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LABOUR LEGISLATION

IN

BRITISH INDIA

A study in the Legal and Economic aspects of Labour

BY

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CONTENTS

	Pages
Introduction	1 to 17
Child Labour in India	18 „ 39
Woman Labour in India	40 „ 65
Adult Male Labour in India	66 „ 94
Adult Workers in Mines	95 „ 108
Adult Males in Different Occupations	109 „ 120
Labour Life in Prison	121 „ 135
Triple Legislation for Labour	
1. Workmen's Compensation Act	136 „ 199
2. Trade Unions Act	200 „ 222
3. Trade Disputes Act	223 „ 235
Index	I „ IV

ABBREVIATIONS.

A. C.	=	Appeal Cases, Law Reports.
B.	=	Bombay Series.
Bom. L.R.	=	Bombay Law Reports.
B.W.C.C.	=	Butterworth's Workmen's Compensation Cases.
C.W.N.	=	Calcutta Weekly Notes.
C.L.J.	=	Calcutta Law Journal.
Cr.L.J.	=	Criminal Law Journal.
I.C.	=	Indian Cases.
I.L.R.	=	Indian Law Reports.
K.B.	=	King's Bench.
L.J.K.B.	=	Law Journal King's Bench.
L.J.Q.B.	=	Law Journal Queen's Bench.
L.J.P.	=	Law Journal Probate, Divorce and Admiralty.
L.T.	=	Law Times.
Q.B.	=	Queen's Bench.
T.L.R.	=	Times Law Report.
T.U.	=	Trade Union.
T.D.	=	Trade Dispute.
W.C.C.	=	Workmen's Compensation Cases (Minton House).
W.C.	=	Workmen's Compensation.

INTRODUCTION

The term "labourer" requires to be clearly defined for the purposes of economics as of law. Generally we take the poor people as labourers simply because they live from hand to mouth. But a man belonging to the middle class having an income, say, of Rs. 25 per month and an expenditure above the said amount is worse than a man working as a porter or a sweeper who can both ends meet. There are many cases where the clerks do not get even Rs. 25/- per month, and have to support a family consisting of four to five members. Under those conditions why should not those middle class people who serve in the office as clerks with keen bread problem before them be put under the category of labourers? It is wrong to make poverty the criterion for the determination of the class labourer. Every man has got to work for his maintenance. The doctors, the lawyers, the bankers, the insurance agents, the government officers down to the peons, the porters, the sweepers and the stewards, all have to labour for their livelihood. properly speaking all of them should be counted as labourers.

But it is possible to take the category labourer or Workingman in a restricted sense. Those who work in the fields and factories, mines and docks, in the construction of ships and buildings, railways and tramways as manual labourer are the labourers in the true sense of the term. The latter idea has been corroborated by the Eur-Americans as well. 6. In the West it is said among labour specialists that slaves are of two types. One is called the "white collared slaves, i.e. those employees who serve their masters and earn their livelihood without besmearing their hands with dirt and filth. The others are ordinary labourers who have to earn their subsistence through manual labour. The latter class of manual labourers who have to work in the mines, mills and factories are the "labourers" in the proper sense of the term.

Labour Legislation in India has a recent growth in comparison with other countries. The modern labour code in India dates from 1922 or even later, though the nucleus of labour legislation may be traced from 1875, when Bombay Government first appointed a commission to ascertain whether any legislation as to labour in India was necessary at all. Labour legislation in India is mainly a product of the Central Legislature rather than that of the Provincial. The Central Legislature thoroughly revised the Factories Act in 1929; and passed the last Factories Act in 1934. It passed the Mines Act of 1923 which was amended in 1928. The Workmen's Compensation Act of 1923 along with other minor amending acts was passed by it. The repeal of the Workmen's Breach of Contract Act, the enactment of Trade Unions Act of 1926, Trade Disputes Act of 1929, Dock Labour's Act of 1934 and Indian Emigration Act of 1922, were the later achievements of the Central Legislature. The Provincial Legislatures contributed a very meagre production towards it. In Madras an act was replaced in 1927 known as the Madras Planter's Act. Bombay Council enacted the Maternity Benefits Act in 1929 which was also adopted by the Government of the Central Provinces and recently by Madras also. These may be said to form the labour code in India.

The next important point that strikes us in connection with labour legislation in India is the problem relating to the power of legislation. The question is whether the Central Legislature should have the sole power to pass laws regarding labour which the Provincial Governments are to carry into effect and to administer properly or the Provincial Governments also should be free to control legislation as well as its administration individually and separately from the Central Government. The Report of the Royal Commis-

1. See the chapter on "Majur—Shakti O Deshonnati" (Labour-power and National welfare) in Prof. Binoy Kumar Sarkar's *Badtir Pathe Bangali* (Bengalis in Progress), 1934, pp. 190-193.

sion on Labour in India (1931) recommends that the Central Legislature ought to reserve certain power for passing legislation with regard to labour as the Provincial Legislatures possess at present.⁽²⁾ The whole question hinges upon the nature of the constitution that India will get. If the Federal constitution be granted to India, in its truest sense then the Central Legislature ought not to participate in framing the Labour Legislation for the Local Governments. Because in a federal form of government the provincial governments surrender certain powers to the central authority in which it predominates over the local authorities. Under such conditions, laws with respect to labour is better to be framed by the local legislature which remains more in contact with the particular need of a province and can put the Act into effect in time. Whereas in case of the Provincial Autonomy, the central legislature should frame labour laws. The reason for the same lies in the very form of the Provincial Autonomy system which is reflected in the words of Sir Frederick White. "The greatest of all restrictions upon Provincial Autonomy is the responsibility of the Secretary of States as the agent of the Sovereign Authority of Parliament for every thing that pertains to the Government, either in India as a whole or of any Province".³ The Provincial Autonomy deals with the relations of the Provincial Governments with that of the Central and the provinces receive power from the central authority and enjoy autonomy only in certain subjects. In such a case if the central authority passes laws then there would be a harmony of legislation throughout the country. If a Central Government wields the supreme power then the variation in legislation would bring about a collision between the provinces regarding their policies, and that would ultimately affect the Central

2. The Government of India Act 1919 (Devolution of Rules, Part II—20—P. 206).

3. India, A Federation ? By Sir Frederick Whyte (p. 87)

administration. It is natural that each province will look into its own local interest which would ultimately affect the interest of another province. Suppose the Bengal Government passes a 12 hours legislation for the cotton mills of Bengal to give an impetus to the said industry, then the interest of Bombay with regard to her cotton mills would sooner or later be affected. Then the question of emigration and immigration of labour from one province to the other would turn to be the most vexing problem to be determined. Many such problems can be set forth to prove the clashing interest of the different provinces. The recommendation of the Whitley Commission cannot be taken for granted without questioning its preferability to the present condition. It has recommended that both the Central as well as the Provincial Legislatures should retain the power of legislation. In that case just like the "Dual Government of Clive" and the present "Diarchy" of our constitution it would prove a great failure. The provinces would think that the Central Authorities will move to pass legislation whenever it is required whereas the Central Government will think that the Provincial Governments ought to legislate for their peculiar local needs. Lastly the provinces under the constitution of 1919 cannot override the central authority. In that case reform can scarcely be effected just in accordance with the necessity of a particular province. The division of function without any fixed jurisdiction has everywhere proved abortive. Again if jurisdiction be rigidly fixed up then the legislatures become confined and their powers become limited. The supreme legislature that wields an unlimited power to pass laws in an unitary form of Government is the Central legislature which should have the sole power of passing labour laws. From the financial standpoint also the Central Government is in a better position than the Provincial Governments. Because the Provincial Government has its own income as its support whereas the Central

Government can easily muster up a large amount from different provinces under it. If the introduction of Social Insurance System be preferred, the Central Government can immediately launch into it and can carry the same into effect. Whereas the Province like Sindh cannot all on a sudden take the risk of such an adventure depending on its own financial strength. In any way it can be suggested that labour legislation ought to depend on the control of the Central Legislature though the Provinces are to carry them out.

The question of the state interference in matters concerning individual contracts has been approached by two different schools in two different forms which are thoroughly inconsistent with each other. The school of Mill, Sidgewick, Spencer and Bosanquet supports that the individual must be free from any sort of interference from the state in their respective development. They claim that each man has the right to do anything so long he does not encroach upon other's rights. They want a complete freedom for the individual. The doctrine of Laissez-faire was the product of that school. Sidgewick defined the doctrine of Laissez-faire in the words. "Letting people manage their affairs in their own way, so long as they do not cause mischief to others without the consent of others." There can be no doubt in the fact that each individual ought to get a free scope for his own development. Because that would bring about an ultimate benefit of the whole community. As each community is composed of individuals, the good of the individuals would terminate in a common good. But an extreme orthodoxy of the above doctrine would prove a great loss to the mankind. The theory of Laissez-faire in its extreme form has produced the doctrines like the "Survival of the fittest" and the "natural selection". These extreme dogmas would permit even the loss of the greatest genius and the substitution of the brute in his place. They say that nature would eliminate those who are not fit to exist in this world. If a man be the fittest one then

there is no one who can drive him out of his existence. Gradually some of the followers of the individualists school have realised that the interference of the Government in some cases is essential. They now emphasise more on the limits of the Government than on its sphere.

Herbert Spencer has argued in favour of Individualism in an article "Specialised Administration" published in the year 1871 intended to reply to Huxley's 'the body physiological.' ⁴. As regards the interference of Governments, Spencer is of opinion that the Governments can interfere only to prevent any aggression out of conflicting interests. In short he participates in the 'negatively regulative control' of the Government. Sidgwick was also a great exponent of the Individualistic theory. He commenced his Elements of Politics with the statement "the individualistic minimum of Governmental interference". This implies three things, namely : (1) the maintenance of personal security, (2) that of private property and (3) the fulfilment of contracts. His theory is almost like a limited individualism which has the colour of the most recent form of Individualistic theory. Sidgwick supported the governmental interference for the good of the community and he interpreted that "on the grounds of individualistic theory as the best method of approximating to the ideal of individualistic justice." ⁵. Mill's "Liberty" stands to represent this ideal in its purity. He seems to be a staunch follower of Individualism without admitting any sort of modification in it. "It is hard, says Mill, to get a boot to fit a foot ; how much harder it would be to discover a kind of Government which would suit the individuals concerned." He further argued that each individual know his condition far better than any one else, so the external control by the Government for

4. Fortinghtly Review—December 1871.

5. Elements of Politics—page 156.

the good of the individual is fallacious....." 6. He strongly condemned any sort of parental interference. Let the individuals have a training through mistakes and misfortunes. If somebody always wants to point out the ways to another, the latter will never get the chance of discovering the way for himself. Mill respected the individual existence more than the merged existence of that individual with society at large.

Individualism has limited the actions of a man only to the extent that each of their action must be non-interfering with others. This implies an abstraction of one individual from the rest. This abstraction is based on the theory of 'atomism' which had been the philosophy of the early 19th century. In fact each individual does not exist separately from another being fettered and encircled with his own rights but he has duties to others as well. In another way it may be put that the writers on the Individualistic theory have stressed more on the positive rights of a man than on the negative rights. The individual has a fixed amount of right beyond that if he tries to get, he will, perpetrate a wrong. To protest those positive rights he has to observe some negative rights as well, or in other words if a man wants to enjoy his rights he must have to observe the duties towards others. Bosanquet has ably refuted the theory of 'atoms' in regard to Individualism in his "Philosophical Theory of the State." There he has sought to indicate that individuals are not isolated but for that reason it is not true that all individuals are only constituent elements in a sort of super-mind. Secondly, the point that has been greatly emphasised upon by the individualists is that exceptional ability should be given a chance. Mill says "Genius can only breathe freely in an atmosphere of freedom." (7). There

6. Mill's Liberty—Chapter III.

7. Mills—Liberty Chapter III.

is no gainsaying to the fact that individuals must get scope to develop themselves but that does not mean a negation of state-control even at the cost of sufferance.

Socialism attacks Individualism on the ground that it has led directly to the formation of Trusts, curtails and combinations which have become the nucleus of all the troubles and miseries of mankind. Socialism upholds more the relation of a man to his fellowmen. The individualistic ideal relates that the state is meant for the individual whereas the Socialist claim that the individual is meant for the state. There are many kinds of socialistic interpretation varying from the most liberal class to the extreme revolutionists. The utopian or Bourgeois Socialists, the Associalists, the State Socialism, the International Revolutionary Socialism, the Marxism and lastly the Opportunist or Revisionist Socialism. The philosophy of the socialists may well be treated shortly to get at the answer of the question of state interference with the individuals. Though there are so many varieties of socialistic ideals still Marxism stands foremost. Karl Marx in his famous "Das Kapital" offered a trenchant interpretation of the socialistic ideal. The most dominant idea of socialism is this that "In the bourgeois form of society the means of production have the mastery over man". It emphasises more the merging of the individual capital in the state. It differs from the individualists in this point only that the individuals can develop and ought to develop but the development is sought to be moulded for society and not for his own interest. In other words socialism has merged the lower interest to the higher interest. It says that the ideal form of society may be achieved by the control of the state over all the means of production which means a thorough elimination of the fear of competition. The individualists conceive that largest varieties of individuals and their scope for development whereas the socialists think of the individual improvement for the common interest because the

complete evolution of an individual is to be found in the performance of his function in the life of the whole. (8)

Saint-Simon (1760—1825) one of the earliest exponents of 'socialistic ideal' expressed his opinion regarding the control of the government over the industries in the following way :—

“The nation was to be organized on an industrial basis in which industrial chiefs should control production. Government would thus be reduced to the direction of a national association for industrial purposes.” Saint Simon belonged to the Utopian Socialists school. Another Advocate of Socialism of much later date (1840—1848) is Luis Blanc who is said to belong to the Associalists along with Charles Fourier, Robert Owen and Thomson. According to Luis Blanc Socialism is to prevail among the various branches of industries. His associations are to be initiated and subsidized by the state, in which point he differs from Robert Owen or Fourier who support self-sufficiency of each unit. Thus it will be found that the earlier writers of Socialism both French and English down to 1848 belonged to the Utopian or Idealistic school. Then begins a bourgeois spirit and the movement was not fully for the wage-earning class, though Luis Blanc and Proudhon had been seen to fight for the proletariats. Next scene was shifted to Germany where the proletariat socialism grew up in its entirety. Rodbertus and Lassale stood for “State Socialism” (1805—1875). His chief productions are : *Zur Erkenntniss Unserer Staatswissenschaftlichen Zustände* (1842) (Our economic condition) ; *Soziale Briefe an von Kitchman* (1850-1851) (Social letters) ; *Der Normal Arbeitstag* (1871) (The normal labour day). Rodbertus insisted upon the extirpation of poverty and crisis and the introduction of distributive justice by

means of socialisation of property. The property at that stage was in an ill-distributed condition and the state should confiscate all and then only proper redistribution would become possible. Proper distribution was not possible immediately because land and capital both belonged to the private individuals who demanded an unearned rent for their use. Rodbertus suggested some practical remedies which might immediately be realised. He proposed various regulations of the labour contract with the purpose of increasing the labour's share in the national income. He also supported the legal limitation of the working day. From all these it can easily be inferred that State Socialism supports the governmental interference with the industrial organisation. Then comes the age of Karl Marx and Frierich Engels who founded the International Revolutionary Socialism. It is said that Marxism is the classicism of the socialistic thought. Marx put Hegells "Dialectic upon a materialistic basis" and stated the material and economic forces to be the cause of social evolution. To Marx "The ideal is nothing else than the material world reflected by the human mind."¹⁰ Lastly comes the Revisionists or Opportunists. Bernstein in Germany and Sidney Web of England were the followers of this school. The Revisionists school was not yet fully developed. This school supported the socialisation of the instruments of production and upheld the doctrines of class-struggle and internationalism.

Taking the views of the two schools of opposite poles, it is better to adopt the mid-way between them. Because individuals are neither wholly isolated nor absolutely merged in society. Individuals have got dual aspect in their lives. One is external and the other is internal. The state can interfere, society can call to account those actions which are external in nature but they ought to be free to decide

10. Das Kapital—preface to second edition.

matters concerning internal relations. The extrenality of an individual lies in his relationship with others, that is to say any action by which a third party would come in direct contact should be termed as external action of a man whereas the internal actions are those in which the doer will directly receive the result of his action without having any contact with others. If a man thinks of not taking his food the state ought not to enforce him to take it. That is absolutely a personal matter which under normal condition a man must be left free to decide for himself. Whereas if a labourer thinks to employ his child twice in two different mills the state must come to interfere. Because the third party, namely, the employer is coming in contact with the personal matter of employing a child which has again a distinct entity from that of the father. It is true that a man is a social being but he has also a separate entity for his own self. The man is bound in one place again unchained in another. Individual being requires certain bondages without which his life would have been miserable. In the words of Wordsworth—

“Me this unchartered freedom tires ;

I feel the weight of chance desires.”

The poet here seems to have the truest realisation of a life that a man can never remain without duty. The sayings of the French Revolution that man is born free but he is chained afterwards is pragmatic and not a real. What is meant by “freedom” ? Is it license or liberty ? If we commence the analysis of the sense of the term freedom from the very earliest period, it will be found that the sense is varying in different era. To St. Paul “freedom” is a specially freedom from the law, from ordinances, from the fear which these inspire,—a freedom which is attained through the communication of what he calls the ‘spirit of adoption’ or ‘Sonship’.⁽¹¹⁾ Kant says that a man is free

because he is conscious of himself as the maker of the law which he follows. The question of freedom in case of St. Paul and Kant is not within the bound of matter. They have always thought of the laws of spirit to which a man is bound. The conception of freedom by Hegel is realised in state. He says that freedom is the condition in which the will of a man becomes determined by some external object sufficient to itself is realised in a state. In every society there exists something which always has a tendency towards freedom. There exist in every society some men who demand a perfect freedom for the common good on a permanent basis rather than his own personal benefit. To achieve that permanent good for society is the greatest satisfaction for them. In that case the interest of the individuals would be merged with the interest of society. Thus the question 'Is individual free' implies two kinds of freedom. The first is freedom of action and the second is freedom of will. But "the term freedom had been confined by juristic sense of the power to "do what one wills" : for the extension of its meaning seems to have caused much controversy and confusion."⁽¹²⁾ If freedom implies external relation of a man then even through the arguments of the individualists, it can be proved that interference from outside is absolutely necessary. If the government be taken to have a police action only then the relation between man with man and their interests must be protected and controlled by it. The interest of the labourer and the employer, are so opposite in nature that there cannot be a harmony without any control from the Government. The employers have got capital behind them whereas the employees have nothing. So the position of the employees is weaker than the employers which demands Governmental support for its impartial position.

