, Part IV, pp. 747-751.
4. *Idem*, Part IV, 27 November 1953, pp. 260-266.

es in the industry in the local area, sections 114 and 115 were amended by Bombay Act XLIV of 1955.[1]

The Bombay Industrial Relations (Amendment) Act (XXXV of 1956)[2] enacted in June 1956 makes the intention of subsection 3 of section 10 of the Act of 1947 clear by providing that no person shall be deemed to be connected with the industrial dispute or with the industry only by the fact that he is a share holder of an incorporated company which is connected with or likely to be affected by such industrial dispute.

*Madhya Pradesh*

The Industrial Disputes Settlement Act (XXIII) of 1947, of this province, which applies to such area or industry and on such date as may be specified by the Government by notification is a much less comprehensive measure than the Bombay Industrial Relations Act, but contains the same basic features. It makes provision for the compulsory framing of standing orders by employers, requires either party desiring a change, whether in the standing orders or in other industrial matters specified in a schedule to the Act, to give 14 days' prior notice to the other and, if they disagree, to desist from a strike or a lockout during the pendency of conciliation proceedings. It provides for the constitution of a permanent conciliation machinery consisting of conciliators, special conciliators, a chief conciliator for the province, district industrial courts and a provincial industrial court and for the appointment of labour officers to act as respresentatives of the employees under certain conditions. Arbitration under the provisions of the Act is available to any employer and a representative of employees who have voluntarily agreed to refer "any present or future industrial dispute or any class or classes of such disputes" to arbitration; the provincial Government is also empowered by the Act, at any time, to refer on its own initiative any industrial dispute to the arbitration of the provincial industrial court, if it is satisfied that serious disorder or a breach of the public peace or serious or prolonged hardship to a large section of the community is likely to be caused, or that the industry concerned is likely to be seriously affected and employment curtailed by reason of the continuance of the dispute.[3]

The Act was further amended by Act XVI of 1951[4] to enable a recognised union to represent the case of persons who were not members of the union, if the parties concerned agreed.

1. *Bombay Government Gazette*, Part IV, 8 December 1955, pp. 194-196.
2. *Idem*, Part IV, 21 June 1956, 146-147.
3. *Central Provinces and Berar Gazette, Extraordinary*, 2 June 1947, pp. 167-183. This Act was amended in 1948, but the provisions in question relate only to a minor matter of detail.
4. *Madhya Pradesh Gazette*, 11 May 1951, Part IVB, pp. 117-118.

The Act was further amended in 1955[1] to remove certain defects noticed in its working. One of the amendments alters the definition of 'representative of employees' so as to make recognised union representative of employees for all workers in the industry where such union exists. Another amendment adds a new chapter IVA to the Act providing for the constitution of a wage board for one or more industries for the State. Provision is also made for reference of industrial disputes to the arbitration of the State Industrial Court on failure of conciliation proceedings.

*Uttar Pradesh*

The U.P. Industrial Disputes Act, 1947, which came into force in this province on 1 February, 1948, replaced two successive ordinances promulgated earlier, in May and October 1947. Unlike the Bombay or the Central Provinces enactments, it contained no complex provisions creating special classes of unions or setting up a chain of agencies for conciliation and arbitration, but it gave the provincial Government power to prohibit strikes and lockouts, to refer industrial disputes to conciliation or adjudication, to enforce adjudication awards on the parties to disputes and to exercise control over any public utility service for achieving one or more of the following objects: (1) securing safety or convenience; (2) maintenance of public order or supplies and services essential to the life of the community; and (3) maintenance of employment.[2]

The Act was amended in August 1950 by Act No. XXV of 1950[3] to empower the Government to control the administration of a public utility service or undertaking, which had closed or was likely to close down. The Act was further amended in October 1951 by Act No. XXV of 1951[4] to make certain minor changes prescribing the qualifications of members of industrial tribunals.

The Government of Uttar Pradesh promulgated in May 1953 the U.P. Industrial Disputes (Amendment) Ordinance, 1953 (No. 1 of 1953)[5] to meet certain difficulties which had arisen as a result of judicial decisions to the effect that the State Government did not possess powers under the Act to extend from time to time the period originally fixed for declaration or pronouncement of awards by the tribunals or adjudicators. The Ordinance specially empowered the State Government in this behalf, besides validating

1. *Idem, Extraordinary*, 25 November 1955, pp. 2115-2124.
2. *Government Gazette of the United Provinces*, 10 January 1948, Part VII-A, pp. 1-4.
3. *Idem, Extraordinary*, 21 August 1950, pp. 1-4.
4. *Idem, Extraordinary* 29 October 1951, pp. 1-2.
5. *Uttar Pradesh Gazette, Extraordinary*, 22 May 1953.

the orders passed by the Government in the past granting such extensions. The ordinance was replaced in October 1953 by U.P. Act No. XXIII of 1953[1].

In January 1957 another Amending Act was enacted,[2] introducing the provisions of the (Central) Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, with appropriate alterations in the U.P. Act of 1947. These amendments related, *inter alia*, to widening of the scope of the term "workman", setting up of labour courts, industrial tribunals, and national tribunals, notice of change in conditions of service of workmen and conditions which trade unions shall comply for taking up industrial disputes to industrial courts.

1. *Idem, Extraordinary*, 9 October 1953.

2. Act 1 of 1957, *Government Gazette of the Uttar Pradesh, Extraordinary*, 2 January 1957, pp. 1-26.

# CHAPTER 9

## Social Security

The first step towards social security in India was the passing of the Workmen's Compensation Act in 1923. This was followed by legislation enacted in several States for the protection of women in childbirth. Under these enactments the responsibility for payment of compensation rested with employers, a system which led to certain hardships. The Royal Commission on Labour reviewed the subject and made a number of recommendations. As regards workmen's compensation the Commission's recommendations involved a substantial extension and enlargement of the rights the Act conferred and its revision in a number of matters of detail. On maternity benefit legislation, the Commission considered that "the time was ripe for the introduction of legislation throughout India making a maternity benefit scheme compulsory in respect of women permanently employed in industrial establishments on full-time processes"[1].

The main achievements in the field of social security during the last two decades may be summarised broadly as : (a) a steady extension of maternity protection to new areas and to new classes of wage earners; (b) the enactment in 1948 of the Employees' State Insurance Act, 1948, and the formulation for the first time in India, of an integrated scheme of insurance against sickness, maternity and employment injury, applicable initially to workers in non-seasonal factories but capable of being extended progressively, as more experience is gained, to workers in other classes of establishments—industrial, commercial, agricultural or otherwise; (c) the inauguration, again for the first time in India, of a scheme of compulsory provident fund for colliery workers and for employees in certain classes of factories in specified industries and (d) statutory provision for payment of compensation to workers in the event of their lay-off or retrenchment.

*The Workmen's Compensation Act*, 1923.

The question of granting workmen's compensation for fatal or serious accidents was first raised in India in 1884 and the need for legislation was emphasised by factory and mining inspectors. But the question of framing legislation was taken up by the Government of India only towards the end of 1920 and in 1921 public opinion on the issues involved was invited. To examine the question in some detail it was referred to a small committee

1. *Report of the Royal Commission on Labour*, p. 263.

composed of Legislative Assembly members, employers' and workers' representatives and medical and insurance experts, which met in 1922. The Committees' detailed recommendations for framing legislation were accepted and a Workmen's Compensation Act was passed in 1923. The measure followed the British Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. Its most striking feature was its rigidity, designed to prevent vexatious litigation. In respect of the tribunals set up to decide disputes the Act followed the American model in preference to the British model, and special commissioners were appointed with wide powers where required; and although provision was made for appeals to the High Court, the right to appeal was severely limited.

The Workmen's Compensation Act, VIII of 1923, applied, in the first instance only to workers employed otherwise than in a clerical capacity and receiving monthly wages not exceeding Rs. 300, in factories, mines and ports, to those engaged on the railways, tramways, on loading unloading, or coaling ships at docks etc. where mechanical power was used, in the building trade, construction of bridges, telegraph and telephone lines and posts and overhead electric cables, in connection with sewers and in fire brigade services. The Act also applied to specified occupational diseases and the Government of India was empowered to extend the list of such diseases as well as to hazardous occupations[1].

Workmen covered by the Act were entitled to compensation from the employer in case of personal injury caused by accident arising out of and in the course of employment, provided that the incapacity lasted more than ten days and that the injury was not caused by the fault of the workman (*i.e.* drunkenness, wilful disobedience to an order expressly given, or to a rule expressly framed to ensure safety, wilful removal or disregard of safety appliances).