One of the greatest thinkers of the modern age Mr. Bertrand Russell says with regard to industrialism "Wherever industry is well-developed and not very new, one finds that religion and the family, which are the twin props of every merely traditional social structure, lose their hold on men's mind." ¹³. It is almost a truism that industrialisation means desocialisation. The shocking statistics of the divorces and the drunkards, crimes and corruptions bear a clear testimony to a degenerating humanity in the atmosphere of industrialism. But the question has been put by many a thinker whether this is the result of industrialism or the defective distribution. They are of opinion that private property which lies at the root of capitalism is the basis of all the evils. Capitalism has tried to exploit the weaker class that is to say the labourers who are often put to a good deal of disadvantages like unemployment and over-work, low pay and no-comfort. A man loses his vitality due to both the reasons, namely if he remains without work or if he does excessive work more than what his body permits. It is often the case that the labourer takes recourse to drinks only to forget the strain of over-work. To meet both the ends together they are bound to employ their wives and children in mills or mines, factories or workshops. The most vitiating atmosphere of those localities affect the normal psychology of the weaker sex as well as that of the child. The result of that action and interaction of the factory-atmosphere is the weak-brained and morally wrecked men and women. What is the family of a labour class? They have their wives to beget child alone. In it women have two functions, one is to earn their bread and the other is to bear child. The domestic life is almost a negation to them. They take their meals from the nearest hotel or an inn, they get their clothings from a shop and hire a room to rest the

13. The Prospects of Industrial Civilisation.

tired body and nothing else of their own. From morning till night they work in the factories. At night they make revelry and afterwards fall asleep. Days in and days out, they pass such a life where no purity ever embalms their roughly trodden hearts. This is not all, in countries like America where exists no penury, where the labourers are well-paid and well-fed there even the evils of industrialism have assumed a horrible structure. Germany, America, France and Japan have all the same picture of industrial life. America stands first in the statistic of divorce, Japan stands second. Comparing the extent of industrialisation Japan in the east is fast progressing like any of the Western countries and she has developed at the same time all the necessary evils along with it. The statistics of separation between the husband and wife in America in the year 1905 is 6800, in 1924 the number rose to 1,70,867 which became more increased in the year 1926 and ran up to 1,80,868. The divorce in 1924 is 6.9 per seven marriages in America, in Japan one per eight marriages. In France one separation per 21 marriages ; in Germany one in 28 marriages ; one in 16 marriages in Switzerland, in Norway one in 30, in Great Britain one in 96 and in Canada one in 161. One of the American writers has remarked "The vicious attack upon family life and the rapid increase of divorce in recent years in our own country is ominous for the future of national morals and national welfare." It has become almost the fashion of mankind to get rid of the sanctity of marriage and to let lose in the satiation of the morbid passions. Mr. Justice Lindsley of America has hinted upon the good of companionate marriage in the following way. "I really see no remedy for all this, unless we of the adult generation can bring ourselves to treat these boys and girls with some respect and as equals. What I do mean is sympathy and understanding and tolerance and a complete willingness

to let young people order their lives in the light of facts." He is of opinion that when the fact is that men and women are indulging themselves in baser passions then law should rescue them from keeping those facts in secret and for that reason companionate marriage ought to prevail.

Let us observe now the criminal aspect of an industrial country. "Cocaine commits 60% of the crimes of violence in America." The statistics of the importation of wine from Canada shows that wine of about 60 lakhs of rupees was imported in 1927 more than in 1926. About 4 lakhs of people had been punished for the violation of the prohibitive act against wine.¹⁴ The President of the Enquiry Committee of the Criminals Mr. Edward Gore expressed his idea in a lecture in the Hotel Lassel that the young boys and girls are taking the places of the old criminal. This is the long and short of the extensive criminality in Western civilisation. In America the gangs of robbers and forgerers are continually fighting and getting away with the booties inspite of the strict vigilance of the police and detectives.

The problem of labour is absolutely a product of industry. India is not yet fully an industrial country in the sense of Germany, America, England or France, but she is only growing to be an industrialised. Necessarily the class labour and the question of labour life are only of recent origin. The Indian labour, till five years back, was characterised by two elements, it was principally agricultural labour and appeared to be industrial worker only in an off season. It may be said with impunity that labour class as an exclusive group has come into being since the war when the textile mills required a regular supply of mill-hands very badly and paid them hand some. The temporary nature of labour still can be found in mines, plantations and in various other aspects of industrial life.

14. Markin Samaj O' Somosya. (Nagendra Nath Choudhury, p. 126).

So no trace can be made at of any legislation with regard to "labour" in the modern sense in ancient India. We find only sparced legislation with regard to wage of domestic and agricultural worker. "Cowherds are usually paid in kind, in as much as they receive a part of the milk ; according to others they receive also a certain percentage of the animals entrusted to them, eg, a calf for every 100 cows ; they are however also punishable for wickedly deserting the herd and for illegal milking. The punishment of flogging according to Ap 2, 28, 2F, is generally to be applied to a cowherd or a field labourer (Ki) who does not perform his duty".¹

The ploughman (Krsivala) used to get one fifth of the produce and also free living and quarter. If he would not get any other advantage then one third of the produce was allotted to him¹. Later writers have given various other classification of wage earners. The soldiers stood first after that came the field labourer, porters and domestic servants occupy the lowest place¹.

If India is to become industrialised then she cannot get over the evils of it. Her society and her religion are already in a tottering condition. If she is bound to abide by the course of the progress which is now before her, there is no other alternative but to frame social laws which can alone save her from the harrowing degeneracy of industrialism. Labour Legislation is one of the social laws which cannot be connived at without the danger of a greater misery in the near future.

Here I should make a grateful acknowledgment to Mr. Rama Prosad Mukherjee, M.A., B.L., the illustrious son of Sir Ashutosh Mukherjee, whose love and sympathy have enabled me to bring out this small work before the public.

15 For fuller treatment read "Hindu Law & Custom" by
Juhus Jolly (1928).

16 Ref. Brah 16, 11-13, 2, 28, 1. Narda 6. 3 and 72, 194.

17 Naradu 5, 22-24. Brah 16, 10F.

The present work has grown out of studies and researches in connection with the "Inter-national Bengal" Institute ("Antarjatic Banga" Parishat) as well as (the Bengali Dhana Vijnan Parishat) since 1933. Part of the material constituted the topics of talks before my colleagues, the Research Fellows of these two Institutes, as well as before the Tal-tolla Literary Conference (Calcutta, 1934 and 1935). Acknowledgments are due to Arthick Unnati (Economic Progress), The Calcutta Review, the Insurance and Finance Review, the Basumati, the Hitabadi, the Forward, the Amritabazar Patrika and Probudha Bharata, the journals in which much of the data contained in this publication first saw the light in one form or other.

Finally, I should not fail to express my gratitude to Prof Benoy Kumar Sarkar, Founder & Director of the two Institutes mentioned above as well as Editor of Arthick Unnati, from whom I derived considerable inspiration and guidance in economic research.

January 1933. {
Calcutta. }

PANKAJ KUMAR MUKHERJEE

CHILD LABOUR IN INDIA

Legislation with regard to child labour scarcely contemplates an exclusive negative policy. The ultimate significance of such legislation may be stated that "It is an essential part of the broader social policy of protecting and developing all the children of the nation." If the proverb, the "child is the father of the man" stands unchallenged then one cannot gainsay the fact that protective legislation for the child and young person is an absolute necessity. Such legislation does not mean the cessation of work altogether but it recognises work as an educative medium which would form an important factor in the moral development of the child. What is work for an adult is a strain to the child, so the standard for labour of a child should be distinct from that of a man. The motive of a legislator is not to dissociate the school from the factory but to transform the factory into a school. The plight of the poor child no doubt becomes pitiable when it works as a tool to turn out coins for the maintenance of the family at the cost of health, education and morality. The ignorant parents require protection from temptation to alleviate poverty, through the employment of children. Society as a whole can scarcely absolve itself from the duty of securing the tender lives and the sweet freedom of the poor cherubim coming out of the huts and cottages. In the interest of society, in the interest of a country and in the interest of a community, why a nation, one cannot forego the protective legislation for child labour without incurring irreparable loss. In connection with this, I cannot desist from quoting Swami Vivekananda which runs as follows: "I do not believe in a God or a religion which cannot wipe widow's tears or bring a piece of bread to the orphan's mouth."⁽¹⁾

(1) Vol. V. (1924), p. 89 *The Complete Works of Swami Vivekananda.*

The causes of the origin and continuation of child labour often trouble our minds. Reasons should necessarily vary in accordance with the circumstances of different countries, though the general trend is almost universal. The legislators in advanced countries took great care to fight against the environments adverse to the improvement of child and young persons. India presents many a reason for the origin and growth of the child labour, of which the paramount cause lies in her inherent poverty. Gross illiteracy of the labour as a class, apathetic attitude of the labourers towards education and morality and the advantageous position of the capitalists due to the absence of organised labour are the most conspicuous reasons for the grovelling condition of the child labour in India. The workers consider education to be a disqualification for the child because enlightenment would lead the child to look after refined job rather than accept any menial vocation. In other words, the prevalent idea is that education would spoil the child and would alienate it from the family tie.

Another vexata quæstio which arises in the course of discussion about legislation regarding child labour is that whether it would be at all advisable for the state to interfere in the matters of contract between the employees and the employers. It is an eternal problem that troubles the thinkers of all ages and has given rise to different schools of thought according to the view points they uphold. The individualists resent every form of interference from the Government in matters of individual activities whereas the socialists invite state interference in the interest of society and the community as a whole. Whatever the ideas of the different schools may exist, one is to accept or reject the proposal on the basis of the particular circumstance of the particular case. Because no thought, no principle in the world can claim the efficacy of an universal panacea in every matter. In the present case, it is not beyond our comprehension to realise the need that the state should

come in between the poor and ignorant labourer on the one hand and the intelligent and moneyed capitalists on the other. The reason is not too far to foresee. The principle of "summum bonum" should form the criterion for the application or adoption of any of the previous schools of thought. Restriction on child labour would mean an improvement of children and young persons which would ultimately bring about the prosperity of the nation. No nation can develop with a crippled labour and an inefficient hand. But objections may be raised against such restriction in various modes. It may be apprehended that the labourers have to undergo certain economic strain and the capitalists have to suffer a large cost of production for the substitution of costly adult labour in the period of transition. But a little insight would dispell such an apparent apprehension. The labourer will not suffer, firstly because the unemployed adults will get jobs in the place of the child workers and will draw a higher wage. Secondly the general wage level of the labour class will have a rise to a certain extent due to the increase in demand of labour. From the capitalist's point of view it may be argued that they shall have to undergo a heavier cost for the replacement of adult labour. In answer to that objection it may be said that adult worker would produce more than a child labour which means an ultimate gain to the capitalist. The young workers would be trained in the meantime and would be able to produce more finished goods within a short period affording the capitalists greater turn over and maximum profit.

In the words of Prof. Benoy Kumar Sarkar it may be said "The key to modernism in the national and world economics is to be found in the Trade Union Movement". (2) The associations of labour form an important

(2) "Social Insurance Legislation and Statistics" by Prof. Benoy Kumar Sarkar at page 21, Sec. 3.

phenomenon in the "neo-capitalist" era. As we find the co-operative movement, the cartel movement and Rationalisation in industry, the elaborate Banking Organisation and the most pervasive Social Insurance activities the glaring features of the economic world, so the brotherhood of the labouring class is one of them. In course of the treatment of the Child Labour, one is lead to think of an organisation for the welfare of the children and young persons. India can boast of having a very few of such Society. Mere protective legislation cannot be effective in the absence of social co-operation. Welfare organisations of the labourers are required not to start strikes and complications in the labour life but silent work in the amelioration of the child's life. They should evince the heart of the Society as a whole and not of a section of it. Prof. Sarkar has rightly given out the latest note of the world economy in the term of "Neo-capitalism"⁽³⁾ which is capitalistic socialism or socialised capitalism. The purpose of stressing upon the point of creating a social mentality rather than sectional mentality is the basic principle for which Prof. Sarkar's dictum has been referred to in this connection. According to him the days of unalloyed socialism or unmixed capitalism have given a good-bye to the present conciliatory spirit of modernism. Examples in support of the previous statement are not lacking. Since 1930 the Trade Union Congress is joining the National Confederation of Employers Organisations and the Federation of the British Industries in the discussions on matters concerning U. K. and British Empire. This rapprochement of the labourers and the capitalists clearly manifests the legitimate function of the labour organisations. From such a trend

(3) For fuller details of the signification of "Neo-capitalism," vide Prof. Sarkar's Social Insurance Legislation and Statistics (Pages 76-79).

to "Solidarism" one commits no mistake while urging on an evolution of the social mind instead of sectional one. Legislation is absolutely ineffective if it does not show the community's mind or it does not help in its growth.

Though legislation after legislation has been passed to put a stop to the abuses of child labour still there are unguarded corners where it is subjected to hard fate. In the plantations children even under the age of twelve years are found to be in employment. The child of nine and ten are often employed in the Dooars. Those unfortunate kiddies scarcely get the vestige of an opportunity for even a semblance of education. Salt ranges of the Punjab are well-known for the absence of literacy. The factories in India are filled up with illiterate labourers. In support of the above statement a quotation may be made from the Labour Commission's Report, which runs thus : "In India the whole mass of Industrial labour is illiterate, a state of affairs which is unknown in any other country of industrial importance."

The question of recreation is almost unknown in India. They know only two sorts of recreations, *viz.* one is gossip and the other is sleep. They know little of games or of any healthy excursion or of any cinema instruction. Though in some factories, equipments for gymnasium may be found but they are of little use after the day's labour and with insufficient nourishment. A glimpse in the condition of the working men in our neighbourhood that is in Japan may afford us a lot of instruction to improve our conditions. (4) The large factories possess big amusement halls in which permanent stages are erected. Monthly once or twice during the shift days,

(4) For fuller details, vide Japanese Trade Bulletin, September 1934.

professional singers or story-tellers are invited to afford entertainment to the boys and girls. Moving pictures are also shown without any fees. For the sake of psychic satisfaction and artistic senses beautiful flowers and trees are planted with fountains and bowers at different places.

The employment of children may be found in the regulated as well as in the unregulated factories like the bidi-making, carpet-weaving, shellack, wool-cleaning, mica mines and tanneries. Public work is also notable for the employment of child and young persons. In a recent undertaking of the construction of New Delhi children equally took part as men and women. The existence of the child-labour is more conspicuous in the unregulated factories than in the regulated factories. It is not only difficult, but, it is an impossible task to find any statistics of the child labour in the unregulated factories. The most pitiable condition of the child worker is keenly felt in the unregulated factories which are not governed by the Factories Act. The long hours of work, the poor payment which amounts to a sum of -/2/- as. per day and their worst working environment together seem to be shocking. The report of the Labour Commission of India states "In the course of discussion of bidi factories, workers as young as five years of age may be found in some of these places working without adequate meal, intervals or weekly rest days, and often for 10 or 12 hours daily for sums as low as -/2/- as. in the case of those of tenderest years." Further the Report proceeds and ends this discussion with the remark "...that it is sufficiently large in certain areas to constitute an evil which demands immediate remedy". (i) Children of the age of 5, 6 and 7 are often employed in the carpet making industries, bidi making industries, tanneries

(5) Report of the Royal Commission on Labour in India (16-97). (1931).

and plantations. In the carpet industries of Amritasar, the proprietors do not engage those child workers but the weaving master in charge appoints them and pays them. The docks were not lacking in the possession of child worker till the sitting of the Washington convention and the consequent amendment of Indian Port Act of 1908 which prohibited the employment of children under the age of 12 years. Here also the Report of the Labour Commission does not fail to observe that "Although such rules have been duly promulgated in the only port in which we found children employed, some children below the prescribed age were employed in the coaling of ships". (6) In the case of the regulated factories also, even after the introduction of certificate system regarding age and health, the abuse of employment of boys under-age is not out of practice. As there is no whole time Surgeon to examine the boys, there is little check on the willing abusers. The recent token system is a nominal proviso which protect more the abusers than the workers. The token of a certificated young worker may be placed in an uncertified child which cannot be easily detected. The multiple shift system affords another advantage to the employers to cross the penalty zone being unscathed, because they can easily employ the same batch of child with a little variation and combination in it for a longer period than is prescribed by law.

The following table will show the number of child workers in the Factories subject to the Indian Factories Act. (7)

(6) Report of the Royal Commission on Labour in India (188-189) (1931).

(7) Statistical Abstract for British India 1922-32

" " " 1923-29 to 1932-33.

Years.	Total number of Factories.	Total number of hands employed daily Children.
1922	5,026	67,658
1923	5,973	74,620
1924	6,406	72,531
1925	6,926	68,725
1926	7,251	60,094
1927	7,515	57,562
1928	7,863	50,911
1929	8,129	46,843
1930	8,148	37,972
1931	8,143	26,932
1932		21,783

From the above table it is quite evident that the number of child worker is waning every year. In the year 1922 the number of child worker had been 67,658 which rose to a considerable extent in the year 1923 amounting to 74,620. But from the year 1923 the course is downwards and it has come down to 21,783 in the year 1932. The sign is quite favourable and the restricting legislations for child labour has been proved to be successful. The same view may be supported by a quotation from the Bombay Labour Gazette which has discussed about the present condition of the women and children workers. The quotation runs thus : "As compared with the year 1933, there was a reduction in the number of children employed in factories, but

the number of women employed showed an increase in Bengal and Central Provinces reported comparatively large decreases in the number of children employed. The process of eliminating child labour from the Jute and Cotton Mills in Bengal continued and the number of child workers in the Jute Mills at the close of the year under review (1933) was 915 as against 26'174 in 1925."⁽⁸⁾ Bombay also shows a remarkable decrease in the number of women and children in the mills since 1920. The rapid decrease of the said number of workers in Bombay is due to two reasons, *viz.* :— (1) Maternity Benefits Act and the (2) Prohibition of women worker to be engaged at night. From the above facts and figures, it can be inferred that the present condition of the child labour is perceptibly better than before. When we compare other countries, it may be found that China has got almost an equal position rather worse than India regarding women and children workers. Approximately women workers in China amounts to 66·2 per cent and children 3·2 per cent. But, children of nine years age even are found as mill-hands in China,⁽⁹⁾ as we find in the unregulated factories in our country. In Great Britain boys under fourteen years of age cannot be admitted in any occupation, excepting in certain specified works which do not interfere with education. Those exceptional occupations are :—delivery of Newspapers, milk or goods and parcels ; the shopwork and the Industrial work at home ; Nursing and domestic work ; Agricultural work and other miscellaneous and unclassified works. The number of children under 14 employed in 1931 is stated in the following table.⁽¹⁰⁾

(8) Bombay Labour Gazette March (1936) at p. 529.

(9) " " " " January (1934) at p. 369.

(10) Ministry of Labour Gazette, London, November 1933.

Occupations	Children under 14 employed.				Total.
	Aged 12—13.		Aged 13—14.		
	Boys.	Girls.	Boys.	Girls.	
Delivery of News- papers	10,152	394	18,187	605	29,338
Milk	1,727	243	2,442	242	4,654
Goods & Parcels	5,403	416	9,902	431	16,152
In Shops	727	127	1,048	227	2,129
Industrial work at home	192	152	186	122	652
Nursing & domestic work	241	1,317	395	1,505	3,458
Agricultural work	1,387	348	1,790	349	3,874
Other occupation	706	161	980	230	2,077
Unclassified	...	...	...	...	974
Total ...	20,535	3,158	34,930	3,711	3,308

Egypt has also taken measures to regulate the employment of children and young persons in industry and has authorised the employment of children between ages 9 and 12 years in certain industries. Such measures are evinced by the order of the 28th. December 1933. An Island like Madagascar has not failed to take into consideration the cases of the child and young worker. Under the Decree dated 14th January 1936, young persons of

either sex under 18 years of age may not in future be employed at any work between 9 P.M. and 5 A.M. ⁽¹¹⁾

Successive legislation in India has attempted to ameliorate the position of the child worker. Now the question

may be raised as to the meaning of the term "child" and when that "child" becomes an adult. The answer to that

is to be found in Section 2, Clauses (a), (b) and (c) of the factories Act xxv of 1934. Section 2, Clause (a) explains "adolescent" means a person who has completed his fifteenth year but has not completed the seventeenth year. Whereas an adult implies a person who has completed his seventeenth year but a "child" means a person who has not completed his fifteenth year even. Under English law a person would be an adult after completing his eighteenth year.

The Factories Act of 1922, provided that those who were below 15 and within 12 could be employed in factories on the production of a certificate showing the physical fitness. Those persons who were between 9 years and 14 years of age were called the half-timers. Children under 12 could not be employed in the docks, ports or piers. The Factories Act XXV of 1934 provided that no child who did not complete his twelfth year should be allowed to work. Here the language of the Act regarding the completion of the 12th year is obligatory. In case of age restriction a distinct improvement is marked from the Act of 1922. If the hours of employment of the child worker be taken up for discussion, it will be found that legislation has attempted successively to improve the condition of the child more liberally. By the Act of 1881 nine hours a day was the maximum period of work with an interval of one hour in the midst. The Act of 1911 reduced that to 7 hours as maximum in general and 6 hours for the textile

(11) "Industrial and Labour Information"—Geneva Feb. 10, 1936.

industries. The Act of 1922 fixed up the working period as six hours a day in all cases. All the previous Acts were in agreement in making compulsory provision for holidays without mentioning any particular day for the same. The most remarkable improvement is obvious from the provisions of the Act of 1934. It prescribed 5 hours a day in a factory for the child and stated that no child should be allowed to work in any factory except between 6 A.M. and 7 P.M. No child worker can be employed twice in two different factories in any one day. It has become obligatory on the part of the factory manager to notify clearly the period of work for children which must be displayed beforehand. The forms and methods of notice have been prescribed in the Act which may undergo certain changes by the Local Government.

The compulsory system of keeping proper registers for the child worker has been introduced since 1881, and it has been improved by the successive Acts of 1911, 1922 and lastly by the Act of 1934. Sec. 56 of the Factory Act XXV of 1934 has provided that the Manager of every factory in which children are employed shall maintain register of child workers showing (a) the name of the child working in the factory, (b) the nature of his work, (c) the group in which he belongs to and in cases of shift the relay to which he is allotted, (d) the number of his certificate of fitness granted under Sec. 52 and such other details which might be notified by the Local Government. No factory can employ any child without complying with the provisions of notification and entry in Register, the name and period of the work of that child.

With regard to accidents, notice to the authorities must be given by the factory manager in time. This duty on the part of the manager has become a compulsory phenomenon since the passage of the factory Act of 1881. As a prevention to accident the Factory Act of 1911 prohibited the employment of children to cleanse any dangerous machinery

or to start work while the cotton-openers are operating. Sec. 27 of the Factory Act of 1934 has clearly stated that "No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed and moving parts of any machinery which is in motion under power. Sec. 29 prescribes that no woman or child shall be employed in any part of the factory for pressing cotton in which a cotton-opener is at work.

The notable factor in the Act of 1934 is its provision for certificate and token system. A certificate of fitness is an essential thing for a child before he can enter into any factory work. "A certifying Surgeon on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the Manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work" (Sec. 52, Cl. (1.) The Surgeon would certify the age and health of the child and the prescribed physical standard for the work to be done by the child. Under Cl. (3) of the same section, the certifying Surgeon may revoke any certificate granted under sub-section (2), if in his opinion, the holder of it is in no longer fit to work in the capacity stated therein in a factory. After the certificate being issued, the token bearing the number of the certificate should be carried by the child while working in a factory.

The starving wage of the child worker is really a pitiable concern which ought to have elicited sympathy from all without any distinction between rank and file. It is too difficult a task to secure the statistics of wage in general and the question of the statistics of wage for the child labour is far from it. The Report of the Labour Commission has remarked in this connection "So far as wages are concerned, practically nothing has hitherto been

Abuses of child labour

achieved with the exception of the enquiries made by the Bombay Labour Office into wages in the Cotton Mill Industry of that Presidency." In Madras Presidency the minimum payment of the tenderest child is -/2/- as in the Bidi factories. In the Punjab the system of pledging out children was very frequent till recent times. The father pledges children by taking a loan from the factory-owners and he repays that by contracting the labour of his own child. The average payment in those parts amounts to Rs. 7/- to Rs. 9/- per month according to the age and capacity for work of a child. Informations as to the particular wage of the child labour in Plantations are not available. One can gather materials from heresay and other minor source regarding wage, which are not of much worth. The Royal Commission fixed to make an official enquiry in this respect but to their utter failure, the Commissioners have reported the result in the following words: "No official Statistics of average earning are available, but we were informed by the representatives of the Dooars Planters' Association that the average monthly earnings in 1929 were Rs. 14-4-1 p. for men, Rs. 10-5-8 p. for women, and Rs. 2-14-5 p. for children." (12) The average statistics for wage is equally absent in case of other plantations. Generally the payment is made on piece-rate system. The only information which is available is that the general wage-level of the child in Plantation is usually /2/9 p.

In connection with the pledging of the child in the Punjab, some details are necessary to elucidate the subject. Fathers generally take loan from the weaving masters and contract with them by executing a formal document which states a certain period of time for the repayment of the loan taken. The child is pledged in exchange of that loan. The labour of that child would, in course of time, clear up the whole debt. Children generally work under the super-

(12) Report of the Royal Commission on Labour (P 445).

vision of those weaving masters on a very trifling remuneration, which amounts to -/2/- as. per day. Those Factories are not governed by the Factories Act as they fall under the group of unregulated Factories. Under the recommendation of the Royal Commission's Report, the Government is now taking steps to protect the interests of labour in those unregulated factories even. The system of Certificate to show the physical fitness of the child is remarkably absent in those factories neither there exists any fixity of hours of work in them. Under such conditions children are bound to become the victims of early and immature death and shattered health.

In the year 1933 the Pledging of Children's Labour Act was passed by the Indian Legislature. This Act attempted to give a death blow to the system of pledging children by the parents to the weaver-masters or any other employers. It interpreted agreement to pledge in the following terms in Sec. 2 of the said Act : "An agreement to pledge the labour of a child" means an agreement written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilised in any employment."

But along with the above provision there is another clause which states that an agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child's services, and terminable at not more than a week's notice, is not an agreement within the meaning of the definition. This additional clause clearly demonstrates the legislator's mind which wanted to do away with the prevailing abuse of child labour keeping opened the liberty of contract for employment on decent and reasonable ground. In Section (3) it has made an obligatory provision to treat the agreement of the pledging of a child as a void contract, that is to say, it does not allow the parties the

option of making it void in which case the term would have been "voidable," but it is void...*ab initio*. Here also the Act has not stopped but it has also asserted penal clause in Section 4 by which if the "parent or guardian of a child, makes an agreement to pledge the labour of child, shall be punished with fine which may extend to fifty rupees." Sec. 5 enacts that the other party in the contract with the parents will be punished with fine to the extent of two hundred rupees. Further it proceeds to extend its penalty clause over those who knowingly employ such children after being aware of the existence of such an agreement and they would be fined up to two hundred rupees.

The horrid sight of sending down boys under teens into the pits and drains of the streets in Calcutta to cleanse the bottom is really shocking to one's senses. This system is so pernicious that it often endangers the life of those unfortunates who fall victim to it. Every one knows the fact too well to describe but still up to this day no step has been taken to mitigate the said misery nor a word is passed to drive out such a gross evil from the face of society which persists still to the shame of the community at large even in the twentieth century.

Next point which attracts our notice is the system of double employment. Parents generally take advantage of the shorter period of work of their children and employ them in different groups in more than one factory. To check this abuse of double employment of children, the Factories Act of 1926 made a provision to prosecute the guardian or the parent of a child employed in more than one factory in one and the same day. Sec. 54, Cl. (4) of the Factory Act of 1934 has reiterated the same obligation in different form only. It states "No child shall be allowed to work in any factory on any day on which he has already been working in another factory". The contravention of the above rule will fall under S. 6° of this Act, which

provides for penalty. There was a remarkable tug-of-war between the legislation to stamp out the double employment of children and the employers to abuse the provision for the same. In Ahmedabad where this abuse was raging seemed to be impossible to be eradicated altogether. The more the temptation grew on the part of the employers for such abuses the more rapid was the change of legislation to reduce the period of work and to increase the minimum age limit for the child workers in factory. The abuse of the legislative measures are too clear even in the conduct of the parents. They bring different certificates from different surgeons in different names of the same child and employ them in various groups in one and the same day in the same mill in different shifts or in other mills. The Inspectors cannot possibly detect the mischief from the certificate or token or registry or from any other document. In those cases, parents are the first abetors in the crime perpetrated against the poor children and the managers or the supervisors who appoint them, being aware of those facts cannot escape from the charge of abetment in the second place. It is not very difficult to eliminate the evil altogether from the face of the factory system if only a provision be made to attach a photograph of the child in the token and the Certificate. Suggestion can be made to make the provision for the photograph a compulsory one and a penalty clause to be added to bring the parents and the managers to task for the violation of such provision.

The most important factor in the labour life which escaped the notice of the legislature in the past, is the employment of children in mines. Till

Children in Mines. the year 1923, children even under 12 used to come down to work in the underground along with their parents. They were often made scape-goats to excessive work for the longest period as no law was there to their interest. The first saviour

appeared in 1923 in the form of Mines Act of the same year. It afforded a semblance of shelter to the child workers in mines to breathe a sigh of relief. The Act provided that "child" should imply persons under 13 years of age, who would not be preferred an employment in the underground. But as the law lacked in rigidity, the abusers lost no opportunity to take advantage of those weaknesses and began certifying the children under thirteen as full thirteen and employed them at a low wage. The law thus passed in 1923 proved abortive due to the absence of any provision for the health certificate though age was restricted and secondly it did not take any precaution against the abusers nor any clause provided for the period of leisure of the workers. The worst part of the Act was in its culpable negligence to restrict the working period. At times the working periods in mines extended from 14 to 18 hours a day. It passes one's imagination to calculate the extent of strain to which the poor children were put to when had to work for a continued period of 17/18 hours per day. The Act of 1928 remained silent and reserved a careful connivance at the crying needs of the poor miners though it limited only the working period to twelve hours a day. It mentioned the 60 hrs. a week above the ground and 54 hrs. a week in the underground. This clause proved to be ridiculously insufficient to guard against the excessive labour and consequent strain.

Recently an amendment of the Mines Act has been made with regard to the age of the miners (¹³). It is mainly in connection with the certificate of fitness for employment undergrounds of persons who have not completed 17 years of age. In this connection, it may also be mentioned that Sec. 23 and Sec. 26 of the Mines Act have been the subject-matters of amendment. It states that 'Before any person who has not completed his 17th year is employed under-

ground, the manager shall arrange to have him examined by a qualified medical practitioner and, if after examination the medical practitioner is of opinion that such person is fit for employment underground". Section 26 of the said Act states that the period during which the above Certificate will remain valid. The period of validity of such certificate is twelve months only. Every such person who has received a Certificate but has not completed his 17th year, must be re-examined before the expiry of the twelfth month. This rule of certificate for health is not only compulsory in cases of coal mines but it equally applies to other mines in the same manner. In Chapter VI of the same Act, Sec. 17 and 20 have been amended affecting the lives of the miners other than coal. Section 17 states that "Before any person who has not completed his 17th year is employed underground, the manager shall arrange to have him examined by a qualified medical practitioner and if after examination the medical practitioner is of opinion that such person is fit for employment underground he shall grant him a certificate". The certificate so granted will be effective for a period of twelve months only.

In England, "children and young Person's Act" states in Sec. 49—"No child is to be employed to lift, to carry or move anything, so heavy as to be likely to cause injury to him up to 14 years". The section clearly evinces the attempt of the legislature to guard against the danger of carrying heavy weights. In India children are mostly engaged for the purpose of carrying goods in the coal mines as well as in the salt ranges of the Punjab to a long distance. They require a protection against heavy weights to which legislation has not yet looked to. In this respect not only England but Australia also has taken proper steps to protect the children in mines.

Illiteracy is a standing-block in the case of the young miners as in every other case in India. It is not sufficient to set up the plea of "ought" only, but an active propaganda

and arrangement for education have become imperative. Childhood should be left opened for the training and equipment rather than being engaged for wage-earning purpose. Compulsory system of education in cases of the working class would be counted as a boon to the whole nation. The upper class and the middle class have become conscious of the importance of education and they rarely neglect the training of their children. In Brazil a bill has been proposed to prohibit any employment of child below 14. Brazil has made a compulsory provision to show proof of knowledge in reading, writing and arithmetic. The Polish authorities are also contemplating a change in the minimum age of the child labour ⁽¹⁴⁾. England has made a compulsory system of education for children up to 14 with option to increase the age up to 15. The Education Act of 1918 states that no child can leave school before attaining its 14th year. Employment before the school hours has also been considered as illegal ⁽¹⁵⁾. It is a well-known fact that India cherishes illiteracy in millions and in every aspect of industrial life. There is no effective legislation which can make a compulsory education prevalent here as in other countries. No doubt some patriotic heart among the mill-owners has made a baffling attempt to fight against ignorance but to no effect.

By way of suggestion, it may be said that a definite programme should be chalked out for the training of the child workers in India. The line of work may be based on the resolution of the International Congress on Technical education ⁽¹⁶⁾. Those resolutions have considered the vocational guidance and training, the means of recruitment of instructors, the guidance in salesmanship and publicity, the use of cinema and the technical press. To carry out those suggestions, some substantive means should be fixed up.

(14) Industrial & Labour Information, Vol. XV—30th Nov. 1931.

(15) Children & Young Persons Act (Great Britain) Sec. 49.

(16) Industrial & Labour Information—12th Oct. 1931.

It may be stated by way of example that let a touring teacher's club be started in Calcutta. The club should consist of at least six batches of teachers. Each of such batch should compose of three to four trainers. Each batch must be in charge of one subject—say No. 1 batch would specialise in engineering, No. 2 in tailoring, No. 3 in weaving, No. 4, in imparting literacy only and so on. Now the batch No. 1 will start for a particular mill-area when it will put up for three months to impart elementary knowledge of mechanism and then the No. 2 batch or No. 3 batch may come to the same area to teach its own subject, thus in rotation and in accordance with the necessity of different areas the batches of trainers should be sent out by the Central Committee of the club. The Central Committee should be in direct touch with the employees and the employers equally and should be engaged in constructive work only. It should calculate the different needs of different localities and should arrange the batches of trainers and send them out accordingly. Thus even in the absence of any permanent institution for education the children will not suffer. The next suggestion may be made to introduce the system of transfer of juveniles from the depressed area to more prosperous areas. In England such system has been proved to be very successful. "Under the Industrial Transference Scheme, 19,532 juveniles were transferred between 17th February 1928 and 30th December 1933 (17). By the system of Transference, children will get chance to realise novel experiments and educate themselves in many things which would not have been possible within their own locality. Legal provisions to give effect to the above suggestions are essential.

Lastly with regard to the suggestions for the welfare-work one cannot forego thinking of the first-aid arrangement, supply of better drinking water, creches for the

(17) *International Labour Review*, February, 1935.

babies and the canteens for refreshment but there are still better things for improvement of equal or more important nature. The essential need for body is food, drink, shelter and leisure. Arrangements may be made for the supply of nourishing food through the refreshment rooms and canteens directly under the supervision of the doctors who would prescribe regular chart for the diet of the workers. The costs for such supply of food may be deducted from the wages and tickets can be issued in lieu of wage. The ration should be specified according to the direction of the medical officer. Thus the child-workers may be saved from the hands of the unthrifty fathers and careless mothers. The creation of a healthy and moral atmosphere for the children is imperative for their proper development. Libraries and clubs should be started where the child can get a pleasant teaching from the important personages who may be invited at times to deliver lectures through lantern slides. Good books and simple newspapers should be supplied to them for their information and improvement. Equipments for physical culture are absolutely necessary for the young workers. Games, Gymnasiums, drill should be introduced through clubs. Thus we can conclude by saying that "The evil inheres largely in the deprivations which it involves such as loss of schooling and loss of play". In reality with the progress of civilisation mankind is learning to respect childhood. If we fetter the sweetest period of life with the iron-band of work, the poor child will be stifled to death. Artificiality, stupidity and criminality are the natural consequences of the morbid training of our young workers. Environments should be so created as to afford the child a pure air and healthy moral atmosphere for its proper development. Legislation is required for the creation of such an environment. ⁽¹⁸⁾

(18) It may be noted here that the gist of the "Child Labour" was published in Amritabazar Patrika of...and in Advance of...The full text to be published in the Prabudha Bharata in January 1937,

WOMAN LABOUR IN INDIA

The existing law regarding women labour commenced in the year 1891, and it was successively improved by the Acts of 1911 1922, 1923 and 1934. (The Act of 1891 prohibited the night-work of women, and the Act of 1911 restricted the period of work to 11 hours a day and the Act of 1922 confirmed the fixity of working period as prescribed by the Act of 1911. The Act of 1934 has fixed daily hours of work as ten for all adult workers. It has also provided that no woman shall be allowed to work in a factory except between 6 A.M. and 7 P.M.) The Mines Act of 1923 limited the hours of work as 60 hours on the surface and 54 hours for the underground work per week. But the daily hours of work in mines are still excessive for the same body of workers, men and women, remain engaged for 16 to 17 hours at a stretch in the underground work. The Act of 1923, restricted that period of work in Mines to 12 hours a day from 1st April 1930. The Factories Act of 1922 did much towards the improvement in the conditions of women labour. It restricted the period of work to 11 hours. It prohibited the employment of women in any factory before 5-30 in the morning and 7 o'clock in the evening. It was directed by the same legislation that the same woman should not be employed in two factories in one and the same day. Lastly, it required the Manager of each factory to announce the specified time for the employment of each woman and child. The only factories which do not fall under those restrictions are the Ginning Factory and the Pressing Cotton Factory.