The Act prescribed separate scales of compensation for death, permanent total disablement, permanent partial disablement and temporary disablement. In case of the death of an adult, his dependants (defined as a wife, husband, parent, minor son, unmarried daughter, married daughter who was a minor, minor brother or unmarried sister, minor children of a deceased son, and, where no parent was alive, a paternal grandparent)

1. One addition was made to the list of Occupational Diseases in order to make it possible to ratify a Convention adopted by the International Labour Conference. With the same object a minor amendment was made by Act XXIX of 1926 in the provisions of the Act relating to occupational diseases.

were to receive a sum equal to thirty months' wages or Rs. 2,500, whichever was less; in the case of the death of a minor (*i.e.* a person under 15 years of age) the compensation was Rs. 200. For permanent total disablement the compensation was, for an adult, a sum equal to forty-two months' wages or Rs. 3,500, whichever was less, and, for a minor, a sum equal to eighty four months' wages or Rs. 3,500, whichever was less. Compensation for permanent partial disablement was payable according to the percentage of loss of earning capacity. Temporary disablement, whether total or partial, was compensated by half monthly payments during the disablement or during a period of five years, whichever period was shorter, of Rs. 15 or a sum equal to one-fourth of his monthly wages, whichever was less, in the case of an adult, and, in the case of a minor, of a sum equal to one-third or, after he reached 15 years of age, to one-half of his monthly wages but not exceeding Rs. 15.

The administration of the Act was entrusted to provincial Commissioners for Workmen's Compensation who were to enforce it in accordance with the provisions of the Act and of Rules made thereunder either by the Central Government or by Local Government. Extensive duties were entrusted to the Commissioners; these duties included for instance, the reception and settlement of claims to compensation not settled by agreement, the revision of periodical payments, and the apportionment of compensation to dependants in cases where the injury resulted in death and in certain other cases.

The Act, since its adoption in 1923 was amended several times. By Act XXIX of 1926 a minor amendment was made in the provision relating to occupational diseases to enable ratification of an International Labour Convention. By Act V of 1929 several amendments were made, designed to remedy defects or to embody improvements of a non-controversial character. They did not involve any change in the main principle of the Act or in its more important features. A comprehensive revision of the Act, however, was suggested by the Royal Commission on Labour[1]. In particular, the Commission recommended that the Act should be extended to cover as completely as possible the workers in organised industry and should be gradually extended to workers in less organised employment, beginning with those who are subject to most risk. To give effect to some of the recommendations of the Commission, the Workman's Compensation (Amendment) Act, XV of 1933, was adopted.

1. Report of the Commission, pp. 295 to 315.

*The Workmen's Compensation (Amendment) Act*, 1933.—The Amending Act of 1933 substantially modified the Act of 1923, in scope, title to compensation, amount of compensation and classes of dependants entitled to benefit. The scope of the 1923 Act was very much extended to cover a large number of workers. As a result of the change in the scope of the Act it was estimated that the numbers covered increased from four to six million. The new Act entitled workmen to compensation for injuries resulting in disablement for more than seven days instead of ten days, and the provision disqualifying workmen for compensation in respect of accidents due to their fault was amended to exclude fatal accidents.

The provisions relating to the amounts of compensation were amended both to increase the rates and to define more precisely the amounts due at different wage levels. In the event of the death of an adult the rate varied from a minimum of Rs. 500 to a maximum of Rs. 4,000; compensation for the death of a minor remained at Rs. 200. For permanent total disablement of an adult, the rates ranged between Rs. 700 and Rs. 5,600; in the case of a minor, the sum payable was Rs. 1,200. No change was made in the method of calculating compensation for permanent partial disablement, although the rates, being percentages of the amounts payable for total disablement, were increased. For temporary disablement, an adult, after a waiting period of seven days instead of ten, would receive compensation varying from a full wage in the lowest wage class to a maximum of Rs. 30 (half-monthly), while a minor would receive half his monthly wages subject to a maximum of Rs. 30.

In pursuance of the constitutional changes introduced by the Government of India Act of 1935, the Government of India transferred to provincial Governments on 1 April 1937 all the powers vested in the Central Government by the Workmen's Compensation Act. The important power so transferred were three, namely, the power to add by notification new classes of workmen, the power to schedule additional industrial diseases and the power to make rules governing procedure.

*Other Amendments.*—In January 1937, three groups of industrial diseases were scheduled after consideration of the Workmen's Compensation (Occupational Diseases) Convention 1925, as revised in 1934 (Convention No. 42). The separation of Burma in 1937 necessitated arrangements for the transfer of distribution proceedings in respect of compensation, from India to Burma and the Workmen's Compensation (Amendment) Act, VII, of 1937[1], was consequently adopted.

1. *Gazette of India*, 13 March 1937, Part IV, p. 18.

The Workmen's Compensation Act was amended in 1938 on account of a number of ambiguities and minor defects which had come to light in the course of the administration of the Act. The more notable changes made by the Workmen's Compensation (Amendment) Act, IX of 1938[1], was the deletion of the condition that a workman who contracted compressed air illness or poisoning by lead tetraethyl should have served for the preceding six months under the employer whom he served when the accident occurred; this was felt unreasonable, as these diseases, unlike most industrial diseases, do not develop gradually. The Act also rearranged the provisions regarding industrial diseases and added formally to schedule III (List of occupational diseases) certain occupational diseases which had already been brought within the scope of the Act by notifications.

The Workmen's Compensation Act was amended twice in 1939. The first, the Workmen's Compensation (Amendment) Act, 1939, Act XIII of 1939[2], elucidated the meaning of the expression, "employed on monthly wages" occurring in the definition of "workman" in the Act. This was necessitated by certain conflicting decisions of High Courts. The second amending Act of 1939 (Act XLII of 1939[3]) was to take away the right of seamen to compensation under the Workmen's Compensation Act in respect of war injuries in cases where they were entitled to compensation under special schemes[4]. This Act of 1939 applied only to seamen serving on ships registered under the Merchant Shipping Act, 1894, which did not cover those serving in ships registered under the Bombay Coasting Vessels Act, 1838, or under the Indian Registration of Ships Act, 1841. A similar Act (No. 1 of 1942[5]) was adopted in 1942 to take away the right of seamen to compensation under the Workmen's Compensation Act in the cases covered by the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942[6]. Finally, the 1946 amendment extended the scope of the Act to workers on monthly wages not exceeding 400 rupees, as against the earlier limit of 300 rupees per month and below[7]. Despite these numerous amending Acts, however, the structure of the Act and its main provisions remained unchanged.

1. *Gazette of India*, 9 April 1938, Part IV, pp. 125-128.
2. *Idem*, 1 April 1939, Part IV, p. 150.
3. *Idem*, 30 September 1939, Part IV, p. 229.
4. The Personal Injuries (Emergency Provisions) Act, 1939, of the United Kingdom Government. See Proceedings of the Conference published as Bulletin No. 73 in the series, Bulletins of Indian Industries and Labour.
5. *Gazette of India*, Part IV, 7 March 1942, p. 1-2.
6. Resolution No. 275-M II (20)/41-War dated 14 February 1942, *Gazette of India*, Part I, 14 February 1942, pp. 329-333.
7. *Gazette of India*, 9 March 1946, Part IV, p. 1.

One of the major defects noticed in the working of the Act was the considerable delays that frequently occurred in the settlement of claims under the Act. With a view to remedying it, the Government of India in July 1949 requested the State Governments to suggest ways and means of ensuring the expeditious disposal of claims. In May 1953 the Government of India circulated for comments a detailed memorandum showing the proposals for amendment of the Act. To advise the Government on the amendments to be made to the list of occupational diseases, a technical committee was appointed in December 1955. The Government now proposes to make a comprehensive revision of the Act and proposals for amendment are being examined by an expert inter-departmental committee.

*Employers' Liability Act, XXIV* 1938

The Workmen's Compensation Act, 1923, while in Bill form contained a chapter defining and modifying in favour of the workman the ordinary civil law in respect of employers' liability. These provisions were eliminated by the select committee on the Bill as it was not satisfied that they were required. It was only in 1938 that legislation on the subject could be adopted. The Employers' Liability Act declares that the plea of common employment shall not be raised as a defence in suits for damages in respect of injuries sustained by workmen. In a recent case the Privy Council held that the scope of Section 3(d) of the Act was limited and that the defence of 'common employment' was still available to the employer. This was due mainly to ambiguity in the language of clause (d). To remove the defect a Bill to amend the Act was introduced in Parliament on 17 Novermber 1950 and the Bill was passed as Act V of 1951[1].

The Amendment Act provides that when personal injury is caused to a workman by reason of the act or omission of any person in the service of the employer done or made (i) in the normal performance of the duties of that person or (ii) in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved); or (iii) in obedience to particular instructions given by any other person to whom the employer has delegated authority in that behalf, a suit for damages shall not fail by reason only of the fact, that the workman was at the time of the injury, in the service of the employer.

1. *Gazette of India Extraordinary*, Part II, Section 1, 1 March 1951, p. 47.