There are other minor restrictions regarding women workers in factory. Women and children are prohibited

from cleaning any part of the machinery in certain dangerous work. They are also prohibited from commencing work when cotton operators remain on duty. The Act of 1922 emphasised the prohibition of night work by women labour. The minor factory Acts of 1923 and 1926 did not deal with the problem of women workers. The Act of 1926 relaxed the provision of night-work of women in cases of fish-canning and fish-curing industries. The Factory Act of 1934 has empowered the Governor-General-in-Council to prohibit or restrict the employment of women, adolescents or children from any operation likely to expose any person to risk.

The sketch of the improvement in the protection of women workers in India through legislation shows a poor achievement in comparison with the development of the conditions of women labour through state legislation in other industrial countries like Europe and America.

**Poor Achievement in
India.**

It is an approved fact that labour legislation in India has followed the footsteps of the English labour legislation. But inspite of imitation, India is lagging behind. What Great Britain did in the year 1844, to regulate the long hours and night-work was achieved in India only in 1891.

Italy as early as November 1907 fixed the length of continuous rest as 11 hours and prohibited employment between 10 P.M. and 5 A.M. In Lithuania, the Act of 1895 of the former imperial Russian Code prohibited the working hours between 10 P.M. and 4 A.M. where two shifts arrangement existed and 9 P.M. to 5 A.M. in the textile industries. In Switzerland by the Federal Act of 1914, as amended in 1919, prohibited the period of employment between 8 P.M. and 5 A.M. and 6 A.M. in the winter season, for men and women in general. But a special regulation for women workers determines the prohibited period of work as between 10 P.M. and 5 A.M. in Norway, the Workers Protection Act of the 18th September 1915, prohibited the work of

women between 9 P.M. and 6 A.M. but the subsequent Act of the 11th July, 1919, amended the above Act and changed the prohibited period of work between 8 P.M. and 6 A.M. which was formerly between 9 P.M. and 6 A.M. Poland by the Act of 1924, which concerned the employment of women and young persons, prohibited the work of single shift between 8 P.M. and 6 A.M. and in case of two shifts arrangement, it prohibited work between 10 P.M. and 5 A.M. It also fixed the continuous period of rest at 11 hours in Canada and Novascotia the Factories Act of 1901, prohibited the work of women between 9 P.M. and 6 A.M. Quebec by the industrial establishment Act of 1909, prohibited the work in general factories between 9 P.M. and 6 A.M. and in Cotton Industries, between 6-30 P.M. and 7 A.M. I have here attempted to compare the legislation of those countries only the industrial life of which is of recent growth like that of India.

The Factories Act as it stands to-day has prescribed only the 11 hours rest period for women and precludes their employment between 7 P.M. and 6 A.M. (There is no distinction as to the regulation of time with the variation of season, neither there exists any differentiation between the general factories and factories of special type like textile industries and poison manufacturing industries.) The Factory Act of 1934 has provided that in respect of any seasonal factory or class of seasonal factories, the local governments can change the period of work for women. In some cases the Provincial Governments have prescribed some regulations according to their own way.

In Bengal, there are two types of Jute Mills, namely, mills with single shift arrangement and mills with double shift arrangement. Though all the Mills open at 5-30 A.M. and close at 7 P.M. still the period of interval and the period of working of machinery are different in those two classes of mills. There is an interval of $2\frac{1}{2}$ hours for rest in the mills with single shift arrangement whereas there is no fixed

resting period in the mills with double shift arrangement. The latter type of mills work for $13\frac{1}{2}$ hours, because the shifts are so arranged that alternately each group may get rest. But in reality, the theory is never translated into practice. The abuse of the multiple shift system in Bengal is conspicuous. The real practice prevalent in the jute mills has been exposed by the evidence of the Inspector of Factories.

“Respect for law rests on the degree in which that law is felt to be adapted for the satisfaction of the community’s needs and interests, public and private,” is a modern theory of law (Continental Legal History Series—Vol. I, p. 197). Keeping an eye to that theory and the environment of India, the period of work must be fixed in such a way as to cause fatigue and strain as little as possible. The community at large is responsible for keeping its labour section fit and efficient. To achieve the above ideal the working period ought to be made to vary according to the changes of season. One prescribed time cannot suit throughout the year in tropical country like India. In the hot summer, workers find it impossible to labour in the same strain from the early morning to the late evening. The labourers in plantations also suffer from the same wrong. In plantations the work of women labourers is interrupted at mid-day for meal. Because there is no fixed time for the period of rest, they suffer as much as those in the factories. In Mines also the fixity of resting period is remarkably absent. Systematic observation of rest-period is absolutely necessary in the mines.

The Act of 1891 gave $1\frac{1}{2}$ hours compulsory rest period in factories which was reduced by the Act of 1911, to half-an-hour only, but they also were changed by the provision of the Act of 1922, which specified one full hour for rest. See 45 of (a) the factories Act xxv of 34, has provided that “no woman shall be allowed to work in a factory except between 6 A.M. and 7 P.M. 10 hours rule under S. 86 of

this Act is obligatory on the part of the women labour and no exemption can be granted in this respect.

To save the fatigue of the employees in general, it is better to change the time of closing the factories in summer from 7 P.M. to 8-30 P.M. The result of such a change would be, that, $1\frac{1}{2}$ hours curved out of the resting period at night, will be available for addition to the rest-period in the noon.

The time may be arranged during the summer season in the following way :—

In the first half of the day, work may be started at 5-30 A.M. which may be continued up to 11-30 A.M. After that there may be a stoppage of work for a period of four hours. In the second half of the day, work may again to be resumed at 3-30 P.M. which may continue up to 8-30 P.M. By taking both the periods together we get 11 hours working period in a day which corresponds with the period of work prescribed by legislation (Factories Act of 1911). In winter, of course, there is no reason to change the routine-work which is at present prevalent. Because the wintry days are not very hot and as such are not likely to tell upon the nerves of the workers. The period of work in textile-industries ought however to be regulated in a different manner. It is better to prescribe the prohibited period of work in textile industries between 8 P.M. and 6 A.M. in summer ; and in winter between 7 P.M. to 7 A.M. In cases of poisonous articles manufacturing industries, Government ought to determine different periods of work as well as the prohibited periods of work by calculating the different circumstances of each case.

As regards the multiple shift system, its abolition is preferred in the best interest of the workers. The evidence of inspectors of Factories have proved the fact that the employers and their officers generally exploit the labour so cleverly as to put the Inspectors at a crux to detect the real practice. The Inspectors have submitted that it is not possible to detect from the register whether there are

several batches of workers or one, because false names of different groups are often entered into it.)

Lastly, as regards the age of women labour, a good deal of differences of opinion prevail. Some are of opinion that the age should be determined for women labour at fifteen while others are of opinion that it should be fixed at 17, and still others hold the view of increasing the age to 18. The proper angle from which the problem ought to be looked at is that of the physical fitness of the workers. It is an admitted fact that a woman generally bears a more delicate constitution than that of a man. So lifting of heavy weights in a premature age may result in organic deformity. Roughly, it may be calculated that in the 18th year of a girl her body becomes strong enough to stand the strain involved in the carrying of heavy weights. Under these circumstances at the time of the appointment of women in factories or in industries which involves lifting or moving of heavy weight the health and physical fitness of the applicants should as much be considered as her age.

It is everywhere to be found that the remuneration of women employees is usually less than that of males. They become the victims of exploitation in almost all the countries. It is argued on behalf of the employers that physically women are incapable of working as much as men. Secondly, it is argued that the burden of the family being mainly borne by the males, the women need be given no more than what they need for their own expenses. In India where neither any statutory provision for the protection of wages of women labourer, nor any organisation of women workers exists to fight for their interests, the need for the encouragement of a law fixing the minimum wages of women, can never be over-emphasised.

There are three main principles on which such a law may be based. Firstly, minimum wage may be fixed for women exclusively as has been done by the French Act of

**Wages for Women
Labour.**

1915 and the Acts of Canada, Peru, and the United States. Secondly, the principle of equal pay for equal work which has been adopted by countries like Australia, Great Britain, New Zealand, and South Africa may be adopted. In these countries rates of wages are equal in all the trades, for both men and women workers. Thirdly, for the effective regulation of wages, the collective agreement may be taken recourse to. This has been adopted by Germany, Great Britain, Irish Free State, Italy and other countries.

While discussing the question of "living wage" it is essential to know the actual standard of living of the workers. In India over four-fifths of the total income of a worker is spent on food, clothing fuel lighting rent and household requirements. The rest is generally spent on interest on debt, cermonials, sickness, travelling, remittances, liquor, tobacco, leaving very little, if any, for educational and recreational purposes.

Interest on debt lies heavy on each family budget. It is a common phenomenon in all the industrial localities, 6.65 per cent of the total expenditure is spent on interest in Sholapur. The number of families so indebted is 47 per cent, in Bombay, 69 per cent in Ahmedabad and 63 per cent in Sholapur. The rate of interest is about 75 per cent per annum or $\frac{1}{12}$ per rupee per month. The rate of interest may rise as high as 150 per cent. The cause of such indebtedness is the delay in the payment of wages the practice of bribes to secure jobs and reckless expenditure on ceremonials.

In the next place it has to be ascertained to what extent women labourers in India actually contribute to the family funds. According to the International Labour Review a woman of a Burmese family with an average monthly income of 58 rupees contributes Rs. 5-11-11 while a woman of a Tamil and Telugu family with average monthly income of about 45 rupees contributes Rs. 5-8-2 and Rs. 7-2-11 respectively.

It may be mentioned here that the general standard of the people of this country is very low. The reason for such low standard may be ascribable to the extreme poverty of the labouring class. But on tracing the cause of such permanent poverty it is to be found in the last analysis that low wages and inefficiency of labour are the two causes which contribute to the misery of the labourers. The question then arises whether high wages would ensure greater efficiency or greater efficiency would command higher wages. In any case it may be stated that both interacts on each other. It may be said that high wages would mean a better living which would cause greater efficiency in its turn while it may also be said that initial efficiency would command high wage-rate.

In considering the first principle of wage regulation, namely the minimum wage regulation for women alone, there may arise some difficulties. Firstly the male workers may oppose the same on the grounds that no such minimum fixity exists for them and that keen competition may become the standing block for them. Secondly, it is generally considered that the family responsibility rests heavier on man's shoulder than on woman.

The above difficulties may be solved in the following way. To avoid competition a fixed minimum may be laid down without any regard to either sex, the purpose behind such legislation being always the maintenance of the legal minimum of women alone. The other solution may be suggested that the minimum wages should be kept at the level of the "living wage" of an adult woman so that there may not arise any cause for competition. The second difficulty may be overcome by allowing family allowance. The minimum wages will remain the same for both the sexes but where circumstances so require, extra allowance may be given. Then the question whether women also carry burden like men or not, will not arise.

In discussing the second principle, *viz.* equal wage for

equal work, it may be said that though there are many advocates of this principle, yet it is not altogether free from all drawbacks. The first difficulty under this principle is that in a country like India where no two industries pay the same rate of wage in the same locality, the flat-rate system for both the sexes will not meet with success without causing some grievance to the employers as a class. The second difficulty is that in places where the union of women workers does not exist at all, the interest of the same class of workers cannot be guarded with steady precaution. Lastly, there is no guarantee that the principle will be maintained by all. The initial difficulty in giving equal wage for equal work will be how to determine that two works are just the same except in some cases. So, ultimately the question of the determination of wage and quality of the work will become supreme and confusive.

The last principle of creating a machinery for fixing the minimum wage is a very sound one. This was also recommended by the 11th session of the International Labour Conference.

As rent is the return of land so wage may be said to be the return of labour. It is stated by Prof. V. J. Kale that "From the economic and social points of view, the question of wages is important because apart from the consideration of justice, there is an undeniable fact that on the condition of the wage-earner depends not only the efficiency of well production but the well-being of the bulk of the population and, therefore, of the whole community". So it becomes incumbent upon the State to discuss and find out some principles for the determination of wages."

In this respect different theories have been put forward by the representatives of different interests. The employers would advocate the theory of supply and demand of labour, whereas the wage-earners would demand their shares in the "ill-gotten gains" of their masters. There would be no end of that contention to determine wages

between the two opposite sets of interests. So it is better to launch at once on a search for truth and commence to investigate theories and facts consecutively. Of the prominent economists who devoted themselves to solve the problem, some were of opinion that the supply of and demand for labour formed the basis of wages. Labour was a commodity, so its value depended upon the theory of price. Prof. Seligman objected to it on the ground that the theory of demand and supply showed only proximate rather than an ultimate explanation. Others held the theory of cost of production to be the determinant factor of wages. They argue that the case of reproducible commodities were governed by the normal value which, in its turn, was determined by the cost of production. Labour being a reproducible commodity it ought to be governed by the theory of the cost of production. That theory is equivalent to the theory of minimum subsistence—the Iron law or Brazen law of Wages.

The above theory may be challenged on two grounds. Firstly, it had a wrong analogy that labour was equal to the ordinary reproducible commodity by neglecting the fact that there might be an automatic check on population. Secondly, the very basis of the theory of cost of the production was the theory of price which being defective in itself, could not support the theory of wage. Others uphold the wages-fund theory. It rests on three pillars of support. The first is that wages are paid out of capital ; the second is that fund or capital is fixed at one time and place ; and the third that the share in wages proportionately increases or decreases according to the number of labourers. If the number of labourers increase, wage would be reduced ; if its number be decreased its rate would go high. Those statements are based on wrong grounds. The former arguments are falacious for wages are only advanced capital but not paid out of it. Secondly, the capital is never fixed as is assumed and

thirdly the presumption of the fixity of dividend is erroneous.

The theories propounded by Taussig and Marshall are the most recent ones. The discounted marginal product of labour is the basis of Taussig's theory. The expression "marginal product" is obvious but what is meant by 'discount'? 'Discount' means an advance. Production in modern industrial organisation is a roundabout process which takes a long time for completion. So the labourers get money for maintenance before their production is actually sold in the market. But the doctrine that wages depend upon the discounted marginal product of labour, is vague and an abstract one which is remote from the real life. If the rate of interests be taken to depend upon the excess over the advance made to the labourer from the future sale of its products, then the rate of interest cannot be the determining factor of the wage rates. Because the rate of interest would then be the result of the process of advance made to the labour. A third objection is this: Taussig like Walker, makes the labourer a residual claimant. The labourer gets that amount which remains as balance after deducting rent and interest from the gross income.

Marshall has declared the theory of marginal productivity. It implies that the sum of the products ascribable to any of the workmen must be equal to the additions made by the last of the marginal labourer actually at work. This theory has exploded almost all the previous doctrines.

The best way to achieve the ideal of getting the "living wage" for women labour is by way of fixing the minimum wage through legislation. The minimum wage must be such as to cover the expenditure of an adult woman in support of her "fair and average standard of comfort." But in fixing the minimum wage, account must be taken of the "nature of her duties." Three important elements may be indicated to fix up the minimum wage. Firstly, the economic condition of the industry; secondly, the clear determina-

tion of the "living wage" and lastly, the comparative view of the 'nature of' duty. By the economic condition of an industry I mean the paying capacity of the industry in question. "Living wages" means that a woman ought to earn as much as she requires to maintain "fair and average standard" of comfort. 'The nature of duties' signify the value of the output. The consideration of all the above factors can lead to a judicious determination of the living wage.

The saying that "Mothers are the makers of a nation" has correctly brought out the spirit of

Perils and Pitfalls. the importance of motherhood. Society would have become crippled in the absence of good mothers. They meet the vital needs of society. Because each individual owes his development to the mother. It would not be an exaggeration to state that the protection of women employees is of paramount importance for the growth and sustenance of society, nay, that of a nation.

Women are generally susceptible to the evil effects of an industrial life. Poison manufacturing concern and explosive factories are really dangerous. In India, we do not face strictly a danger of the latter type, still the hazards of a similar nature may arise from the preparation of inflammable substances. Works which involve carriage of heavy weights and out-door activity are equally harmful. Under these conditions provisions should be made for safeguarding women workers against the actual and the potential menace of the industrial life.

On tracing the history of such protective measures from the year 1911 to 1935, it may be noticed that actually very little has been done to safeguard the interests of women workers. The Factories Act of 1911 provided that women and children were prohibited from working during the cleansing of dangerous machineries. It also restricted their employment when the cotton openers were at work. Then the Factories

Act of 1922 afforded an additional protection to the women employees and prohibited the employment of women and persons under 18 years in zinc or lead works, in the manufacture of solder or alloys containing more than 10 per cent of lead or mining or pasting in connection with the manufacture or repair of electric accumulators. The Factories Act of 1934 is the latest enactment which has improved little upon the above measures. Section 27 of the same Act forbids the employment of women and children for the purpose of cleaning or oiling any part of the machinery of a factory while that part is in motion under power, or in any work which has to be performed between moving parts or between fixed and moving parts of any machinery which is in motion under power. Under S. 57, the Local Government has been empowered with the maximum capacity to put restrictions on the employment of women.

Section 28 of the Act of 1934 has prohibited the employment of women and children near cotton-openers. Sec. 33 has given an additional power to the Local Government to make health and safety rules and hazardous operation. Sec. 33 Cl. (4) states that "where the Governor-General in Council is satisfied that any operation in a factory exposes any persons employed upon it, to a serious risk of bodily injury, poisoning or disease, he may make rules applicable to any factory or class of factories etc." This section seems to be vague and in actual working it has little practical effect. It empowers the Governor-General in Council to make rules but the condition is that he must be satisfied that an act or operation exposes a person to serious danger. The provision lacks in definiteness by not mentioning the conditions of satisfaction. Then the whole thing has been left to the discretion of the Governor-General. It is therefore felt that the section should have been so framed as to make it obligatory on the Government to make provisions for the safety of the workers against specified risks.

There may be some difficulties in the way of legislation against the hazards of employment. It may be that fresh peril may spring up from an unknown region and that the existing dangers against which steps have been taken may not exist due to the invention of some new machine. But regulations may be framed in such a way as to obviate the difficulties to enhance the interest of women workers. Regulations may be special or prohibitory. If it be special, then a complete prohibition of employment would be enforced whereas if it be prohibitory then employment would be permitted under certain restrictions. It is also possible to adopt a joint method of the above two regulations.

A complete prohibition of the employment of women in industries manufacturing poisons like mercury, white-phosphorous and arsenic, has been adopted by countries like Rumania and Switzerland since 1919. Special measures concerning women have also been taken recourse to by many other countries like France, Germany and Great Britain ('Women's Work under Labour Law' 1932). India has adopted restrictive measures regarding manufactures of mercury and lead phosphorous. With a view to a gradual improvement in Indian chemical industries, it may be suggested that the protective measures should be extended to other chemical products as well. Industries which deal with chromiun, chlorides, tin-salts, sulphuric, exalic, nitric, picric, hydrochloric, carbon-disulphide, benzine and its homologues should be closed against women workers.

It is well-known that women often suffer from organic trouble due to the manipulation of heavy weights. All the civilised countries have adopted some one or other form of regulation to control the carriage of heavy weight by women employees. In some cases, the restriction of carrying heavy weight is complete and in others it is merely prohibitory. The prohibitory regulations have determined

certain maximum weight up to which workers are permitted to carry. For instance, France has fixed 55 lbs. as the maximum weight for adult women. Great Britain has fixed the same at 65 lbs. when the body is compact and rigid and in other cases at only 50 lbs. Italy's maximum weight limit is 20 k. g., and that of U. S. S. R. is 16 k.g. (International Labour Review, Sept. 1919, "the maximum weight of loads").

In India such provisions are conspicuous by their absence. So it is imperative that certain maximum weight for woman labour should be fixed without any undue delay to guard against serious troubles.

The question of moral danger for women workers has attracted the notice of the legislatures of different countries. No one can gainsay that there are certain classes of work which really involve the risk of moral degradation of women employees. The French Industrial Code, Sec. 72 of Book II, the German Industrial Code, Sec. 139A, the Swedish Workers' Protection Act of 1912, Sec. 21 have made clear provisions for the protection of women labourers from such danger.

Looking at the problem from the Indian standpoint it seems imperative that she is badly in need of a law to guard against moral danger of women. The nucleus of danger as located by other countries lies in the external activity of women. There is really sufficient reason to believe that the moral danger emanates more from out-door work than in-door work. If we consider the case of India, it will be found that the demand for women employees for out-door work is increasing rapidly. Women coolies, women hawkers, women canvassars are not rare. The advertisement columns of the newspapers often show the demand for women canvassars for sewing machine and insurance Companies. All these go to prove the proclivity of demand for women workers. In Brazil, the code for

the Employment Of Minors of 1926, prohibited employment of unmarried woman under the age of eighteen. In the same way, it is desirable that a certain age limit, say thirty, should be statutorily fixed in India, before attaining which no woman shall be eligible for employment in outdoor work like newspaper selling, canvassing and hawking.

It is better to elucidate the idea of the subject-matter at the very beginning of this article.

International Maternity Benefit Legislation.

The term "Maternity" covers principally three periods of a woman's life : firstly, Ante-natal, secondly, Confinement and thirdly Post-natal Periods. During these three periods, woman labour requires help from the master and from the Government. Because the protection of labour is not the duty of a government alone, neither it is an exclusive look-out of the master who are in need of labour. It is society as a whole which is responsible for an important section which stands as a prop to it. Government is nothing but a mere organ through which the State works, whereas, the State is but a bigger society. Ultimately it will be found that Government is as much responsible for the welfare of women workers as the masters and the labourers themselves, because society is composed of the labourers, the capitalists and the consumers. Now let us see who should take responsibility and to what extent for their welfare during the above three periods of life. The discussion will be comprised of the different legislations regarding such maternity help before, during and after the confinement of women workers.

The opinion of the Convention of the International Labour Organisation which was held in the year 1919 at Washington concerning the employment of women before and after child-birth, will be of some importance in this connection. It wanted to suggest some provisions for the protection of women labour. The suggestions run as follows.

Some definitions of terms concerning the maternity

benefit legislations of the world are necessary in order to help the readers to follow the suggestions. The Washington Convention has defined "Employed Woman"—as every woman, without any distinction as to age, nationality and marriage. It does not consider whether the child is legitimate or not. Whoever is engaged in an industrial or commercial undertaking, public or private, or in any branch thereof other than an undertaking in which only members of the same family are employed. Then it proceeds to explain the signification of "Industrial Undertakings." These are, extraction industries like mines and quarries, industries in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity or motive power, construction, maintenance, repair, etc., of buildings, railways, harbours, piers, canals and transport of passengers or goods excluding transport by land. By "Commercial Undertakings", the Convention means any place where articles are sold or where commerce is carried on.

According to the Convention women workers should have the right to be absent from work before and after child-birth. The period of absence is prescribed as 6 weeks before confinement, on production of a medical certificate stating that it will probably take place within 6 weeks. They will equally enjoy 6 weeks' leave after the child-birth. It is of opinion that during the period of legal absence they should not be dismissed from work. Regarding benefit, they should get. (1) cash benefit and (2) free attendance by a doctor or certified midwife.

In connection with cash benefit, the question may arise as to the source of fund. The Convention suggests that the fund may be created either by public charity or by a system of insurance. The benefit should be received by a woman worker from the date she is absent from work by virtue of a medical certificate and that it should continue for six weeks after confinement.

In Great Britain, two successive legislations were enacted to protect maternity interests of women workers. They are : (1) Factory and Workshop Act, 1901 and (2) National Health Insurance Act of 1924. Sections 61 and 103 of the Factory and Workshop Act of 1901 and Sections 14 and 56 of the National Health Insurance Act of 1924, deal directly with the maternity benefit system in England. Laundries, factories and workshops are all governed by the said Acts. In Great Britain insurance is compulsory for women workers. Married women get greater privilege than the unmarried women by receiving the double benefits. Women are prohibited from working for a period of 4 weeks after child birth. Under the National Health Insurance Act of 1924, the compulsory sickness insurance has been introduced in England. A directly insured person receives an allowance of not less than £2, whether married or not. But to be eligible to draw the same it must be shown that the payment of contributions for 42 weeks, and 52 weeks in case of voluntary insurance, has been made. A married insured woman, or a widow giving birth to a posthumous child, may draw from her husband's insurance, or from her own, a second confinement allowance of a sum of £2. But the cost of granting a medical certificate is always deducted from the allowance. In case the woman employee becomes sick in the postnatal period, she would receive not less than 12s. a week for 26 weeks under sickness benefit system. If the said incapacity continues for a longer period then she would receive 7s. 6d. per week under invalidity benefit system.

Up to the year 1928 France has enacted a good number of legislations regarding the protection of women workers. They are eight in number. Legislation regarding woman labour was passed for the first time and incorporated in the Labour Code of France, Book I, as amended by the Act of January 4, 1928. The second legislation with respect to woman worker contains in the Labour Code, Book II,

sections 54 (a), 54 (b), 54 (c) 54 (d), and 54 (e). The third regulation governing their interest is the Act of June 17, 1913. It provided for the relief of women during childbirth, as amended by the Act of December 2, 1917 and the Acts fixing maternity and nursing benefits on the Budget Act of July 30, 1913. Finance Act of 1921 and Budget Act of 1930-31. The fourth regulation is the Decree of March 11th, 1926, concerning provision for nursing mothers. The fifth is the Social Insurance Act of April 4, 1928, Sec. 9, as amended by the Act of April 30, 1930. In the sixth place stands the Act of March 15, 1910, concerning maternity leave for women teachers. The seventh and the eighth regulations were passed in 1911 and 1928 respectively which contributed much towards the benefit of the woman worker in France.

The above-mentioned series of Acts will govern generally "French women with no resources." Specifically it may be said that it covers those wage-earners whose wages do not exceed 15,000 francs and who are liable for compulsory insurance ; women teachers in public schools ; wage-earners having one child to maintain and whose wages do not exceed 2,000 francs : the female staff of the postal, telegraph and telephone services and lastly the female employees on the permanent staff of State administrative bodies or undertakings. The French law further directs that "work may not be resumed until a medical certificate is obtained stating that the mother has recovered," which shows a great liberality to afford every scope to the women workers to recoup in the post-natal period. The mother can enjoy one month's leave before and one month after the birth of a child. There is provision even to extend the leave to two months when it is found necessary by medical examination. During the period of absence of two months, and the extension of the same for another two months full salary is allowed under the law. There is also provision for nursing allowance and maternity allowance to those labour-

ers. The nursing allowance is afforded for a period of six months amounting to 15 to 75 francs of which the State pays $\frac{3}{4}$ and the department and municipality the other $\frac{1}{4}$. "The maternity and nursing allowances are proportionately raised in the case of multiparity."

According to Social Insurance Act of 1928, a compulsory social insurance system has been enforced in France. The benefit of such insurance is incalculable. The woman is to receive the benefit of 50 per cent of average wage, 6 weeks before and 6 weeks after confinement. But there are some conditions which the beneficiary has to observe in order to maintain eligibility to receive the same. She should not be engaged in any remunerative work during her leave and must have contributed for 60 days during the 3 months or 240 days in the 12 months preceding her pregnancy. Nursing allowances for not more than 9 months are allowed under the said insurance system. It is paid for the first four months at the rate of 150 francs, and for the fifth and sixth months at the rate of 100 francs, and 50 francs from the 7th to the 9th month. Even the milk vouchers are given for not more than $\frac{2}{3}$ of the value of the benefit. In cases of "pathological pregnancy" ordinary sickness benefits are granted. If sickness continues for longer period, then the benefit under invalidity insurance takes effect for 6 weeks.

In Germany, there exist four different sorts of legislation to govern the interests of women workers. The Act of 16th July, 1927, concerning the employment of women before and after child birth, has become amended by the Act of 1927. Then comes the Federal Insurance Code of which the sections 195, 200 and 205 are in direct touch with the interests of women workers. This Act has been amended by the Acts of 9th July, 1926, and of 18th May, 1929. The Orders of 13th February, 1924, and of December 4, 1924, concerning compulsory social relief, and the Principles of 1st August, 1931, concerning the method and scope of relief, were promulgated in favour of woman labour. Lastly, the

Decision of the Federal Cabinet Council of July 24, 1923, and that of August 2, 1923, are also of great importance.

These legislations govern the following classes of women workers :

(i) All married women officials ; (ii) Poor women who are not entitled to insurance benefits ; (iii) Women wage-earners in industry, agriculture and domestic service ; (iv) Women wage-earners in commerce whose wages per year do not exceed 3,600 RM ; (v) Women wage-earners who are liable for compulsory sickness insurance excepting those engaged in forestry, cattlerearing and fishery or in subsidiary under-takings employing not more than 3 persons, or in domestic work.

Women workers are prohibited under the law from working during two weeks before the birth of the child and four weeks after. But any one can resume work on the presentation of a medical certificate. They have the right of absenting from work for four weeks before and six weeks after confinement. They cannot be dismissed during the period of absence up to twelve weeks and if necessary the same may be extended for six weeks more. Even after they join work, the mothers receive certain facilities for nursing the babies. The hours of service should be so arranged as to permit the mothers to nurse their children twice in the day for half an hour each time comprising one hour extra break. German women receive two sorts of benefits during their period of absence. The first benefit is received under compulsory sickness insurance and the second benefit is derived out of Public Relief. Under compulsory sickness insurance they receive medical attendance and a fixed allowance of 10 to 25 RM. as a contribution to the cost of confinement. Before confinement, they receive three quarters of the wages for a period of six weeks or longer if confinement be delayed. But the said allowance is given only when they abstain from any remunerative work, and if they continue work they receive

half of their wages. The system of paying an allowance of half the wages but not less than 0.50 RM. for six weeks after confinement is also in vogue. There also exists a system of bonus for nursing which amounts to a quarter of the wages for not less than 12 and not more than 26 weeks. The condition precedent to obtain the above benefits is the payment of insurance premium for six months before the ten months preceding confinement.

Public Relief is the second source of benefit through which women workers of Germany get aid. They receive medical attendance, certain contribution to the cost of confinement and an allowance of not less than 0.50 RM. for four weeks before child birth and six weeks after it. It also pays a nursing allowance of at least 0.25 RM. for a period of twelve weeks.

Italy heads the list of all the countries in point of the number of legislations regarding woman labour. She has passed eleven Decrees in connection with the protection of her women workers. The are as follows :

(1) Royal Decree No. 818 of 1907—This is an uniform text of the Act relating to the employment of women and children.

(2) Decree No. 1136 of 1916—This is meant for the application of the above decree No. 818 of 1907.

(3) Decree No. 2157 of 1923 has approved the Maternity Fund.

(4) Royal Decree No. 3158 of 1923—This has been passed with respect to compulsory insurance against unemployment.

(5) Legislative Decree No. 1825 of 1924—This has been enacted to control the contract of employment of salaried employees.

(6) Decree No. 530 of 1927—This decree has approved the General Regulations regarding industrial hygiene.

(7) Legislative Decree No. 850 of 1929—This has given directions to bring about the welfare of the women wage-earners and salaried employees during pregnancy and confinement. (This Act has been converted into the Act of 1929).

(8) Royal Decree No. 1358 of 1930—This decree is meant for the application of the above, Legislative Decree.

(9) Health Act No. 636 of 1907—This is mainly meant for labour in rice fields.

(10) Royal Decree No. 312 of 1930—This also has been passed in connection with rice fields situated in the Province of Rome.

(11) Decree No. 99 of 1926—This has given directions for affording benefit to those who work in the administrative staff of the postal, telegraph and telephone services, in cases of sickness and accident.

The law regarding maternity benefit governs all women workers and employees in industrial and commercial undertakings saving the family undertakings (*i.e.* working at home). It may be extended to women workers engaged in arduous agricultural work by a decision of the Minister. In connection with this it may be mentioned that in Italy insurance is compulsory for all women workers between 15 and 50 years of age as well as for all women employees in industrial and commercial undertakings according to the Legislative Decree of 13th May, 1929.

The employment of women is prohibited for one month before and one month after childbirth. There is a provision for the reduction of the same to three weeks before and three weeks after childbirth on the production of a medical certificate. But women workers have got the right under law to remain absent from work for six weeks before confinement. There is a provision for two months' special leave in addition to the ordinary annual leave. Then 30

days' ordinary leave may be taken after 60 days' leave for confinement. They run no risk of dismissal and full pay is given during the legal absence of two months and during the further ninety days' leave on account of sickness after confinement.

The Italian law provides the mother with two extra breaks of one hour each in case of the non-existence of any accommodation and of half an hour each when accommodation is provided. In the former case, women workers can leave the premises for nursing their babies. In cases of pregnancy, notification is absolutely necessary and when it is notified, dismissal is forbidden on certification for six months, except for serious misdemeanour.

Japan has not neglected the interests of women labour. She has passed four legislations governing their health and interests: (1) Factories Act of 1923, (2) Imperial Ordinance No. 153 of 1926, (3) Regulations of 1916 and (4) Sickness Insurance Act No. 70 of 1922. In Japan the compulsory insurance system has covered persons employed in undertakings within the meaning of the Factories Act and Mines Act excepting the salaried employees of administrative offices whose annual salary exceeds 1,200 yen.

Women workers are prohibited from working for four weeks before child-birth and six weeks after it (or on a miscarriage occurring after four months). The period of compulsory prohibition from work after child-birth may be reduced to four on the production of a medical certificate of fitness. But the Prefect has the power to order the employers to restrict or prohibit the employment of a woman immediately after child-birth in special cases. The mothers are allowed to get two breaks of half an hour each, excepting those who are employed underground because there is special provision for the latter. In Japan, the compulsory insurance system provides a lump

sum confinement allowance of 20 yen. Women workers receive 60% of the daily wages as daily maternity benefit for a period of twenty-eight days before and forty-two days after confinement. When medical attendance is granted the allowance is generally reduced to 10 yen. As a condition for having the benefits under insurance, women workers must be insured at least 180 days during the year before confinement.

Lastly, with reference to India it may be said that there is practically no law at all meant exclusively for women labourers as a whole. There remain only two stray Provincial Acts, *viz.*, Maternity Benefits Act of 1929 in Bombay and that of Central Provinces passed in the year 1930, which has also been adopted recently by Madras. No Act passed by the central legislature exists to govern all the workers of all the provinces. The Bombay Act covers women workers in factories in the city of Bombay and in certain provincial towns. Whereas the C.P. Act covers women workers in factories governed by the factories Act of 1911. Bombay and Central Provinces both permit 3 weeks' leave after confinement and 4 weeks' leave before it. The post remains open during the seven weeks' absence. The laws are not mandatory but permissive with regard to the dismissal of the worker, as it goes—"A woman may not be dismissed during maternity leave or at a date such that the notice would expire during her leave."

The employer pays 8 annas a day during the 3 weeks before and the 4 weeks after confinement. To get the above privilege woman worker must abstain from all remunerative employment and must have been employed in the factory for at least six months before the absence for maternity.

The following suggestions may be made in connection with the Indian law regarding woman labour :

- (1) There should be regulations passed through the

central legislature to cover all women workers of different industrial and commercial undertakings.

(2) A compulsory insurance system must be provided for so that maternity benefit may be afforded to in the ante-natal and post-natal periods. It should also offer a nursing bonus of not less than 10 as. a day. Medical aid should be offered, the cost of which may be deducted from the allowance.

(3) Condition for getting such allowance may be restricted to the payment of certain number of premiums before confinement rather than making the allowance depend on the period of service.

(4) The fund of the insurance may be built up out of (i) the contribution of the employer ($\frac{1}{3}$), (ii) the contribution of the employee ($\frac{1}{3}$), (iii) the contribution of municipality and local government ($\frac{1}{3}$).

Thus the maximum benefit may be afforded with ease to the mothers of the poor children of the labour class which constitutes the most important section of our country. ()

(1) The article on "International Maternity Benefit Legislation" was published in the Insurance and Finance Review of May 1935.

ADULT MALE LABOUR IN FACTORIES

The adult male workers have played the most important part in the industrial life of India. Their existence can be felt in the factories and mines, docks and railways, plantations and agriculture and in every sphere of the life. It would not be out of the place to state that at the present moment the labour element should attract our maximum attention from the aspect of legislation. The commencement of the labour legislation in India may be traced from the last century. Those legislations are not all-pervasive in nature neither free from defect altogether. In spite of every deficiency, it can not be denied that they have really formed the charter of safety for the poor labourer. Legislations have been passed and amended almost at a reasonable interval. They are purported to do away with the varied grievances of the factory workers, dock labourers, miners and mariners as well as of the workers in plantations. The cause of the different groups of workers mentioned above will be dealt with consecutively.

From the statistics of the Government record it will be found that the number of factories are daily increasing and the number of employees are swelling by leaps and bounds. The above statement may be supported by the following figures which have been taken from the Statistical Abstract for British India (1922-23 to 1932-33). The table of figure is given in the next page.

Year	Total number of Factories	Total number of hands employed daily
1922	5,026	086,457
1923	5,973	113,508
1924	6,496	147,729
1925	6,926	180,919
1926	7,251	208,628
1927	7,515	222,662
1928	7,863	216,471
1929	8,129	249,165
1930	8,148	235,425
1932	8,143	170,372

The following table will clearly delineate the fact that the number of workers is in waxing even in the different branches of Industries. (1).