*Maternity Benefit*

When the Childbirth Convention, 1919, (No. 3), was adopted by the International Labour Conference at Washington a resolution was passed asking the Government of India to make a study of the question of the employment of women before and after childbirth, and of maternity benefits, and to report to the Conference[1]. In pursuance of this resolution the Government of India consulted Local Governments, medical and welfare authorities, and employers, and a report was laid before the 1921 Session of the International Labour Conference. The general conclusions of the enquiry was that it would not be possible to apply the Convention in India owing to the impossibility of enforcing the compulsory periods of absence from work, the shortage of medical women who would be necessary for issuing medical certificates, the impracticability of compulsory contribution schemes to provide benefits and the absence of need for provisions regarding nursing periods and for the protection of women from loss of employment during pregnancy. Nevertheless, the majority of the provincial Governments agreed to endeavour to persuade employers to start voluntary benefit schemes and to assist them financially. Arrangement by Local Governments for providing medical aid by women doctors to women workers in childbirth were also reported.

Further enquiries into the question of maternity benefit schemes were made by the Governments of Bombay and Bengal and these were followed in 1924 by an enquiry by the Government of India[2]. Mention may also be made of a private member's Bill which was introduced into the Legislative Assembly in 1924. This Bill, which sought to prevent the employment of women in factories, mines and tea estates immediately before and after confinement and to provide for the payment of benefit during the period of confinement, was not accepted by the Government of India on the ground that the necessity for such a measure had not yet been established, that the principle of the Bill was questionable and that the result of the measure might be harmful to women workers[3].

While there was no central legislation on the subject, a number of provinces proceeded to adopt measures on maternity benefit. The first measure of provincial legislation was the Bombay Maternity Benefit Act

1. Final Record of International Labour Conference, 1919, p. 277.

2. *Bulletins of Indian Industries and Labour* No. 32, Indian Maternity Benefit Schemes, pp. 1-21.

3. A.G. Clow, *The State and Industry*, p. 163.

of 1929[1], and this was followed by the passing of an Act in the Central Provinces in 1930[2].

It was at this period that the Royal Commission on Labour enquired into the question of maternity benefit, as a result of which it recommended that legislation should be enacted throughout India on the lines of the Bombay and Central Provinces Acts, that such legislation should apply to women employed full time in non-seasonal factories covered by the Factories Act, that the scheme should be non-contributory, the entire cost of benefit being borne first by the employers, but in the event of any general scheme of social insurance being adopted, maternity benefits should be incorporated and the cost shared by the State, the employer and the worker, that the maximum benefit period should be four weeks before and four weeks after childbirth and the qualifying period not less than nine months or a year, that benefit should be closely linked to treatment, and that administration should be entrusted as far as possible to women factory inspectors. The Commission also recommended legislation providing maternity benefit for women on plantations[3].

With a view to giving effect to some of these recommendations as well as to amend other provisions of the existing Act, the Government of Bombay passed the Bombay Maternity Benefit (Amendment) Act in 1934[4]. A Maternity Benefit Act, based on that of Bombay, was also passed in Madras in 1934, and came into force on 1 April 1935[5]. The Bombay Maternity Benefit Act, 1929, was extended, subject to some modifications, to Ajmer-Merwara in 1932[6], and to Delhi on 1 January 1937.

Since 1937, however, Maternity Benefit Acts have been enacted in almost all the other States and plantations and mines have been brought within the scope of the legislation.

In 1938 the United Provinces (Uttar Pradesh) adopted a Maternity Benefit Act (IV)[7], followed in 1939 by Bengal (Act IV), in 1943 by the

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1. The Bombay Maternity Benefit Act No. VII of 1929 ; *L. S.*, 1929 Ind. 4. The Royal Commission on Labour in India : Memorandum from the Government of Bombay, 1929, p. 54.

2. The Central Provinces Maternity Benefit Act No.VI of 1930 ; *L. S.*, 1930. Ind. 2. Formal amendments to this Act were made by Act No. XXII of 1935.

3. *Report of the Royal Commission on Labour in India* pp. 263-265 and 412.

4. No. V of 1934; *L. S.*, 1934 Ind. 13.

5. *Labour Gazette* July 1933, pp. 835-837; September 1933, p. 21; *Fort St. George Gazette*, 19 March 1935, Part IV. pp. 47-51.

6. Government of India; Third Report 1934, p. 8.

7. Cf. *L. S.* 1938 Ind. 3.

Punjab (Act VI), in 1944 by Assam Act (I), in 1945 by Bihar (Act III)[1], in 1952 by Travancore-Cochin and in 1953 by Orissa and Rajasthan. The essential features of these Acts are as follows.

The Acts apply to women employed in all regulated factories in the States of Andhra, Bombay, Madhya Pradesh, Assam, Mysore, Hyderabad, Travancore-Cochin, the Punjab, Orissa and Rajasthan. In the States of Assam and Travancore-Cochin women employed in plantations are entitled to maternity benefit. Maternity protection was extended to plantation workers in West Bengal with effect from 1 May 1949 by the West Bengal Maternity Benefit (Tea Estates) Act, 1948[2]. In all cases the entire cost is to be borne by employers.

Details regarding the qualifying period, the period of benefit and the amount of benefit under the various Acts are furnished below:—

| Name of Act. (1) | Qualifying period. (2) | Period of benefit (weeks) (3) | Amount of benefit. (4) |
|---|---|---|---|
| 1. Assam Maternity Benefit Act, 1944. | 150 days' service during the period of 12 months immediately preceding the date of notice. | 8 for women employed in factories For plantations 12 | Plantations Re. 0-11-6 per day in addition to usual food concession. |
| | Nil in the case of immigrant women if pregnant at the time of arrival in Assam. | | Other Industries—Average weekly earnings subject to a minimum of Rs. 2 per week. |
| 2. Bihar Maternity Benefit Act, 1947. | 6 months' service preceding the date of notice. | 8 | Average daily earnings or Re. 0-8-0 per day whichever is greater. |
| 3. Bombay Maternity Benefit Act, 1929. | 9 months' service preceding the date of notice. | 8 | Re. 0-8-0 per day in cities in Bombay and elsewhere at the rate of average daily earnings or Re. 0-8-0 per day whichever is less. |
| 4. Central Provinces Maternity Benefit Act, 1930. | Do. | 8 | Average daily earnings or Re. 0-8-0 per day whichever is less. |

1. This measure which was enacted by the Governor of Bihar in exercise of the special powers conferred on him by a proclamation dated 3 November 1939 has since been replaced by an Act of the Bihar Legislature containing identical provisions —the Maternity Benefit Act of 1947.

2. *Calcutta Gazette, Extraordinary* 16 March 1948, pp. 289-296.

| Name of Act. (1) | Qualifying Period. (2) | Period of Benefit (weeks) (3) | Amount of benefit. (4) |
|---|---|---|---|
| 5. Hyderabad Maternity Benefit Act, 1940. | 9 months service preceding the date of notice. | 12 | Re. 0-12-0 per day. |
| 6. Madras Maternity Benefit Act, 1934. | 240 days' service during the period of year immediately preceding the date of notice. | 7 | Re. 0-8-0 per day. |
| 7. Orissa Maternity Benefit Act, 1953. | 6 months' service preceding the date of notice. | 7 | Actual daily wage or salary subject to a minimum of Re. 0-12-0 per day. |
| 8. Punjab Maternity Benefit Act, 1943. | 9 months' service preceding the date of delivery. | 84 days. | Average daily earnings or Re. 0-12-0 per day whichever is greater. |
| 9. Rajasthan Maternity Benefit Act, 1953. | 7 months' service preceding the date of notice. | 8 | Ave age daily earnings or Re. 0-12-0 per day whichever is greater. |
| 10. Travancore-Cochin Maternity Benefit Act, 1952. | 150 days' service during the 12 months immediately preceding the date of notice. | 12 | Rs. 5-4-0 per week (wholly in cash or partly in cash and in kind). |
| 11. U. P. Maternity Benefit Act, 1938. | 6 months' service preceding the date of notice. | 8 | Average daily earnings or Re. 0-8-0 per day whichever is greater. |
| 12. (a) Bengal Maternity Benefit Act, 1939. | 9 months' service preceding the day of delivery. | 8 | Average daily earnings or Re. 0-8-0 per day whichever is greater. |
| (b) West Bengal Maternity Benefit (Tea Estates) Act, 1948. | 150 days' employment in the 12 months' immediately preceding the expected day of delivery. | 12 | Rs. 5-4-0 per week (wholly in cash or partly in cash and partly in kind) |
| 13. Mysore Maternity Benefit Regulation, 1937. | 9 months' service preceding the date of notice. | 8 | Average daily wage or Re. 0-8-0 per day whichever is less. |

Under the Assam Act, the employment of a woman in a factory is forbidden during the four weeks immediately preceding the day of delivery (except on such light work as may be recommended by the medical practitioner) and during the four weeks following, whereas under the other Acts prohibition from such employment is confined to the four weeks immediately following childbirth. In the case of women employed in plantations in Assam, the prohibited period of employment has been raised from four weeks to eight weeks after the day of delivery.