Branches of industry	Years					
	1927-28	1928-29	1929-30	1930-31	1931-32	1932-33
Railway (including railway workshop and transport)	57,239	10,658	159,444	127,689	127,123	122,667
Tramways	1,716	253	4,074	2,148	2,438	1,834
Textiles	19,114	16,776	16,183	19,153	26,310	21,485
Engineering	...	15,590	445	812	598	...
Printing Presses	153	249	3,404	2,534	1,440	2,966
Municipality	1,857	2,359	2,455	3,094	2,829	3,830
Seamen	19,501	27,477	37,121	46,094	54,403	52,361
Docks & P. Trust	...	4,431	6,170	5,458	5,646	6,910
Miscellaneous	1,039	11,284	13,059	12,133	14,906	25,316

(1) The figures are taken from the Statistical Abstracts for British India (1922-33 to 1932-33)

From the above facts and figures, it can be said conclusively that the factory legislation in India is of great importance at the present day. But unfortunately the factory legislation is still vague and unworkable without rampant change in its provisions. One remark from the judgment of Mr. J. Lort-William and Mr. J. Mullick in the case of Superintendent Remembrancer of Legal Affairs Bengal vs J. J. Andrews (59 Cal 519) may be mentioned in this connection. The judgment runs thus. "The Act is carelessly and loosely drawn. Drastic redrafting and amendment of this important Act seem to be required urgently."

↓ The development of the factory law from the year 1881 down to 1934 is an interesting one. It shows the gradual evolution of the series of rights and privileges of the mill hands. It is said with regard to the policy of legislation that "gradualness is the keynote in the past and a safe guide for the future." The Factories Act XV of 1881 was the first Act which empowered the local governments for inspection of the factories. It made provisions for the safety of the workers by making it compulsory to fence the dangerous machinery and to notify the accidents. The Act was applicable to factories which employed not less than 100 persons. It excluded children under 7 years while child from 7 to 12 became "half-timers." The second Factories Act was passed in 1891. It improved upon the first by widening its scope to a greater extent. It raised the age of the "half timers" from 7 to 9 years. It became applicable to all the establishments which used power and which employed not less than 50 persons. In addition to that the local governments became empowered to extend the scope of the Act even to those factories where only 20 persons worked. Though no limitation was put on the working hours of the adult yet a period of interval was prescribed definitely. It reduced the working

hours of the "half-timmers" from 9 to 7 and prohibited their work in dangerous jobs. Half an hour interval on each working day was made compulsory for the adult male and a day of rest was to be given in each week. Measures were also taken to secure ventilation and cleanliness. This Act was also important for its protection given to women labour by fixing the period of work to 11 hours. The third Factories Act of 1911 sought to bring about a further progress in the lives of the male workers. Their working hour in the textile industries was limited to 12 hours a day and special measures were adopted to secure better sanitation and greater safety. After the Act of 1911, there came about a thorough change in the industrial life of India due to the Great War. It reduced the hours of work of the child from 7 to 6 hours a day. The Factories Act of 1922 appeared to face the new demands of the growing industries. It could be applied to any factory using power or steam and employing more than 19 persons on any day. The local Governments had the option of increasing the scope of applicability of the Act to the factories employing even 10 persons. The maximum period of work was fixed up as 11 hours a day and 60 hours a week. In cases of overtime work, wages were to be increased proportionately. One resting day was prescribed by the legislature after 10 days' consecutive work. For the violation of the rules prescribed by the legislation, penalties were made severe and hard. Subsequently several amendments were made on the Factories Act of 1922. The amendment of the factories Act in 1926 was not of much importance. The principal amendments were only two in number. The first was a penal provision prohibiting the guardians to employ children in more than two factories and the other was the regulation with regard to the temperature of the factories. Another amendment of the Factories Act was made in the year 1931 which aimed at the relief against fire accidents. Finally came the Factories Act

(XXV) of 1934 which requires a fuller treatment in this connection. *

The Factories Act (XXV of 1934) is extended over the whole of British India which includes Beluchistan and the the santhal Parganas. The signification of certain terms which are often used in connection with the factory work is required to be elucidated before entering into the main provisions that guard the interest of the workers. The technical meanings are given in S. 2. of the said Act. It has described "adolescent" as a person who has completed his fifteenth year but has not completed his seventeenth year. The person who has completed the seventeenth year should be considered as "adult" whereas a "child" should mean a person below fifteenth year. The age above seventeenth is the age of majority in the eye of the factory law whereas below fifteenth year is the period of childhood. The "day" under this Act contains twenty four hours beginning at midnight and the week covers a period of seven days commencing at the midnight of Saturday. It has described "power" as electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. The words "any other form of energy which is mechanically transmitted" should be interpreted *ejusdem generis* with electric, steam or water power and do not include hand power⁽²⁾. The terms "manufacturing process" implies any process for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale, trans-

* (In connection with the treatment of the Factories Act (XXV of 1934) it may be stated here that chapter V of the said Act which deals with the "Special Provisions for Adolescents And Children" and Ss. 27, 28, 29 and 45 have been discussed in the chapters of "Child Labour" "Women Labour" respectively).

(2) Ref. Wilmott V. Paton, (1902) 1 K. B. 237.

port, delivery or disposal or for pumping oil, water or sewage or for generating, transforming or transmitting power. The words "manufacturing process" include laundries, carpet beating or bottle washing also ("). The process of putting ginned cotton into bales and that of pressing, should be considered as work pertaining to the "manufacturing process" and the workers to be considered as employed in the factory (+). The implication of the term "worker" is that any person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for the purpose of manufacture or for any other work incidental to or connected with manufacturing process or the subject of the manufacturing process. It excludes persons engaged in a clerical capacity in any place where no manufacturing work is done.

The term "factory" and its meaning have been the apple of discord for a long time. It has been stated by the Act that "Factory" means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Indian Mines Act of 1923. In other words the term factory implies a premises where from the process of making or finishing of an article up to the marketing stage is carried on (3). It included anything—machine, rooms, sheds, godowns and yards. If some sort of mechanical power is used for altering for transport or sale

(3) Ref. (i) *Owner V. Cottingham Sanitary Steam Laundry Co. Ltd.* 740. J. P. 219 ; (ii) *Johnstone V. Lalonde Bros and Parham* (1912) 3 K. B. 218. (iii) *Royal Masonic Institution for Boys V. Parkes* (1912) 3 K. B. 212. (iv) *Patterson V. Hunt* (1909) 73 J. P. 496.

(4) Ref. 143 I. C. 772

(5) Ref. 109 I. C. 599.

of any article, then those precincts are factory (6). The drying yards used for drying ground nuts where machinery for decorticating the ground nuts is used is a factory (7). The Railway workshops are factories within the meaning of the Act (8). If the "power" be used in part of the building, then every part of it should be taken to be part of a factory (9).

Then comes the question who are the persons employed in a factory. The answer to it is that any person who works in a factory whether for wages or not may be taken to be employed in that factory (10). It may be pointed out here that those persons who are engaged simply for selling the manufacturing articles do not come within the definition of "employed" in that factory though they may occupy a room in it (11). It should also be noted along with this connection that it is incorrect to state that the Factories Acts govern only the manual labourers (12). The term "machinery" implies all plant by which power is generated, transformed, transmitted or applied. By "occupier" of a factory, the Act means the person who has ultimate control over the affairs of the factory. If a managing agent is entrusted with the affairs of a factory then that agent should be counted as an occupier of the factory. "Occupier" generally indicates a person who occupies the factory either by himself or his agent. He may be an owner, he may be a lessee or even a mere licensee, but he must possess the privilege of occupying the property and order the rules for management (13). It has got the same meaning as that of the enactments in England—occupier is a person who regulates a factory and who controls the work that is done there. The word "relay" means the different

(6) Ref. 50 M. 834 = 52 M. L. J. 207.

(7) Ref. 100 I. C. 235 = 50 M. 834 = 52 M. L. J. 207.

(8) Ref. 52 Bom. L. R. 329 = 126 I. C. 867.

(9) Ref. 4 Q. B. 209.

(10) Ref. 151 I. C. 763 = 38 C. W. N. 801.

(11) Ref. 109 I. C. 599.

(12) Ref. 152 I. C. 566.

(13) 55 B. 366 = 133 I. C. 826.

sets of workers who work during the different periods of the day and that period or periods for which each set works is called a "shift". The meaning of the term "prescribed" is that the rules as prescribed by the Local Government under this Act.

Reference has been made before as to the time of day in this Act. Under S. 3 it implies that in British India excluding Burma, the time is referred to Indian Standard of time which, is five and half-hours ahead of Greenwich Mean Time.

This Act has classified the factory system into two parts namely seasonal and non-seasonal. This classification was made originally with the purpose of treating the adult hours and other factors with convenience. According to S. 4 Cl (I) a factory which is exclusively engaged in one or more of the following manufacturing process, namely, cotton ginning, cotton or jute pressing, the decortication of ground-nuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea, or any manufacturing process which is incidental to or connected with any of the afore-said process, is a seasonal factory. The Local Government alone can declare, any manufacturing process which ordinarily carry on work for more than one hundred and eighty working days in the year, not to be a seasonal factory under this Act.

The duties of the factory owners and occupiers may broadly be divided into two groups, namely (i) rules to be maintained for health and safety of the workers and (ii) restrictions to be observed with regard to the working hours and notifications and Register of the workers.

**Duties of the Factory
owners and occupiers.**

Regarding the duties pertaining to the first group, one will observe that emphasis has been put on cleanliness, ventilation, over-crowding, lighting, watering, latrine and urinals, precautions against fire, means of escape and fencing.

Every Factory, under S. 13, shall be kept clean and free from any bad gas emitting out of any drain, privy or other nuisance and shall be cleansed either

Cleanliness.

by lime-washing or colour-washing, painting, varnishing, disinfecting and deodorising as may be prescribed. The factories under S. 14 Cl. (i) are under obligatory duty to maintain ventilation in accordance with

Ventilation.

such standards and by such methods as may be prescribed. The factory owners and occupiers are to prevent injury to the health of the workers due to gas, dust or other impurity which may be generated in the course of work in compliance with S. 14 Cl. (2). In connection with accommodation, it is said that sufficient space for the workers must be afforded to avoid the over-crowding of workers. Under S. 17 the propor-

Accommodation.

tion of the number of cubic feet of space in a room and the number of superficial feet of its floor area bearing to the number of workers working at any time therein shall not be less than such standard as may be prescribed either generally or for

Lighting.

particular class of work carried on in the room. With respect to lighting, S. 18 prescribes that each factory shall be sufficiently lighted during all the working hours. Every factory shall provide

Watering.

sufficient supply of drinking water in compliance with S. 19 Cl. (1) and (2) each of such factory in which any process of involving contact by the workers with injurious or obnoxious substances is carried on, shall maintain sufficient supply of water for the purpose of washing at a suitable place which is convenient for the workers to use. The factories shall

**Latrines and
Urinals.**

afford sufficient latrines and urinals for males and females separately according to the prescribed standard. Those latrines and urinals should be kept in a clean and sanitary condition during all working hours under S 20.

Then S.21 prescribes that every factory shall keep the doors of each room in which more than twenty persons are employed shall, except, in the case of sliding doors be constructed which may be opened outwards or where the door is between the two rooms, in the direction of the nearest exit from the building, and no such door shall be locked or obstructed while any work is being carried on in the room. Precautionary measures must be maintained against fire under S. 22. and means of escape should be provided for in case of fire under S. 23 Cl. (1). Certain objects are required under S. 24 to be kept adequately fenced. They are as follows :—

**Means of
Escape**

**Measures against
Fire.**

(a) Every exposed moving part of a prime mover and every flywheel directly connected to a prime mover ;

(b) Every hoist or lift, hoist-well, or lift-well and every trap-door or similar opening near which any person have to work or pass.

(c) Every part of the machinery which the Local Government may prescribe.

All such fencing as described above should be kept in order, at all times, when the workers have access to the part required to be fenced. In exceptional cases when they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning, lubricating, altering the gearing or every other arrangements of the machinery, the above rules are relaxed.

The privileges which have been afforded to the adult male workers by putting the factory owners or occupiers under obligatory duties to observe the limitation of the working period of the employees, and to make proper publication of the working periods and to keep registers of

the employees, are really covetable. Those duties on the part of the factory owners or occupiers fall under the second group of my classification.

The maximum working hours of the adult labour has been prescribed as fifty-four hours per week and sixty hours per week for the workers in a seasonal factory. There is a license for two hours work over above the

**Hours of
Work.**

said maximum period in a non-seasonal factory only on the ground of technical reasons. This provision has been made under S. 34. Whereas the periods of work per day for the

Daily Hours.

adult labourers has been prescribed under S. 36. as ten hours only. The workers in a seasonal factory can be employed for one hour more, so they can work for eleven hours. The period of work for an adult in factory should be arranged in such

Spread over.

a manner along with the intervals for rest under S. 37 that the total period should not exceed thirteen hours a day, without the permission of the Local Government. No adult worker shall be allowed to work double in any one day under S. 48.

Under S.35. no adult worker shall be allowed to work in a factory on a Sunday unless he is allowed to enjoy one full holiday within three days immediately before or after the working Sunday. The manager is bound to

Rest.

intimate the Inspector for the change of such holiday of the workers concerned.

Under S. 37 the periods of work of adult workers in a factory during each day shall be fixed either—

(a) So that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least one hour.

Or.

(b) So that no period shall exceed five hours and so that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour, or for more than eight and a half hours before he has had at least two such intervals. If a worker

**Provision for
Over-time work,**

is employed for more than the prescribed maximum hours then he is eligible to realise extra pay for overtime under S. 47. The payment will be made at the rate of one-and-a-half times his ordinary rate of pay. S. 42 has strictly stated as a mandatory order that hours of work should correspond with Notice under S. 33, S.S. (1) and Register under S.41.

Notification is one of the most important element in the obligatory duties which the factory owners or occupiers are to observe. Before the work is commenced in any factory seasonal or non-seasonal, the occupier is bound, under S.9. of this Act, to send a notice to inspector writing the following informations in it :—

- (i) The name of the factory and its situation
- (ii) The address to which communications relating to the factory should be sent
- (iii) the nature of the manufacturing process to be carried on in the factory,
- (iv) the nature and the amount of the power to be used.
- (v) the name of the person who shall be the manager of the factory.
- (vi) The change of the manager, if any, should be notified within seven days from the date of such a change.

If no manager is appointed to work in that capacity for a certain period then the occupier should be considered under this Act as a manager.

Under S. 30 If any accident occurs in any factory which causes death, or which causes any physical injury whereby

any person is injured or prevented from resuming his work in the factory during the forty-eight hours after the occurrence of the accident which is of a nature as prescribed, the manager of such factory is under obligatory duty to send notice thereof to such authorities and in such form and within such time as may be prescribed. Here the word "person" includes the plural idea and necessarily where as a sequence of a single accident more persons than one injured. The accident cannot be split up into as many persons injured and the notice contemplated is single notice of the accident which the manager is required to send to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of casualties. ⁽¹⁴⁾ Though under S. 30. the manager is responsible for sending the notice of accident, still the violation of the section will cause joint and several responsibility of the owner and occupier for the said contravention ⁽¹⁵⁾ In the absence of the manager if any accident occurs and if the notice of the absentee manager be not sent then the Occupier will be held responsible.

Under S. 35 the adult workers should enjoy one compulsory holiday which is prescribed as Sunday. But if for any reason, any worker or workers are obliged to be employed on Sunday, then a notice to the office of the Inspector about his intention to require the employees to work on Sunday and of the day which is to be substituted under S. 35 S.S. (i) cl (b) S. cl (ii) should be sent. The cancellation of the same should also be informed in the same manner. The display of the said notice in the factory is also required under S. 35 cl (b), S. cl (ii). S. 39 commends that there shall be displayed and correctly maintained in every factory a notice

(14) Ref. 125 I. C. 380 = 81 Cr. L. J. 869.

(15) Ref. 1930 L. = 658.

of periods for work for adults showing clearly the period within which adult workers may be required to work in accordance with S. 76. S.S. (2). The object of S. 39 is to fix the hours of employment which should not be subjected to casual alteration at any one's caprice ⁽¹⁶⁾. The periods of work to be notified under S. 39. S.S. (1) shall be fixed before in accordance with other provisions of this section which have been mentioned before and that the working period so notified should not violate the ordinary regulations which restrict period of work, resting hour, spread over and holiday as prescribed under sections 34 to 38. Fixation of special hours is quite different from capricious change of hours ⁽¹⁷⁾. The following provisions are required to be observed for putting up the notification under S. 39. S.S. (1).

(i) When all the adult workers in a factory are required to work within the same periods, the manager of the factory shall fix those periods for such workers generally.

(ii) When all the adult workers in a factory are not required to work within the same period, the manager of the factory shall classify them into groups according to the nature of their work.

(iii) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods within which the group may be required to work.

(iv) Where any group is required to work on a system of shifts and the relays are not to be subject to pre-determined periodical changes of shift, the manager of the factory shall fix the periods within which each relay of the group may be required to work.

(2) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up

(16) Ref. 58 Bom. 137—147 I. C. 1154.

(17) Ref. 35 C.W.N. 1108—1931 C. 639.

a scheme of the shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

Under S. 40 S.S. (1). The duplicate copy of the Notice as mentioned in S. 39. S.S. (1) should be sent over to the Inspector within fourteen days after the commencement of this Act, or if the factory begins work after the commencement of this Act, before the day on which it begins work. If any change in the system of work is to be introduced then the notice regarding the nature of the change should be sent in duplicate to the Inspector before such change actually takes place. The change of work should not be made without the sanction of the Inspector if it is to take place within one week since the last change. It should be carefully noted in connection with the affairs of notice that S. 76. S.S. (1) has clearly asked to display in every factory a notice containing the abstracts of this Act and of the rules made thereunder, in English and in the vernacular of the majority of the workers as the local government may prescribe. Those notices should be placed near the main entrance and in a conspicuous place and it must be kept in clean and legible condition.

But it has been decided in favour of the employers that if any notice be wrongly put up and the employees could ascertain the falsity of the same then he cannot bring the master to task for such mistake or wrong ⁽¹⁸⁾.

The last factor of the second group of the duties of the owners or occupiers of the factory is the task of keeping proper Registers. Rules regarding Registers are embodied in Ss. 41 and 56 of this Act S. 65 enforces the requirement of keeping Registers of the child worker which has been dealt with in the article "Child Labour". S. 41 gives the provisions for Register of adult workers. It

(18) Ref. Nussey Birtwistle 1894 58 J. P. 735.

states that the manager of every factory shall maintain a Register of Adult Workers which must show the following facts clearly :—(i) the name of each adult worker in the factory ; (ii) the nature of his work ; (iii) the group, if any, in which he is included and (iv) where his group works on shifts, the relay to which he is allotted and (v) such other particulars as may be prescribed from time to time. This section is mandatory and it has cleared up the position that in the absence of an order by the Inspector, one register in a prescribed form of all persons employed and of the hours and nature of their employments must be kept. It can not be supplemented by time-sheets ⁽¹⁹⁾. To keep the Register up-to-date, it is necessary that it should contain, day by day, the names of the persons employed in the factory, their hours of work and the nature of their employment ⁽²⁰⁾.