The Assam Act provides for free medical aid during the period of confinement. In Rajasthan, women workers are entitled to a bonus of five rupees if they avail themselves of the services of a qualified midwife or a trained woman health visitor at the time of their confinement. Both in Bihar and U.P., bonus payable in such circumstances is three rupees. These two Acts also provide that if a woman worker employed in a factory has a child of less than one year of age she shall be entitled to two intervals for rest of half an hour each—one in the forenoon and the other in the afternoon—at such times as she thinks fit, in addition to the usual interval of one hour allowed by the Factories Act. In case of miscarriage the U.P. and Rajasthan Acts provide for three weeks' leave with pay from the day of miscarriage. By virtue of an amending Act passed by the Government of the Punjab women workers in that State are now entitled to maternity benefit in case of miscarriage and abortion also. Benefit in such cases is payable for a period of 42 days if the worker concerned had at least six months' service to her credit.

Provision exists in the Acts for protection of women against dismissal by the employers to avoid liability of payment. A woman worker cannot be discharged during the period of maternity leave. Employment of women during maternity leave is a penal offence but the Assam Act permits such employment provided it is on light work during the four weeks preceding the date of childbirth. Similarly, the West Bengal Maternity Benefit (Tea Estates) Act permits employment of women on light work during the six weeks before confinement if certified fit to do such work by the prescribed medical practitioner.

The administration of the Acts in all the States is the responsibility of the factory inspectorates.

The regulation of labour in mines, as stated earlier, is a central subject, and provision for the grant of maternity benefits to woman workers in mines in India was first made by the Mines Maternity Benefit Act enacted by the Government of India in 1941. This Act (XIX of 1941) came into force on 28 December 1942. It prohibited the employment of women workers in mines in British India during the four weeks following the day of delivery of a child, and provided for the payment to them of maternity benefit at the rate of one-half rupee per day for a period of up to four weeks of absence before and four weeks after delivery. The qualifying period entitling a woman to claim benefit was fixed at six months' service preceding the day of delivery. Dismissal on the ground of pregnancy was

prohibited[1]. A major amending Act (X) of 1945[2] stepped up the rate of maternity benefit to 12 annas per day and provided for the grant of maternity protection on a much more liberal scale to women workers employed on underground work in mines. Thus, the employment of women below ground in a mine is prohibited during the 26 weeks following confinement, and during the next ten weeks they may not be employed on work below ground for more than four hours in a day unless a creche is provided in the mine. In the case of women workers employed on work below ground, maternity benefit is to be paid at a special rate of six rupees per week for the ten weeks immediately preceding and six weeks following delivery[3]. These special provisions relating to women employed below ground in mines had some value during the period of war emergency when the ban on the employment of women on underground work in mines had been temporarily lifted[4]. but with the reimposition of the ban on 1 February 1946 they have ceased to have any practical importance.

The main provisions of the various Maternity Benefit Acts[5], referred to above has been superseded by the Employees' State Insurance Act, 1948 (wherever it has been applied) described below in the undertakings to which that Act applies.

*The Employees' State Insurance Act, 1948.*

Neither the various Maternity Benefit Acts nor the Workmen's Compensation Act introduced the principle of social insurance in India. They were merely measures of social assistance, placing entirely on the employers the responsibility for the payment of maternity benefits and compensation for employment injuries. The migratory character of the labour force and the extremely low level of earnings were held to be adverse factors making it difficult to introduce any scheme of social insurance involving the regular collection of contributions from the workers, and until the late 'thirties' the environment was considered unfavourable for the introduction of any of the more complex forms of provision for social security, such as health and unemployment insurance. During the years following 1940, however, there has been a marked change in official as well as public opinion as regards the feasibility of making a beginning in the field of social insurance. The

1. Cf. *L.S.* 1941-Ind. 1.

2. A minor amending Act (XVIII) of 1943 sought merely to remove certain ambiguities in the wording of the provisions of the Act of 1941.

3. Cf. *L.S.* 1945-Ind. 2.

4. The ban was lifted in 1943 as an emergency measure in the coal mines of the Central Provinces and Berar, Bengal, Bihar and Orissa.

5. For an account of the working of the Acts during the year 1955, see *Indian Labour Gazette*, Vol. XIV, p. 799.

Employees' State Insurance Act which received the assent of the Governor-General of India on 19 April 1948 marks the first attempt to introduce an integrated system of health, maternity and accident insurance.

Three provincial labour enquiry committees, in Bihar, Bombay and the United Provinces (Uttar Pradesh) which reported between 1938 and 1940 had all agreed that the introduction of some form of sickness insurance, at least for industrial workers was not only desirable but also practicable in India; and the second Labour Ministers' Conference, held at New Delhi in January 1941, agreed that the Central Government should be requested to undertake an actuarial investigation of the sickness risk in certain large-industries and then to draft a scheme providing for contributions from employers and workers. At the third Labour Ministers' Conference, at New Delhi in January 1942, both workers' and employers' representatives agreed in principle to a scheme of sickness insurance financed by regular contributions from the workers, the employers and the State. In March 1943 the Government of India appointed an officer on special duty to prepare a scheme of health insurance for industrial workers. The scheme so prepared was modified in the light of the suggestions made by two officials of the International Labour Office who visited India in 1945 at the invitation of the Government to advise on the matter; they recommended mainly the extension of the scheme to all perennial factories covered by the Factories Act and the insurance of the risks of sickness, childbirth and employment injury under a single scheme in the interest of economy and administrative efficiency. These proposals emerged finally in the form of the Workmen's State Insurance Bill, 1946, which reached the statute book in April 1948 as the Employees' State Insurance Act (XXXIV) of 1948.[1]

The Act, which inaugurates a new era in the field of social insurance legislation in India by providing for the compulsory insurance of a specified class of wage-earners against the risks of sickness, maternity and employment injury, is to come into force on such date or dates as may be specified by the Government of India but different dates may be fixed for different provisions of the Act and for different States. The Act has now been extended to the whole of India except the State of Jammu and Kashmir. Its main provisions may be summarised as follows.

The Act applies initially to all perennial factories and covers about two million industrial workers, but the appropriate Government may in consultation with the Employees' State Insurance Corporation and the

1. *L.S.*, 1948-Ind. 2. Cf. *Industry and Labour*, Vol. 1, No. 3, 1 February 1949, p. 118.

approval of the Government of India, extend all or any of its provisions to other types of establishments, industrial, commercial or agricultural. Persons earning more than 400 rupees a month, however, are excluded from its provisions.

To administer the scheme of insurance introduced by the Act provision is made for the setting up of an Employees' State Insurance Corporation, consisting of representatives of Government, employers and workers, the medical profession and the central Legislature. The affairs of the Corporation are to be administered by a Standing Committee, constituted from among its members; and a Medical Benefit Council is to be set up to advise on matters relating to the administration of the benefits. The activities of the Corporation are to be financed by the Employees' State Insurance Fund, derived mainly from contributions from employers and workers though for an initial period of five years, the central Government was to contribute two-thirds of the administrative expenses of the Corporation.

Every employer and worker coming under the scope of the Act is required to make, for each week during the whole or part of which the worker is employed, weekly contributions to the Fund according to a scale prescribed in the Act, the total weekly contribution (employees' and employers') rising from seven annas in the case of employees whose average daily wages are below one rupee to three rupees 12 annas in the case of those whose daily average wages are eight rupees and above. Employees whose average daily wages are below one rupee, are, however, exempted from contributing to the Fund out of their wages, the entire contribution in their case being recoverable from the employers.

The Act grants to all insured workers five types of benefits; sickness benefit, maternity benefit, disablement benefit, dependents' benefit and medical benefit. Sickness benefit is payable for not more than 56 days in any continuous period of 365 days, at a rate equal to about half the average daily wage, provided weekly contributions have been paid in respect of the beneficiary for not less than two-thirds the number of weeks during which he was available for employment within the preceding 26 weeks or six months, and subject to a minimum of 12 contributions. Closely connected with sickness benefit is medical benefit, which is to be given mainly in the form of out-patient treatment or treatment as in-patient in a hospital, according to a certain prescribed standard. Medical benefit can be claimed not only during the period for which sickness benefit or maternity benefit may be claimed, but during any week for which contributions are payable, and

therefore starts even before a person becomes entitled to sickness benefit. Maternity benefit is payable to insured workers satisfying the prescribed condition, at the fixed rate of 12 annas a day or half assumed average daily wage, whichever is greater, for a total period of 12 weeks of which not more than six may precede confinement. Disablement and dependent's benefits at the weekly rates prescribed in the Act are payable in lieu of the compensation or damages to which the worker is at present entitled under the Workmen's Compensation Act. The periodical payments prescribed under the Employees' State Insurance Act are considered to be a far more suitable method of protection than the lumpsum payments under the Workmen's Compensation Act, as lumpsums are apt to be squandered without regard to future requirements.

Finally, the Act requires State Governments to constitute Employees' Insurance Courts to decide disputes and to adjudicate on claims. An appeal lies to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law.

In pursuance of this new measure, the Government of India appointed a Director-General of Employees' State Insurance and set up the Employees' State Insurance Corporation. On 6 October 1948, when the Corporation was inaugurated, the Labour Minister rightly claimed that it "was the corner stone of a great edifice which a free country seeking its economic salvation must build"[1].

The starting of pilot schemes in selected areas was considerably delayed as a result of a representation from employers of these areas that they would be placed at a disadvantage, financially, *vis a vis* employers in areas to which the Act was not simultaneously extended. To meet this, the Act was amended in October 1951 (Act No. LIII of 1951)[2]. The amendments made are primarily to effect an equitable distribution of the employers' contribution, even when the insurance scheme is implemented only in certain areas, among the employers in the whole country—employers in regions where the scheme is implemented paying slightly higher contribution corresponding roughly to savings accruing as a result of the corporation taking on certain liabilities hitherto borne by the individual employers.

The insurance scheme was put into operation first in Kanpur and Delhi on 24 February 1952. The scheme was extended to other industrial

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1. Government of India, Press Information Bureau, Communique of 6 October 1948.

2. *Gazette of India, Extraordinary*, 6 October 1951, Part II, Section 1, pp. 361-372; the Act as amended extends to the whole of India except the State of Jammu and Kashmir.

areas in other States from time to time and the total number of employees covered was 1.095 million.

*Provident Fund for Coal Miners*

Another important step which has been taken in the field of social security is the institution of a compulsory provident fund scheme for colliery workers. Reference has already been made elsewhere to the constitution by the Government of India of a tripartite Industrial Committee on Coal Mining[1]. This Committee, at its meeting in January 1948, considered a proposal for the establishment of a central compulsory provident fund for coal mines, to implement one of the recommendations of the board of conciliation which the Government had appointed early in March 1947 in connection with trade disputes in the Bengal and Bihar coalfields. Following these discussions, the Government of India promulgated on 23 April 1948 the Coal Mines Provident Fund and Bonus Schemes Ordinance (VII of 1948) empowering the Central Government to frame a Provident Fund Scheme and a Bonus Scheme for persons employed in coal mines in India[2]. This Ordinance has now been replaced by an Act bearing a similar title (Act XLVI of 1948)[3], which received the assent of the Governor-General of India on 3 September 1948.

The Act empowers the Central Government, by notification in the official gazette, to frame a Coal Mines Provident Fund Scheme specifying, *inter alia*, the coal mines to which the Scheme shall apply, the employees or class of employees who shall join the Fund and the conditions under which they may be exempted, and the rate, time and manner of payment of contributions by employers and workers. It may further provide for the levy of a charge, payable by the employer, to meet the cost of administering the Scheme. A Board of Trustees may be formed consisting of nominees of the Central Government and representatives of employers' and employees' organisations, to manage the provident fund, subject always to the condition that the number of representatives of employees on the Board shall not be less than the number of the representatives of employers.

The Government has introduced a scheme which applies to all colliery workers in Bihar, Madhya Pradesh (the Central Provinces and Berar), Orissa and West Bengal who earn 300 rupees or less per month. The workers contribute, monthly or weekly, approximately one anna per rupee of their basic wage, and the employers contribute an equal amount[4].

1. See chapter 4.
2. *Gazette of India, Extraordinary*, 23 April 1948, pp. 623-626.
3. *Idem*, 3 September 1948, Part IV, pp. 207-211.
4. *Idem, Extraordinary*, 11 December 1948.

Certain minor amendments were made to the Act by Acts No. LXXX of 1950[1] and No. XXI of 1951[2].

*Provident Fund for Factory Workers*

To provide for the institution of provident funds for employees in factories and other establishments, the Government of India promulgated on 15 November 1951 the Employees' Provident Funds Ordinance (No. VIII of 1951)[3]. The Ordinance applies to all factories which are in existence for three years (whether using power or not) employing 50 or more persons and engaged in the manufacture or production of cement, cigarettes, electrical, mechanical or general engineering products, iron and steel, paper and textiles. The Central Government is empowered to frame a scheme called the Employees' Provident Fund Scheme for establishing provident funds for the various classes of employees. The scheme will provide for certain matters enumerated in schedule II to the Ordinance. The employer and the employee has each to contribute one sixteenth of the basic wages and dearness allowance (including cash value of any food concession) payable to the employee. The amount standing to the credit of any member in the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court.

The Ordinance was replaced by Act XIX of 1952,[4] by which woollen textiles have been included under textiles and the Central Government has been empowered to prescribe conditions under which a member might be permitted to pay life insurance premium from the fund. A scheme under the Act was framed by the Central Government in September 1952[5].

The working of the Employees' Provident Funds Act revealed certain defects and administrative difficulties relating to the application of the Act and the scheme. To remove them a Bill was introduced in the Council of States on 14 September 1953. As the Bill could not be passed during that session of Parliament an Ordinance[6] was promulgated on 14 October 1953 to give effect to certain urgent amendments. As there were considerable doubts regarding the expressions used in the schedule to the Act, the Ordinance substituted a new schedule elucidating the various items and giving a list of the products. The Ordinance defines the term 'manufacture' as 'making, altering, ornamenting, finishing or otherwise treating or adapting

1. *Idem, Extraordinary*, 31 December 1950, Part II, Section 1, p. 308.
2. *Idem*, 28 April 1951, Part II, Section 1, pp. 81-82.
3. *Idem*, 15 November 1951, Part II, Section 1, pp. 495-502.
4. *Idem, Extraordinary*, 5 March 1952, Part II, Section 1, pp. 97-104.
5. *Idem, Extraordinary*, 2 September 1952, Part II, Section 3, p. 807.
6. *Idem, Extraordinary*, 14 October 1953, Part II, Section 1, pp. 337-341.

any article or substance with a view to its use, sale, transport, delivery or disposal'. Other provisions of the Ordinance relate to exemption of industries and a new section giving the Central Government power to make provisions or give directions to remove any doubts or difficulties in giving effect to the provisions of the Act. The Ordinance was replaced by Central Act No. 37 of 1953.[1]

The Act and the Scheme were enforced in the scheduled industries in November 1952. There was persistent demand for extension of the Act to all categories of industrial workers and recommendations for such extension were also made by the Planning Commission and the tripartite consultative committees. The Act was accordingly extended to 13 additional industries on 31 July 1956[2] and to another four on 30 September 1956.[3] These industries included among others matches, sugar, tea factories, printing, glass, heavy and fine chemicals, and edible and non-edible vegetable and animal oils and fats. The Act was further extended to newspaper establishments on 31 December 1956 and mineral oil refining industry on 31 January 1957.[4]

By the end of March 1957 the Employees' Provident Funds Scheme benefited 2 million employees in more than 4,000 factories and the total provident fund contributions collected upto November 1956 amounted to 730 million rupees.

The Employees' Provident Funds Act, 1952, was amended in 1956 by Act No. 94 of 1956[5] to empower Government to extend the Act to non-factory establishments. The Act as amended now applies to factories engaged in the scheduled industries and in which 50 or more persons are employed and to other establishments (employing 50 or more persons) which may be specified by the Central Government. In exercise of the new powers the Act was extended on 30 April 1957 to workers in plantations of tea, coffee, rubber, cardamom and pepper, employing 50 or more workers[6].

*State Legislation.*—Legislation has been enacted in the States of Bombay and Uttar Pradesh providing for the constitution of funds for the welfare of

1. *Gazette of India, Extraordinary*, Part II, Section 1, 12 December 1953.

2. Notification SRO 1566 and 1567, dated 4 July 1956, *Gazette of India*, Part II, Section 3, 7 July 1956, p. 1192.

3. Notification SRO 2026 dated 3 September 1956, *Gazette of India*, Part II, Section 3, 8 September 1956, p. 1533.

4. Notification SRO 218 dated 21 January 1957, *Gazette of India*, Part II, Section 3, 19 January 1957, pp. 174-175.

5. *Gazette of India, Extraordinary*, Part II, Section 1, 29 December 1956, pp. 1278-1280.

6. Notification SRO 529 dated 13 February 1957, *Gazette of India, Extraordinary*, Part II, Section 3, 16 February 1957, p. 542.

labour. The Uttar Pradesh Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950,[1] passed in May 1951, is on lines similar to the Central enactment in respect of coal lines. The welfare fund established under the Act is utilised for the purpose of financing measures for promoting the welfare of labour employed in the sugar and power alcohol industries, including housing, provision of dispensary services and the development generally of the sugar and power alcohol industries.