The Factories Act of 1934 has not failed to foresee the mischiefs which may be done against the worker by a constant violation of the rules prescribed in them to safeguard the interest of those workers. It has equally set up the precautionary measures to prevent any unforeseen mischief which may be perpetrated by the powerful capitalists in future. It has adopted the penal clauses to prevent any violation of rules prescribed under this Act and has at the same time made arrangement for inspectors who have got powers to modulate the requirements made by the factory rules in accordance with necessity. Last but not least important is the powers that have been given to the Local Governments to safeguard the interest of the poor labourers.

An appeal lies against the order of an Inspector made

(19) „ 152 I.C, 566 = 38 C.W.N. 1003.

(20) Ref. 38 C.W.N. 801 = 35 Cr. L.J. 1401.

under Chapter III of this Act and served on the manager or occupier of the factory, to the Local Government or any authority appointed by it. The appeal lies within thirty days of the service of the order. The appellate authority may, and if so required in the petition or appeal shall, hear the appeal with the aid of assessors. One of the assessors (shall be appointed) by the appellate authority and the other by such body representing the industry concerned as the Local Government may prescribe in this behalf. If no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor, or if it thinks fit, with the aid of any assessor.

In the case of an appeal against an order under S. 16 the appellate authority shall, and in any other case except an appeal against an order under S.S. (2) of S. 26 or S.S. (2) of S. 28 the appellate authority may, suspend the order appealed against pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case. This provision for appeal has been laid out by S. 31 of this Act.

Under Chapter VI of this Act the sections deal with the penalties for violation of the conditions, rules and provisions made under the said Act. S. 60 has prescribed that the manager and occupier of the factory shall each be punishable with fine extended up to rupees five hundred and if both of them are convicted then the aggregate amount of fine should not exceed the said amount for the contravention of the following :

**Penalties for
contraventions**

- (i) Provisions of or orders made under Ss. 13 to 29 both being inclusive.

- (ii) Rules made under Cl. (b), (c), (g) of S. 32 or S. 33 and conditions of S.S. 3 of S. 31.
- (iii) Provisions of S. 34 to S. 38, 42, 45, 48 and rules made under them as well as that under S. 49.
- (iv) Conditions attached to any exemptions or permission given under S. 43 or S. 44, 45 or S. 38 or S. 49.
- (v) Provisions of S. 39 to S. 41 both being inclusive and rules made thereunder and that under S. 47 or of any conditions attached with the exemptions granted under S. 41 and S. 44.
- (vi) Provisions of Ss. 50, 51, 54, 55, 56, 57 and 58 and rules made thereunder as well as the rules made under S. 59 Cl. (d).

This section is a penal section. It requires a strict construction. The occupier and manager both or either of them can be required to pay a fine which may extend up to rupees five hundred but the aggregate of the punishment of both cannot exceed the said amount ⁽²¹⁾. It may be that in the absence of any negligence on their part defects may exist in the factory, but if they are to be proceeded against in a criminal court for alleged negligence, the matter should be clearly brought home to them ⁽²²⁾. A conviction under the Act is illegal in the absence of definite evidence to show that a boy, seven or eight years old was employed or allowed to work in contravention of the Act ⁽²³⁾. Regarding the joint liability of the occupier and the manager it may be said that the risk is irrespective of the fact as to which of the two had committed the offence. It is the primary duty of the manager to inform the authority if he deemed to have contravened the provisions of the Act but still the rule

(21) Ref. 45 Bom 220 ; 1921 Bom. 322.

(22) Ref. 85 I. C. 226 – 26 Bom. L. R. 1245.

(23) Ref. 49 I. C. 860 = 20 Cr. L. J. 236.

of joint and several liability has been imposed for a stricter compliance with the provisions of this Act (²⁴). If more than one person is unlawfully employed the manager and agent are responsible for as many offences as there are persons so employed (²⁵). The manager of the factory should alone be held responsible for improperly fencing the engine found in the premises (²⁶). Notice or order from the Inspector is not required to be served on the proper person because it is the duty of such person to obey the rules, and in case of his disobedience, he becomes liable to conviction whether there exists any order or not from the Inspector (²⁷). When the authorities are in a doubtful position in connection with an applicability of a provision and if there be no clear absence of good faith on the part of the manager, then test case in respect of trial and technical infringements of the provisions of the Act is unnecessary (²⁸).

If any person be convicted for an offence involving a contravention of the same proviso, then he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees under S. 61. If he subsequently commits the same offence for the third and fourth time then the amount of fine shall be up to one thousand rupees and not less than rupees two hundred and fifty. The only saving clause exists in providing the benefit of non-cognizance is that if any conviction made more than two years ago and not within two years then the offence will not be considered as repeated for the second time. The fine also may be reduced by the Court if it is satisfied with some exceptional reasons for the commission of any offence.

If an occupier of a factory fails to give any notice

(24) Ref. 31 Cr. L. J. 869. 55 Bom. 366.

(25) Ref. 45 Bom 220 = 1921 Bom. 322.

(26) Ref. 126 I. C. 867 = 31 Cr. L. J. 1094.

(27) Ref. 12 Bom. L. R. 225 = 9 M. L. T. (Sup. B.) 17.

(28) Ref. 33 W. N. 1008 = 1934 Cal 730.

required under S. 9 Ss. (1) he shall be fined up to rupees five hundred under S. 62. A similar fine of rupees five hundred may be imposed under S. 63 on failing to produce the necessary document and record, evidence or witness or for wilful obstruction to the Inspector in the exercise of any power under S. 11. The maximum fine of rupees five hundred may also be inflicted for the contravention of the rules to produce notice of accident under S. 30. In this case the manager is punishable under S. 64 with the said amount of fine. If any return is not furnished in compliance with the requirement of S. 77, then the manager and occupier of the factory shall each be liable to be fined to the extent of rupees five hundred though the aggregate of fine should not exceed the said amount. The maximum fine rupees five hundred shall be imposed under S. 66 for smoking or using a naked light or causing or permitting any such light to be used in the vicinity of any inflammable substance in a factory. But a person can escape such penalty if he takes necessary precautions for the use as may be prescribed. For using and attempting to use a false certificate granted to another person the penalty amounts to a fine under S. 67 of rupees twenty only.

Penalty to be inflicted on the guardians for employing children twice on any day under S. 68 is rupees twenty, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person in charge. For the failure of a manager of a factory to display the notice in contravention of the provision of S. 76. S S. (1) and (2) punishment is the fine which may extend up to rupees five hundred.

The evidence as to age is one of contentious subject. S. 73 states that an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and if such person is in the opinion of the court apparently under or over that age, then the burden

shall be on the accused to prove that such person is not under or over such age. A certificate of a surgeon declaring that he personally examined and believed him to be under or over age set forth in the certificate shall be an admissible document in evidence. The presumption would be that a child was working if he were found inside any part of a factory and if he were over six years of age. This presumption will be made under S. 72 of this Act. Regarding cognizance of offences S. 73 states that no prosecution under this Act, except a prosecution under S. 66, shall be instituted except by or with the previous sanction of the Inspector. No court inferior to that of a Presidency Magistrate or of a Magistrate of the first class can try any offence against this Act or rules made thereunder. The only exception is in a case under S. 66 or S. 62 which may be tried by others.

In connection with the procedure, the most important factor which should be considered is the point of limitation. S. 75 has a mandatory provision to eliminate litigation. It says that no court shall take cognizance of any offence under this Act or any rule or order made thereunder, other than any offence under S. 62 or S. 64 unless complaint thereof made within six months of the date on which the offence is alleged to have been committed. The limitation in connection with the disobedience of a written order of an Inspector is twelve months of the date on which the offence is alleged to have been committed.

The other disputable point is the determination of the "occupier" for the purposes of penalty under chapter VI of this Act. It is stated that where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished for any offence for which the occupier of the factory is punishable. But when a person is nominated to represent a firm for the purpose of this Act and who is a resident in British India, then such individual so long he is

a resident and no change in his nomination occurs, should be considered as an occupier. When the occupier of the factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished for any offence for which the occupier of the factory is punishable; If the company nominates a director or in case of a private company a shareholder is nominated and informed to the inspector to serve as an occupier for the purpose of this Act, then that person should be treated as such so long the nomination is not cancelled or he leaves his residence in British India. There are certain cases

**Grounds of exemption
of the manager or
occupier.**

when the manager or the occupier is exempted from liability if the occupier or manager of the factory proves to

the satisfaction of the court the following facts :—

(i) That he has used due diligence to enforce the execution of this Act,

(ii) That other person has committed the offence in question without his knowledge, consent or connivance.

(iii) If the Inspector can be satisfied prior to the institution of the proceedings of the following things then also the manager or occupier can escape conviction :—

(a) That the occupier or manager of the factory has used all due diligence to enforce the execution of this Act.

(b) By what person the offence has been committed.

(c) That it has been committed without the knowledge, consent or connivance of the occupier or manager and in contravention of his orders.

Sufficient power and advantage have been given to Inspectors who are appointed by the Local Government which limits the area of their work. Inspectors

**Inspectorial system
as a precautionary
step**

are not allowed to be remained interested directly or indirectly in a factory or in any process or business during the period of service or before their appointment.

The additional Inspectors are also appointed by the Local Government who allocates their powers. Those inspectors are to be considered as public servants under S. 10. S.S. (7).

The powers of Inspectors are subjected to the rules of the Local Government. The powers have been described in S. 11 of this Act. He can enter into any place along with any other person either government officer or municipal officer, if he believes such a place to be a factory or worthy to be declared as a factory. He can examine the premises and plants and take necessary evidence on the spot or he can look into the Register or any other document for the purpose of this Act. He has such other powers as may be necessary for carrying out the purposes of this Act. But he cannot put any incriminating question to any body for evidence.

The appointment of a certifying surgeon by the Local Government under S. 12 is also an important factor as a precautionary measure. He can authorise any registered medical practitioner to exercise any of his powers under this Act. But the certificate of fitness granted by such authorised person will remain valid for three months only, unless the certifying surgeon himself confirms the same.

If any inspector thinks proper may serve on the manager of the factory with an order in writing, directing that mechanical or other devices for preventing any generation or inhalation of impure gas or dust shall be provided before a specified date and that should be kept in order during the working hours. He can enforce the manager of any factory in the previous manner, to adopt such measures which might effectively purify the water used for increasing humidity under S. 15. S.S (2). The chief Inspector or an Inspector authorised by the Local Government may order the manager to adopt certain measures which may involve reasonable expenditure under S. 16. to secure workers against injury to health or against serious discomfort for the absence of cooling properties of air in the factory. Here

the system introduced under English Law may be referred to. It states that in textile factories other than cotton factories, 600 cubic feet of fresh air per hour per individual are required to be supplied⁽²⁹⁾. What amounts to "reasonable temperature" has vexed many a people. It is a question of fact which varies with different circumstances of different cases. In the previous manner the Inspector can enforce the manager to arrange for sufficient light if it be deemed insufficient under S. 18 cl (30). The means of escape may also be effected in any factory whenever they are so wanted under S. 22. cl (2). If any machinery be left without being properly fenced in compliance with S. 24 then the Inspector may send an order in writing by specifying proper measures to be taken by the manager within a specified date. He can order the manager to adopt proper measures under S. 26. which may secure the workers against any building or any part of it or any part of the ways, machinery or plant in factory if they be considered as dangerous by him.

Lastly with regard to the Inspectorial powers it may be stated that if any such Inspector is of opinion that any master roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under S. 41, he may by order in writing direct that such muster roll or register shall to the corresponding extent be maintained in a proper place and be treated as the Register of Adult Workers in that factory.

Local Governments have been entrusted with certain powers which may be taken as the preventive measures

(29) Ref. St. R. & O. Rev., 1902 Vol IV.

(30) „ Peter V. Plowden (1903) 67 J. P. 152.

„ Benet V. Hardinge (1900) 2 Q. B. 397.

under this Act. The Local Governments may under S. 4 Cl. (2) by notification in the local Official Gazette, declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act. They can declare under S. 5. any premises whereon or within the precincts whereof a manufacturing process is carried on, whether with or without the aid of power and where ten or more persons were or are employed, to be a factory for all or any of the purposes of this Act. They can direct that the different departments or branches of a specified factory shall be treated as separate factories under S. 6. when the Local Government is satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty and is not likely to be twenty or more on any day during the ensuing twelve months, it may, by order in writing exempt under S. 7 such factory from the operation of this Act. But it should be noted that if on any day twenty or more than twenty persons are employed in such a place it will be considered as a factory and will be governed by this Act. In case of public emergency, the Governor general in council under S. 8 may by notification exempt any factory from any or all of the provisions of this Act for any period. The rules may be made by the Local Government for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities which may be injurious to the workers under S. 14. Cl (4). The Local Government has also the power to make the following rules under S. 15. S.S(1).

Powers of the Local Governments are the preventive measures.

- (i) Rules prescribing standards for the cooling properties of the air in factories in which the humidity of the air is artificially increased.
- (ii) Regulating the methods used for artificially increasing the humidity of the air
- (iii) Directing prescribed tests for determining the humidity and cooling properties of the air to be carried out and recorded.

The rule-making-power has also been vested with the Local Government under S. 18 S.S.(3) by which it can make rules requiring that all factories of specified classes shall be lightened in accordance with prescribed manners. It is also empowered to frame rules prohibiting the admission to any specified class of factories, or to specified parts thereof, of children who cannot be lawfully employed therein. The rule making power of the Local Government has further been added by S.32. to S. 33 by which it can formulate rules for the following factories —(i) To provide for any matter which according to any of the provisions of this chapter, is or may be prescribed ; (ii) To require the managers of factories to maintain stores of first aid appliances and provide for their proper custody ; (iii) To provide against danger arising from the use of mechanical transport in factories, other than railways subject to the Indian Railways Act, 1890 (iv) To prescribe the manner of the service of orders on the managers of factories ; (v) To regulate the procedure to be followed in presenting and hearing appeals under S. 31 and the appointing and remunerating the assessors ; (vi) To regulate the exercise of powers by the Inspectors under chapter III ; (vii) To provide for any other matter which may be expedient in order to give effect to the provisions of chapter III. S 33 has given additional power to make health and safety rules relating to shelters during rest and standard thereof. The Local Government may require any specified factory when more than fifty women workers are employed to provide a

room for babies below six years and also prescribe the nature of such room and arrangement for the supervision of children. It can stop working any manufacturing process carried on with the aid of power in any building or in any part of it until a certificate of stability in the prescribed form with the signature of a prescribed person has been sent to the Inspector.

The Governor-General in Council is vested with the power of framing rules under S.33 Cl. (4) applicable to any factory or class of factories in which the operation is carried, if it seems to him that in such factory or factories persons employed are physically exposed to injury, poisoning or any serious risk. The rules may (i) specify the operation and declare it to be hazardous (ii) prohibit or restrict the employment of women, adolescents or children upon the operation; (iii) provide for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment and (iv) provide for the protection of all persons employed upon the operation or in the vicinity of the places when it is carried on.

With regard to notice, the Local Government may make rules prescribing form of the Notice of periods for work for adults and the manner in which it shall be maintained under S. 39 cl (8). It can also exercise sufficient influence in matters of Register also. The provisions of S. 41 clearly state that when the Local Government is satisfied that the conditions of work in factory or class of factories are such that there is no appreciable risk of contravention of Chapter IV. of this Act, it can exempt any factory or class of factories from being governed by S. 41 with such condition as it may think proper.

The Local Government wields a large power for exempting from restriction under S. 43. It may frame such rules defining the persons who may hold the post for supervision or management or employed in a confidential position in a

factory, the provision shall not apply to any person so defined. It can also exercise the power of granting to exemption the adult worker under certain conditions and in the following cases, namely :—(1) It can exempt from the provisions of S.S. 34, 35, 36, 37 and 38, workers engaged on urgent repairs ; (ii) those engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory—from the provisions of S.S. 34, 36, 37 and 38 ; (iii) of workers engaged in job which are necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under S. 37—from the provisions S.S. 34, 36, 37 and 38 ; (iv) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day- from the provisions of S.S. 34, 35, 36, 36 and 38 ; (v) of the workers engaged in moving or supplying articles of prime necessity which must be made or supplied everyday—from the provisions of S. 35 ; (vi) of workers engaged in a manufacturing process which cannot be carried except during fixed seasons—from the provisions S. 35 ; (vii) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces from the provisions of S. 35 and 37 ; (viii) of workers engaged in engine-rooms or boiler-houses from the provisions of S. 35 ; (ix) any consequential exemption from the provisions of S.S. 39 and 40 which the Local Government may deem to be suitable, and subjected to proper conditions (x) the Local Government shall also prescribe the maximum units for the weekly hours of work for all classes of workers.

Those above rules with regard to exemption etc. will remain in force only for three years only.

If the Local Government be satisfied that, owing to the nature of the work carried on or to the other circumstances, it is unreasonable to require that the periods

of work of any adult workers in any factory or class of factories should be fixed before hand, it can relax or modify the same provision in respect of such workers and with such conditions as it may deem proper under S.44. On the ground of exceptional pressure of work, the Local Government or the Chief Inspector by written order exempt the adult workers on certain condition from any or all of the provisions of S.S 34,35,36,37,38,39, and 40. But such exemption should be accompanied with the prescribed maximum hour of work per week. The maximum period during which those exemptions are effective is two months or as it may be specified in the order of exemption. The Local Government may direct that in the case of any specified factory or any specified class of workers therein the commencing day shall be deemed to be the period of twenty four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day. It can also direct by special rule under S.49 that any specified class or classes of factories' work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time without the permission of the Local Government or compliance with the conditions imposed on them.

The Governor-General in Council may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in his opinion be required for the purposes of this Act. All rules made by the Local Government under this Act shall be subject to the control of the Governor-General in Council.

From the review of the provisions of the factories Act XXV of 1934, one can easily infer that the authority has exerted itself in almost all the directions to safeguard the interest of the poor workers. The compensatory element in the measures of protection through legislation will be dealt with in the Chapter on "Triple Legislation for Labour."