The Bombay Labour Welfare Fund Act, 1953 (No. XL of 1953)[2], provides for the constitution of a Fund for the financing of activities to promote welfare of labour in the State. The Fund is to consist of fines realised from employees, all unpaid accumulations, voluntary donations, labour welfare fund of any establishment which is transferred to this fund, and borrowed sums. The Fund will vest in a Board of Trustees and be defrayed on measures which may be specified by the State Government from time to time to promote welfare of workers and their dependents. In particular the fund may be spent on (a) community and social education centres including reading rooms and libraries, (b) community necessities, (c) games and sports, (d) excursion bonus, and holiday bonus, (e) entertainment and other forms of recreation, (f) home industries and subsidiary occupations for women and unemployed persons, and (g) corporate activities of a social nature. The Act was brought into force with effect from 24 June 1953[3] in 18 municipal areas covering almost all the industrial centres in the State.

The Act was amended in April 1956 by Bombay Act No. XVI of 1956[4] to provide for the delegation of certain powers of the Welfare Board to the Welfare Commissioner to facilitate the day to day administration of the Board.

A similar Act[5] was enacted in December 1956 by the Government of Uttar Pradesh providing for the constitution of a fund for promoting the welfare of labour in the State.

The Assam Tea Plantations Provident Fund Scheme Act, 1955 (X of 1955)[6] provides for the framing of a compulsory provident fund scheme for workers including artisans employed in tea plantations in the State. The provisions of the Act are on the lines of the Employees' Provident Funds Act, 1952, discussed earlier.

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1. *Government Gazette of the Uttar Pradesh*, 2 June, 1951, Part VIIA, pp. 14-22.
2. *Bombay Government Gazette*, Part IV, 17 June 1953, pp. 165-172.
3. Notification No. 1313/46, dated 23 June 1953, *Bombay Government Gazette*, Part IVB, 25 June 1953, pp. 1256-1257.
4. *Bombay Government Gazette*, Part IV, 19 April 1956, p. 97.
5. Uttar Pradesh Labour Welfare Fund Act, 1956 (XXXVII of 1956) (*Government Gazette of the Uttar Pradesh, Extraordinary*, 20 December 1956, pp. 1-8).
6. *Assam Gazette*, Part IV, 15 June 1955, pp. 21-25.

# CHAPTER 10

## Seafarers[1]

The conditions of employment of Indian seamen are regulated by the provisions contained in the Indian Merchant Shipping Act, 1923. Before the adoption of this Act, mercantile marine law was contained in about 21 different enactments. The Act of 1923 was adopted to consolidate the earlier enactments and to introduce certain improvements. The provisions of the Act relating to seamen are briefly reviewed below.

Under the Act a seaman can be engaged on an Indian, British or foreign ship only by the master of a ship in the presence of a shipping master in the manner prescribed by the Act. The Indian Merchant Shipping (Amendment) Act, 1949 (No. LIII of 1949)[2], provided for the setting up of Seamen's Employment Offices at ports for the purpose of engaging or supplying seamen for merchant ships and generally for regulating the supply of maritime labour. The master of every Indian and British ship, except home trade ships of a burden not exceeding 300 tons, is required to enter into an agreement with every seaman at the time of engagement. The agreement which is to be in a prescribed form shall provide details regarding the voyage, the conditions of work and wages, etc. In case the service of any Indian seaman are to be terminated at any foreign port, there is a stipulation to provide him either suitable employment on board a ship bound for the port where he was recruited or to such other port in India as may be agreed upon or to provide a passage to him to some other port in India free of charge or on such other terms as may be agreed upon. It is obligatory on the part of a master of a foreign ship to enter into a similar agreement with a seaman if he is recruited at any port in India for a foreign voyage.

Under the Act every seaman engaged by an Indian or British foreign going ship must be discharged before the shipping master. The master of every ship, except home-trade ships under 300 tons, is required to give a certificate of discharge to a seaman discharged from his ship. Such certificates are to be in a prescribed form and must specify the periods of service of the seaman and the place of his discharge. By virtue of an amending Act of 1931, a seaman is also entitled to receive from the master of every

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1. The International Labour Office published in 1949 under the title "Seafarers" Conditions in India and Pakistan" (I.L.O. Studies and Reports, New Series, No. 14, Geneva, 1949) a report on a mission in these two countries carried out in 1947 by the Chief of its Maritime Service.

2. *Gazette of India, Extraordinary*, 14 December 1949, Part IV, pp. 173-175.

ship, except a home-trade ship, a certificate as to the quality of his work and as to whether he has fulfilled his obligations under the agreement.

*Medical Examination*

The Indian Merchant Shipping (Amendment) Act, 1951 (Act XLII of 1951)[1], provides, *inter alia*, that no person shall engage or carry to sea any seaman to work in any capacity in any ship unless the seaman is in possession of a certificate in the prescribed form, granted by the prescribed authority to the effect that he is physically fit to be employed in that capacity. The Indian Merchant Shipping (Medical Examination) Rules, 1951[2], made under the Act, provide for the arrangements to be made by the Central Government at each of the ports of Calcutta, Bombay or any other port for the medical examination of seaman, and prescribe, *inter alia*, the standards of physical fitness, the nature of medical examination, the form of certificate of fitness, etc.

*Employment of Young Persons*

The Indian Merchant Shipping Act prohibits (1) the employment of young persons below the age of 14 in all ships registered in India, and in all foreign going ships, and (2) the employment of young persons below the age of 18 as trimmers or stokers, except under certain specified conditions. No person below the age of 18 can be employed or carried to sea to work in any capacity, unless he is declared physically fit by the prescribed medical authority and unless the master of the ship has obtained a certificate to that effect.

Rules framed under the Act concerning the employment of young persons as trimmers or stokers in coasting ships restrict their hours of work to six a day for employment at sea, and for port duties including tending fires and ordinary watch-keeping duties. For duties in port, in the engine or boiler rooms, the hours of work are prescribed at seven a day. The Act does not contain any provision concerning hours of work and holidays of adult seamen.

*Payment of Wages*

A seamen's right to wages begins from the time he commences his work or at the time he is required to present himself on board a ship under his agreement, whichever happens first. The master or owner of every ship is required to pay to every seaman his wages within three days after the cargo has been delivered or within five days after the seaman's discharge

1. *Idem*, 17 July 1951, Part II, Section 1, pp. 231-232.
2. *Idem*, 17 July 1951, Part II, Section 3, pp. 883-886.

whichever is earlier. In the case of delayed payment the seaman is entitled to compensation at the rate of two days' pay for every day of delay, but the total amount is not to exceed ten days' double pay. Every Indian and British ship has also to render in a prescribed form to the seaman an account of his wages and deductions. The Act also regulates deductions from wages and the system of making advances to seamen. Provision has been made in regard to payment of wages in cases in which the agreement of a seaman is prematurely terminated. For instance, if a seaman is discharged otherwise than in accordance with the terms of the agreement before the commencement of the voyage or before one month's wages are earned by him, without any fault on his part or without his consent, he is entitled to receive not only his due wages but also compensation to the extent of one month's wages.

Seamen are protected against the attachment or assignment or sale of their wages made prior to their accrual.

*Health and Welfare*

The provisions of the Act concerning health and welfare of seamen cover accommodation, food and catering of crews, grant of relief to distressed seamen, and medical attendance in case of sickness. The standard of accommodation which must be provided to every seaman aboard a ship has been prescribed at a minimum of 12 superficial feet and 72 cubic feet per seaman. Provision is made that on every ship there must be sufficient provision and water of good quality for the use of the crew on the scale specified in the agreement with the crew.

*Social Security*

Under the Act, in case of sickness or injury, a master or seaman is entitled to receive medical attendance at the cost of the owner of the ship. If, on account of loss or wreck of a ship, the services of a lascar are terminated earlier than contemplated in the agreement, he must be paid wages up to the date of termination together with compensation for the loss of his effects up to one month's wages.

The provisions of the Workmen's Compensation Act, 1923, apply to persons employed as masters or as seamen on any power-driven ship or on any ship of 50 or more tons, subject to certain modifications.

*Wartime Measures*

In order to prevent Indian seaman from claiming compensation for accidents both under the Personal Injuries (Emergency Provisions) Act, 1939, of the United Kingdom in respect of seamen in ships registered under

the Indian Merchants Shipping Act, 1894, and under the Workmen's Compensation Act, 1923, an Amending Act, *viz*, the Workmen's Compensation (Amendment) Act, XLII of 1939[1], was adopted. To extend the same principle in the case of seamen in ships registered under the Bombay Coasting Vessels Act, 1938, or under the Indian Registration of Ships Act, 1841, the Workmen's Compensation (Amendment) Act, 1 of 1942[2], was placed on the statute book. Similarly, in order to prevent double claim for loss of effects, under the United Kingdom Compensation to Seamen (War Damage to Effects) Scheme, 1942, the Indian Merchant Shipping (Amendment) Act, II of 1942[3], was adopted.

The special schemes adopted to compensate seamen for personal injuries and loss of effects may briefly be summarised. As regards compensation and pensions for war injury and detention by enemy, Indian seamen were covered by (1) the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, adopted by the United Kingdom dealing with Indian seamen serving in any ship coming under the Indian Merchant Shipping Act, 1894, and (2) the War Pension and Detention Allowances (Indian Seamen) Scheme, 1942, adopted by the Government of India on 14 February 1942 dealing with Indian seamen serving on ships registered under the Bombay Coasting Vessels Act, 1939, or the Indian Registration of Ships Act, 1841. Except for differences in rates of compensation pensions and allowances, both the schemes dealt with the same subject. Seamen were classified into four categories under the British scheme and five under the Indian scheme, in both, according to their wages. For purposes of the scheme, compensation was paid for disablement to a seaman sustaining war injury at rates depending on the class under which the seaman came and the severity of the disablement. A special allowance might be awarded in certain cases where the seaman suffered disablement from war injury or detention by enemy. If the seaman died as a result of a war injury or in enemy detention, widows' pensions and children's allowances, as also dependent's pensions, were payable according to rates specified in the schemes. In certain exceptional circumstances, special awards might be made. The schemes also provided for awards of detention allowances to seamen.

The Indian Seamen (War Damage to Effects) Scheme, 1942, provided for compensation for any war damage to seamen's effects. The compensation amounted to 40 rupees in the case of a seaman of rank lower than a *tindal* and in other cases 50 rupees or one month's pay whichever was more.

1. *Gazette of India*, 1 April 1939, Part IV, p. 150.
2. *Gazette of India*, 7 March 1942, Part IV, p. 1-2.
3. *Gazette of India*, 7 March 1942, Part IV, p. 3.

## CHAPTER 11
## Other Legislation

*Industrial Housing*

Except for the Land Acquisition (Amendment) Act which was passed by the Central Government in 1933 to enable employers to secure land for the housing of their employees, no other legislative measure was adopted till recently by the Central or State Governments to improve the housing conditions of workers. The rapid growth of population in the urban and industrial areas during and after the Second World War and the increasing realisation of the need for better housing for industrial workers led the Central and State Governments to pass certain Acts on the subject. Housing is one of the welfare measures to be financed by the funds constituted under the Coal Mines Labour Welfare Fund Act, and the Mica Mines Labour Welfare Fund Act. The Plantations Labour Act, 1951, requires every employer to provide and maintain houses for their resident labour.

Among the States, Bombay took the lead and in 1948 passed an Act called the Bombay Housing Board Act. The Government of Mysore passed the Mysore Labour Housing Act in 1949. In Madhya Pradesh an Act generally on the lines of the Bombay Act was passed in November 1950[1]. The Government of Uttar Pradesh passed the U.P. Sugar and Power Alcohol Industries Labour Welfare Development Fund Act in 1951[2] to create a fund for financing housing and other welfare schemes for the benefit of labour employed in the sugar and power alcohol industries and for the development of these industries. Legislation to make provision for housing accommodation for workers was also enacted in Hyderabad in 1952, in Saurashtra in 1954 and in Punjab in 1956. The Central Government enacted in December 1956 the Slum Areas (Improvement and Clearance) Act, 1956 (No. 96 of 1956)[3] providing for the improvement and clearance of slum areas in certain Union territories and for the protection of tenants in such areas from eviction.

The Bombay Housing Board Act, 1948, provides for the setting up of a Housing Board consisting of a chairman and four members nominated by the State Government. The Act authorises the Board, subject to the control

1. *Madhya Pradesh Gazette, Extraordinary*, 20 November 1950, pp. 1247-1260
2. *Government Gazette of the Uttar Pradesh*, 2 June 1951, Part VIIA, pp. 14-22.
3. *Gazette of India, Extraordinary*, Part II, Section 1, 31 December 1956, pp. 1205-1311.

of the State Government, to incur expenditure and undertake works for framing and executing housing schemes. Acquisition of land for the purpose of the Board's programme is for a public purpose within the meaning of the Land Acquisition Act and the Board has the power to promote land and building development and to levy betterment charges.

The Mysore Labour Housing Act was passed in February 1949 to make provision for proper housing accommodation for workers. To meet the expenses of housing schemes it provides for the constitution of a fund called the Mysore Labour Housing Fund. The Fund is to be raised mainly from the levy of a capitation tax on employers, rents from employee-tenants and grants, donations or gifts from the State Government, local authorities or individuals. For the purposes of the administration of the fund, the Act provides for the constitution of a Housing Corporation consisting of representatives of the Government, employers and employees.

The Madhya Pradesh Housing Board Act passed in November 1950 provides for the setting up of a housing board which is authorised to undertake, with the approval of the State Government, works in any area for the framing and execution of such housing schemes as it may deem necessary.

The Uttar Pradesh Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950, passed in May 1951, is on lines similar to the central enactment in respect of coal mines. The welfare fund which is to be established under the Act will be utilised for the purpose of financing measures for promoting the welfare of labour employed in the sugar and power alcohol industries, including housing.

The Punjab Industrial Housing Act, 1956 (No. 16 of 1956)[1] provides for the allotment, recovery of rent, eviction and other ancillary matters in respect of houses constructed under the industrial housing scheme for industrial workers in the State.

While Central Government has not adopted legislation on industrial housing, it has evolved a scheme for providing houses to industrial workers through the agency of State Governments, housing boards and co-operative societies by means of subsidies and loans on easy terms. An all-India tripartite conference on housing, convened by the Government of India in August 1952 approved this scheme[2] and the scheme came into operation in September 1952. It envisages construction of houses for industrial workers

1. *Punjab Government Gazette, Extraordinary*, 28 June 1956, pp. 889-896.

2. For details see *Explanatory Memorandum on the Budget of the Central Government for 1957-58*, pp. 164-167.

governed by the Factories Act, 1948 and mine workers (other than those employed in coal and mica mines) governed by the Mines Act, 1952, and who are in receipt of wages not exceeding 350 rupees per month, through the agency of : (i) State Governments or statutory housing boards, (ii) private employers, and (iii) registered co-operative societies of industrial workers. Financial assistance is permissible on the basis of the standard cost of different types of tenements, subject to certain overall ceilings.

*Forced Labour*

Article 23 of the Constitution of India prohibits traffic in human beings and *begar* and other similar forms of forced labour. The State may, however, impose compulsory service for public purposes. Section 374 of the Indian Penal Code, 1860, renders liable to imprisonment or fine any one illegally employing forced labour.

A mild form of forced labour was permissible under the Criminal Tribes Act, 1924, which was repealed by the Criminal Tribes Law (Repeal) Act, 1952 (No. XXIV of 1952). Under the terms of the former enactment the provincial Governments were empowered to establish industrial, agricultural or reformatory settlements for the criminal tribes. The Act further empowered the provincial Governments to establish industrial, agricultural or reformatory schools for the children of such tribals. After some experience of the Act, the State Governments of Bombay and Madras, had it replaced by a Habitual Offenders' Act; and a Committee appointed by the Government of India in 1949 recommended the repeal of the Act and the enactment of a central Act for habitual offenders. In pursuance of this recommendation the Criminal Tribes Laws (Repeal) Act[1] was passed in March 1952, laying down that the Criminal Tribes Act, 1924, and every other law corresponding thereto in any State or part thereof shall stand repealed on 31 August 1952.

*Wartime Labour Legislation*

It is necessary before concluding this review of labour legislation in India to refer to two important events which have naturally affected considerably the course of labour legislation in India; the Second World War; and the transfer of power by the United Kingdom on 15 August 1947 to the two independent Dominions of India and Pakistan.

Following the outbreak of the war, and more particularly of hostilities in the Pacific in December 1941, India rapidly emerged as the main supply

1. *Gazette of India, Extraordinary*, Part II, Section 1, 6 March 1952, p. 111.

base of the Allies in the Far East, and numerous emergency measures had to be taken with the object of utilising the country's vast resources, human and material, to the maximum advantage for the prosecution of the war. The more important of these measures in the field of labour legislation were:

(1) The promulgation on 29 June 1940 of the National Service (Technical Personnel) Ordinance (II of 1940), in order to control the employment and distribution of technical personnel including managerial staff, supervisory staff and skilled and semi-skilled employees, classified under 64 heads[1];

(2) the Essential Services (Maintenance) Ordinance (XI of 1941), promulgated on 20 December 1941, to make provision for the maintenance of certain essential services during the wartime emergency[2];

(3) the relaxation, for the duration of the war time emergency, of the ban imposed in 1937 on the employment of women in underground work in coal mines;

(4) the relaxation, again temporarily for the duration of the war in factories and railways, of the maximum limit on hours of work set by the provisions of the Factories Act and the Hours of Employment Regulations respectively;

(5) the enactment in 1943 of the War Injuries (Compensation Insurance) Act (XXIII) with the object of imposing on industrial employers an obligation to pay compensation in respect of war injuries to workers in their employ, and the introduction in 1942 of a War Injuries Scheme providing for the grant of relief to gainfully occupied persons over the age of 15 who sustained injuries and to civil defence volunteers injured in the discharge of their duties as volunteers (or in cases of fatal injuries, their dependents); and

(6) the framing of a new regulation under the Defence of India Rules (Rule 81 A) empowering the Government to prohibit strikes or lockouts, to refer any dispute for conciliation or adjudication, to require employers

1. Cf. *L.S.*, 1942-Ind. 1. The 1940 Ordinance was amended with regard to details by a number of amending ordinances issued during the years 1940-1944. For a summary of the provisions of this Ordinance as well of other wartime labour legislation, see Bulletin of Indian Industries and Labour, No. 74; *Labour Legislation in India since* 1937 (Delhi Manager of Publications, 1945), pp. 12-15 and INTERNATIONAL LABOUR OFFICE, Studies and Reports, New Series, No. 2. *Wartime Labour Conditions and Construction Planning in India*, Montreal, 1946, Chapters IX, X and XI.

2. Cf. *L.S.*, 1942-Ind. 2. This Ordinance, too was amended several times during the war years.

to observe such terms and conditions of employment as might be specified and to enforce the decisions of adjudicators.

All these wartime statutes and notifications, with the exception of the last, have today either been withdrawn or have ceased to have any practical effect. The main provisions of the Defence of India Rule 81A, however, were incorporated in the Industrial Disputes Act, 1947.

There is one sphere, however, in which the war may be said to have left a permanent mark on the evolution of labour policy in India—that of joint consultation between Governments, employers and workers in matters of common interest. The tripartite labour organisation set up in 1942[1] to promote uniformity in labour legislation, to formulate a procedure for the settlement of industrial disputes and to serve as a platform for the discussion of all matters of all-India importance as between employers and employees, has taken firm root. Indeed, its work has proved to be such a stimulating example of what can be achieved by regular consultations of this kind that the principle of tripartite collaboration has been steadily extended to individual industries, and tripartite industrial committees have recently been set up for the coal, cotton textile, jute, plantation, cement, tanning and leather goods industries and building and construction industry[2].

Besides, the Government of India set up in July 1951, a joint consultative Board of Industry and Labour consisting of three representatives each of employers and workers with an independent chairman. The functions of the Board are to promote agreements between industry and labour and to follow up and assist in their proper implementation. The Board may also be requested to examine general questions, such as the productive efficiency of an industrial unit, association of workers with management, training of retrenched workers in industries, and other matters which might fall within the scope of industrial relations in general.

In February 1954 the Board reconstituted itself as a purely non-official bipartite Board with a view to serving its original purpose more effectively. The reconstituted Board consists of eight members, *i.e.*, two representatives

1. The Indian Labour Conference has so far held 15 sessions; the last one was held at New Delhi in July 1957.

2. The industrial committees on cotton textiles, cement and leather goods have met only once each in 1948; the industrial committee on jute has not met so far; the industrial committee on coal mining has held five sessions—two in 1947, one in 1952 and one in 1956; the industrial committee on plantations has held seven sessions, and the industrial committee on building and construction industry met only once in 1955. No uniform practice about representation to the three groups (Government, employers and employees) *inter se* has been followed in respect of all committees except that the representation given to employers and employees is equal in all cases.

each of the Employers' Federation of India, the All India Organisation of Industrial Employers, the Indian National Trade Union Congress and the Hind Mazdoor Sabha. In addition, an independent chairman has been elected by agreement between the members of the Board. So far five meetings of the reconstituted Board have been held.

Another significant development is the establishment in 1954 of a three-member tripartite committee on Conventions[1] to examine in detail the ILO Conventions which had not been ratified by India, as also the ILO Recommendations with a view to accelerating the process of implementation of international labour standards. The Committee has met so far thrice and examined a number of Conventions and Recommendations as a result of which India ratified the following three Conventions, *viz.*, Convention No. 5 concerning the minimum age in industry, Convention No. 26 concerning the minimum wage fixing machinery, and Convention No. 29 concerning forced labour.

The lead given by the centre in the establishment of tripartite bodies has been followed by most of the State Governments which have set up State Labour Advisory Boards whose main function is to advise the State Governments concerned on all labour problems.

*Effects of Independence*

The complete transfer of power in India on 15 August 1947 to an independent Government responsible to the Indian electorate, and in no way subject to the control of the British Government or Parliament, and the partition of the sub-continent into India and Pakistan have naturally also had an effect in the field of labour legislation.

A second important development in India since August 1947, particularly significant from the point of view of labour legislation, has been the rapid integration with the Union of India of the territories formerly known as the Indian States and the resultant automatic extension of the scope of the labour laws enacted by the Indian Legislature, and the reorganisation of the Indian Union in November 1956 into 14 States and four centrally administered territories.

1. For details of the work done by the Committee, see "*The Influence of International Labour Conventions on Indian Labour Legislation, by* V.K.R. Menon, in *INTERNATIONAL LABOUR REVIEW*, Vol. LXXIII No. 6, June 1956.

*Fundamental Rights*

Of special interest to the working classes are the Fundamental Rights and the Directive Principles of State Policy enshrined in the Indian Constitution. The Fundamental Rights cover, *inter alia*, equality before the law, prohibition of discrimination because of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, the abolition of untouchability, protection of certain rights regarding freedom of speech, association, etc., and prohibition of employment of children in factories. The more important of the Directive Principles of State Policy from the point of view of labour have been laid down as follows:

"38. 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, shall inform all the institutions of the national life.

39. The State shall, in particular, direct its policy towards securing:—

(a) That the citizens, men and women equally, have right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;

(f) that childhood and youth are protected against exploitation against moral and material abandonment.

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41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work to education and to public assistance in cases of unemployment, old age, sickness, disablement, and other cases of undeserved want.

42. The State shall make provision for securing just and humane conditions of work and for maternity relief."[1]

## CONCLUSION

For a variety of reasons, the evolution of the Indian labour code traced in this book should be of absorbing interest. Besides the practical value

1. "The Constitution of India", in *Gazette of India, Extraordinary*, 26 November 1949, pp. 2347-2597.

of such a review, this study in retrospect brings out clearly how social objectives are inextricably entwined with economic development and political maturity, how justice—social, economic and political—is a single cord made up of different strands. It has been found that ideas have a way of travelling fast and getting planted in receptive minds all over the world. There is a similarity in the basic principles of the I.L.O.'s aims and the objectives set before itself by the Indian Republic, and by virtue of this the national code of India is striving towards the International Labour Code evolved by the International Labour Organisation.

From an humble beginning more than hundred years ago, with an almost negative measure, the Indian code can well be proud today of having a corpus of labour legislation compared to that in any progressive modern state. On the statute book of India today are enactments which speak for the country's progressive social policy. In them, one finds, in brief, such provisions: the Minimum Wages Act providing for the statutory fixation and periodical revision of minimum rates of wages; a 48-hour week and annual holidays with pay, and a Factories Act having provisions relating to young persons, health, safety, welfare measures; a steady extension of social security measures in the shape of (a) maternity benefits for women workers in factories, plantations and mines, (b) an integrated scheme of compulsory insurance against the risks of sickness, maternity and employment injury, and (c) a compulsory provident fund for coal miners and employees in certain industries, and statutory provisions for the payment of compensation in the event of lay off or retrenchment; emphasis on adequate welfare measures in the Coal Mines and Mica Mines Labour Welfare Fund Acts; the regulation of conditions of work and employment of plantation workers and mine workers; and a permanent machinery for the settlement of disputes, particularly in public utility enterprises; the promotion of sound industrial relations by imposing on the employers a legal obligation to frame standing orders applicable uniformly to their employees; and the schemes to decasualise dock labour. In addition, one finds the steady growth of tripartite machinery on the model of the International Labour Organisation for frequent consultations between Government, employers and workers and the establishment of tripartite industrial committees for the country's major industries.

It thus seems justifiable to expect, during the following years, a steady extension of statutory protection to new classes of wage earners, such as handicraft workers and agricultural labourers a progressive widening of the scope of social security measures to cover all the more important categories of the gainfully employed population, and a systematic raising of standards of labour protection, bringing them into closer conformity with the provisions of the International Labour Code.