ADULT WORKERS IN MINES

The first Act concerning the miners came to light in the year 1901. Its principal object was to solve the problems of safety and health of the miners without stressing upon any other factor. More than score of years rolled away before the second Act upon the poor miners. In the year 1923 the second Mines Act was passed which put certain restrictions on the employment of labour, limited the working hours and recommended a grant of weekly holiday. It also fixed the minimum age of the child to be employed in the mines as 13. In the year 1928 an amending Act was passed which limited the maximum weekly hours of work for the open works as sixty and for the under-ground works as fiftyfour. It did not make any improvement upon the Act of 1923 with regard to the hours of work. It only wanted to regularise the daily working period by fixing 12 hours to be the maximum period of work. The amendment of March 1929 was directed to do away with the woman labour in Mines by a gradual process. It settled that within a period of ten years the woman labour should be extirpated altogether from the Indian mines. Recently in the year 1931 another amending Act regarding Mines went through the legislature and received the assent of the Governor General on the 1st. October of the same year. This Act attempted to remove some deficiency of the Act of 1923 by determining the jurisdiction of the Court to try mining cases concerning mines. No person other than a District Magistrate could try such cases under the regulations of the Mines Act of 1923.

As regards the hours of work the legislation of 1928 has not made any improvement upon that of 1923. Legislation can easily tend to reduce the present maximum hours of work to 8 for the benefit of the miners and their employers. It is stated that "some of the larger collieries.

are already working eight hour shifts, and other collieries are working ten hours shifts. It is significant that at such collieries the attendance and the level of earnings tend to be higher than prevail at collieries working longer hours and it is not suggested that at such collieries are below the general level." (1). Under these circumstances it cannot be said that 8 hours shifts would bring about a heavy loss to the employers.

Legislation regarding mines is conspicuously silent in point of wage regulation and education. The irregularity of the labour condition in mines is due to the low rate of payment and a low standard of life. If payment be increased the standard of life is sure to be improved which will entice the labour to settle round the mines on a permanent basis. The increment of payment will save the employers from two risks. viz : one is the irregularity of the labour and the other is the fresh costs of recruitment. The following statement as to the wage rate will give out the real status of the miners.

The average daily number of workers in mines is 230, 782 in the year 1933 whereas the number in 1930 had been 261, 667. The reason for the reduction of this average daily workers is due to the slump market and a fall in the slump market and a fall in the price of coal in India. The average daily wages paid in December 1931 in the principal mines in British India may be noted as follows (2) :—

The Coal Mines of	Average Payment.
Jharia, Raniganj, Pench Valley (C.P.) and in the Coal-fields of the Punjab and Beluchistan.	} 10 to 15%.
In the Coal fields of Assam.	
Mica Mines	— 10% fall in Manganese
The maximum income of the open workers is—/12/-	

(1) Report of the Royal Commission on Labour in India 1936.

(2) N. B. The above statistics have been taken from the Labour Gazette of Bombay 1933 January—P. 380—

Another chart from the Labour Commissioner's Report shows the average daily income during the month of December 1929 (P. 201).

	Under-ground				Open works.			
	Miners	Loaders	Skilled Labour	Unskilled Labour	Miners	Loaders	Skilled Labour	Unskilled Labour
Mineral fields	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Jheria Coal field	0 13 6	0 11 0	0 12 9	0 9 9	0 13 9	0 11 6	0 10 3	0 10 0
Raniganj	0 13 0	0 10 0	0 12 3	0 9 0	0 9 0	0 7 0	0 11 6	0 8 0
Giridih	0 12 9	0 12 0	0 14 3	0 8 0	0 11 9	0 6 3	0 9 0	0 0 0
Behar & Orissa Mica	0 7 0	—	0 6 9	0 5 0	0 7 0	—	0 7 0	0 4 9
“ Iron	—	—	—	—	—	—	—	—
Central P. Manganese	0 10 3	1 0 6	0 7 0	0 10 3	0 13 6	0 7 9	0 13 6	0 7 9
Burma Lead	1 12 0	2 11 9	1 5 6	0 8 0	0 14 0	1 0 0	0 14 0	1 0 0
Burma Tin	1 9 0	1 4 6	1 8 0	1 6 3	—	1 5 0	—	1 5 0
Punjab Salt	1 6 3	1 1 3	1 10 9	3 2 0	1 11 6	—	1 11 6	—

From the above chart it may be observed that there is no fixity of standard even in the same class of work in different mines. Jharia coal field pays the miners in the underground work -/13/6 pies whereas Giridih coal field pays to the same class of workers for the similar work -/12/9 pies. The mica mine pays the lowest rate of wages in comparison with other mines like coal, iron, manganese and lead. If wages be standardised, the labourers will be convinced of their fixed income and they will easily take up mining work on a regular basis. Let us now follow the existing state of law with regard to mines.

The relevant portion that directly concerns labour in mines may be briefly discussed here from the Indian Mines Act of 1923 as modified up to year 1935. The following topics will be of great importance for the purpose of the miners, namely :—(i) Mining operations and management of mines (ii) Provisions as to health and safety (iii) Hours and Limitation of Employment (iv) Penalties and Procedure and (v) certain miscellaneous matter.

Section 14 of the Indian Mines Act, 1933, deals with notice, it states that the owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed ⁽¹⁾.

Section 15 S.S. (1) and (2) provide for the rules for appoin-

(1) It should be carefully observed that this section is absolutely an obligatory one. The word “shall” denotes the compulsory action on the part of the owner, agent or manager to send notice to the District Magistrate within the fixed time.

ting managers. It runs thus "Save as otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications to be such manager.

(2) If any mine is worked without there being a manager for the mine as required by sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of this section⁽²⁾.

The Act has prescribed clearly the duties and responsibilities of owners, agents and managers in section 16, S.S (1) and (2). The owner, agent and manager of every mine shall be responsible for all operations carried on in connection with and conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder. In the event of any contravention of any such provisions by any person whosoever the owner, agent and manager of the mine shall each be deemed to be guilty of such contravention unless he proves that he had taken all responsible means, by publishing and to the best of his power enforcing those provisions to prevent such contravention.

Provided that the owner or agent shall not be so deemed if he proves—(a) that he was not in the habit of taking, and did not in respect of the matter, in question take, any part in the management of the mine, and (b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties, and (c) that

(2) This section is obligatory one. It implies that a qualified manager and not an ordinary man should be in charge of the mine to control, direct and manage everything in connection with mine. If the qualified manager be not appointed then it should be considered as amounting to the contravention of the whole section.

the offence was committed without his knowledge, consent or connivance.

(3) Save as herein before provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act ⁽³⁾.

Section 17 relates that there shall be provided and maintained for every mine, latrine and urinal accommodation of

(II) Provisions as to health and Safety Chapter V. of the Act 1923.

such kind and on such scale, and such supply of water fit for use, as may be prescribed. The medical appliances have been recommended by Section 18 of the Act. It states that at every mine in respect of which the Local Government may, by notification in the local official Gazette, declare this section to apply, such supply of ambulances or stretchers and splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order. For the unforeseen circumstances not contemplated in this Act which may bring about the risk of life or any danger of the employees of a mine, section 19 has afforded special

(3) Note should be made here for the clear understanding of the meaning of the terms "owner", and "agent" as implied by this Act. Section 3 of the Mines Act has defined the term "owner" as follows. "Owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil and not interested in the mineral of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this in like manner as if he were an owner, but not so as to exempt the owner from any liability. The term "agent" implies "any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act."

powers to the Inspectors to take measures for safety. Those powers are enumerated below :—

(1) If in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief-Inspector or the Inspector that any time, or any part thereof or any matter, thing or practice in or connected with the mine, or with the mine or the control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine and shall state in the notice the particulars in which he considers the mine, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

(2) If the Chief-Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief-Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3) The owner, agent or manager of any mine may appeal to the Chief-Inspector within ten days from the receipt of any order from an Inspector under S.S. (2) of S. 19. He (chief-Inspector) can confirm, modify or cancel the order.

(4) The Chief-Inspector or the Inspector making a requisition under S.S. (1) of or an order under S.S. (2) S. 19 and the chief-Inspector making an order (other than an order of cancellation) in appeal under S.S. (3) of S. 19, shall forthwith report the same to the Local Government and

shall inform the owner, agent or manager of the mine that such report has been so made.

(5) If the owner, agent or manager of the mine objects to a requisition made under S. 19 S.S. (1) or to an order made by the chief Inspector under S.S. (2), or S.S. (3), of the same, he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the Local Government, which shall refer the same to a Committee.

(6) Every requisition made under S. S. (1) or order made under S. S. (2) or S. S. (3) of S. 19 to which objection is made under S.S. (5), shall be complied with pending the receipt at the mine of the decision of the Committee.

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under S. 19 S.S. (1) pending its decision on the objection.

(7) Nothing in this section shall affect the powers of a Magistrate under Section 144 of the code of Criminal Procedure, 1898.

The owner, manager or agent is under obligation to give notice of any accident under S. 20. This section provides that :—

(1) When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time as may be prescribed under S. 20 S.S. (2) the Local Government may by notification in the Local Official Gazette direct how to enter the accidents which do not fall under S. S. (1), in a register in a prescribed form or shall be subject to the provisions of S. 20 S.S. (1). S.S. (3) of the same section enjoins that the managers, agent or owner of a mine is

under compulsion to send a copy of the register of accidents within fourteen days from 30th. June and 31st. December in every year respectively to the Chief Inspector.

The Local Government is empowered under Section 21 to appoint court of enquiry in case of accidents. The section provides that :—

(1) When any accidental explosion, Ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Local Government, if it is of opinion that a formal inquiry into the causes of, and circumstances attending, the accident ought to be held, may appoint a competent person to hold such inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors ⁽⁴⁾ in holding the inquiry.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under Code of Civil Procedure, (1908), for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects ; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so under S. 176 of I. P. C.

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this section shall make a report to the Local Government stating the

(4) The assessor may possess either legal qualification or special qualification which is not specified in this Act. It depends upon the discretion of the Local Government who appoints an assessor. Another thing to be marked here as regards to the number of assessor. The words in the Act are “assessor” or “assessors” “any person” or “persons”, which may mean one or more than one. This is most substantial provision in the Act but is too vague to be interpreted.

causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

The Local Government can publish those reports which are submitted by the court of enquiry under S. 21 at any time and in any manner under S. 22,

Regarding the limitation of the working hours it may be said that the Act has prescribed fifty hours per week and ten hours in a day above ground under S. 22. S.S. (1). But no mine is allowed to employ labour more than six days in a week under S. 22 A. Taking the hours of intervals along with the working hours, the spread-over cannot be more than twelve hours per day. A continued work for more than six hours is prohibited under S. 22B S.S. (2). S.S. (3) of the same section prohibits persons to be employed in the work of the same kind at the same time, if they belong to two or more relays. Those persons who receive intervals for rest at different times shall not be considered to belong to separate relays. Then the Act further proceeds to recommend regulations with regard to the under-ground work of the mines. Nine hours work is the maximum period for employment below the ground under S. 22 Cl. (1). The only exception is given by S.S. (2) of the same section that the nine hours rule may be violated by a system of relays so arranged that the periods of work for each relay are not spread over more than nine hours. S.S. (3) of the above section strictly enjoins prohibition of staying below grounds beyond the periods of work shown in respect of a worker in the register kept under S.S. (1) of S. 28. S. 23 has been newly substituted by S. 7 of the Indian Mines (Amendment) Act, 1935. It prohibits employment of person who have already been working in any other mine within the preceeding twelve hours. S. 23 B relates that the manager is bound to cause a notice to be posted outside the office of the mine in the prescribed manner specifying time of

**Hours and Limitation of
Employment (Chap. VI
of the Act of
1923,**

commencement and of the end of work at the mine. In the similar way he should inform about the relays. A copy of the same must be sent to the Chief Inspector, if he so requires. Any alteration with regard to the time or work must similarly be intimated. The Act has made provisions for the exemption from the above named sections, namely S.S. 22A, 22B, 22C, 23 including S.S. (4) of S. 23B. The exemption granted only on the ground of emergency involving serious risk to the safety of the mine or of persons therein. The manager can contravene the prohibitive sections enumerated above to protect the safety of the mine or of the persons employed therein under S. 25. Whenever such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine (5).

The special provision for night relays has been made under S.22 D. It states that when an employee works in a relay whose period of work extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning at the end of the period of work fixed for the relay, and the hours he has worked after midnight shall be counted towards the previous day. S.28 provides for the Register of employees. The register should be kept in the prescribed form and in a place where all persons are employed in any mine. It must state that (a) the nature of the employment (b) the periods of work fixed for each worker (c) the intervals for rest (d) the days of rest to which each worker is entitled to and (e) when work is carried on by a system of relays, the relay to which he belongs. The entries must not violate any provision of this chapter (chapter VI) of this Act. No person can be employed without being properly enlisted in the

(5) Note should be made here that the provisions in respect of the child and young persons have been dealt with in the Chapter on "Child Labour"

register in the required manner and no one can work more than the period as fixed up in the register. The same rule of keeping register is applicable to the workers who are employed below ground.

The most important feature in connection with the legislation to safeguard the interests of labour in mines is

**Penalties and
Procedures.**

the penal provisions and procedures thereof. For wilful obstruction to the Chief Inspector, an Inspector or any other authorised person to discharge his duties under this Act or for refusing to give reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, the penalty is three months imprisonment or fine up to rupees five hundred or with both. Simple refusal to produce any register or other documents prescribed under this Act or any prevention or attempt to prevent the production of the same is to be punished with fine which may extend to three hundred rupees under S. 34. Punishment for the falsification of record is imprisonment which may extend to three months or fine which may extend to five hundred rupees or with both. The following should be counted as falsification of records under S. 35.

(a) Counterfeiting or making any false statement in any certificate.

(b) Knowingly using such counterfeit or false certificate.

(c) Making, producing or using any false declaration, statement or evidence to get any certificate, renewal of certificate or any employment in mine,

(d) Falsifying any plan or register.

(e) Making, giving or delivering any plan, return, notice, record or report containing any false statement.

S. 36. Prescribes a punishment of fine up to rupees two hundred for the omission of any plan, return, notice, register, record or report required under this Act. For the

contravention of the provisions regarding employment of labour, the penalty is the fine extending up to rupees five hundred under S. 37. The next section affords the punishment for the contravention of the provisions of S. 20. S.S. (1) which deals with notice of accidents. The penalty is five hundred rupees if there be only a serious bodily injury but in case of the loss of life, rupees five hundred or imprisonment up to three months or both. The fine may be extended up to. Punishment for the disobedience of any order or bye-law or regulation is the fine which may be up to rupees one thousand. If contravention after the date of the first conviction continues, then per day hundred rupees to be fined in addition to the above sum for persistent offence. The contravention of law with dangerous results has been taken up by S. 40 which enumerates their penalties. It states that notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder, shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both, or if such contravention results in serious bodily injury, with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both; or if such contravention otherwise causes injury or danger to workers or other persons in or about the mine with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees or with both. If such contravention persists then the punishment stated shall be doubled. The Court deciding over such matters may allocate the whole or any part of the fine to be paid as compensation to the person injured and in case of death to the legal representative. The fine should be realised after the lapse of the period of appeal if any preferred or till the decision of the same.

With regard to prosecution, S. 14 states that no prosecution shall be instituted against any owner, agent or manager for any offence under the Act without getting instruction from the Chief Inspector or the District Magistrate or any other authorised Inspector. The limitation of prosecution has been prescribed by S. 42 as six weeks from the date on which the offence is alleged to have been committed. Then the Act proceeds to limit the jurisdiction of the Courts to try the offences committed under it. S. 43 relates that no Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is punishable with imprisonment by this Act. Under S. 44 S.S. (2) any case may be referred by the Local Government, on receipt of a report under S. 44 S.S. (1) to the Mining Board or Committee in lieu of prosecution. The decision of the question whether any excavation or working in a mine within the meaning of this Act depends finally on the Local Government under S. 45. The exemption from this Act can only be made by the Governor-General in Council. S. 49 is a general saving clause which states that no suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done under this Act.

ADULT MALES IN DIFFERENT OCCUPATIONS

In India railways cover the largest area extending over 41,000 miles. The total staff that works in the railways numbers 800,000. The Indian Railways have been divided into three classes, namely, Class I, Class II and Class III. In the Class I, the gross earnings reach about 50 lakhs per year, in the Class II, the gross earnings amount to more than 10 lakhs and less than 50 lakhs, whereas Class III has not more than 10 lakhs of rupees. The above classification has been made for the purpose of statistics only. Without going into the details of statistical information regarding the number of railway workers it is better to consider the average number of employment in different departments of railways for the sake of legislation, because legislature ought to take into account the real condition of the labour life before it can prescribe any regulation for the workers.

There are altogether seven departments in each railway, and under these departments there are different sub-departments. Those principal departments are (1) Engineering, (2) Transportation, (3) Commercial, (4) Mechanical workshops, (5) Electrical and signal, (6) Stores, Medical, Accounts etc., (7) Office staff at the Head and Division or district offices. The Labour Commission's Report states "Statements contained in the annual reports of the Railway Board show the number and cost of all staff employed on the twelve department of railways on 31st March 1929, to be 776,042, costing Rs. 38,46,12, 603" (1).

The problem of work and rest, the provisions for safety, wage regulation, education of the railway labour, their

(1) Report of the Royal Commission on Labour in India (1931) P. 145.

indebtedness and lastly the problem of providend fund and insurance are the burning topics to be treated through legislation.

The prescribed rules for the working period as 60 hours a week by the Washington Conference of 1919 has been adopted by the Factories Act of 1922. The same rule has been adopted by the railways in India where the Factories Act of 1922 is applicable but not in others. In the Construction work or in the temporary staffs the 60 hours rule has been violated almost as a common practice. In Workshops the normal hours of work is 48 hours a week. The shift system is also prevalent in large Loco sheds where eight hours' shift may be found to work in three batches. Eight hours a day as working period is also said to be prevalent in the mechanical staff. Engineering department is to have 8 to 9 hours a day and 48 to 50 hours a week⁽²⁾. On some lines, the drivers, firemen and guards have to work up to 77 and 80 hours, even for a longer period per week. Though they get a higher rate of wage for over-time work still it cannot be said to be quite beneficial on the part of the workers. Money is not the only consideration. The physical and the mental conditions of the workers are the prime factors which call forth our immediate attention. The Railway servants Hours of Employment Rules 1931 has been put into effect to control the irregularity of the working periods of the railway labourers. It has provided the limitation of hours only for a certain group of workers by excluding others. The running staff, watchmen, watermen, the intermittent workers or workers of light labour those who are in the supervising staffs or management or in the confidential employment and those who fall under the Factories or Mines Acts are not governed by the Railway servants Hours of Employment Rules 1931. The rule has

(2) Report of the Royal Commission on Labour in India (1931) P. 156.

prescribed a longer resting period for the workers in a permanent way and works staff than others. The provision is that two consecutive 24 hours rest or 48 hours rest in one calendar month to be afforded to the above-named staffs whereas all other continuous workers will get 24 hours rest per week.

It is not at all desirable that there should be innumerable acts for the guidance of each branch of a particular field. The Railway labour is guided in some portion by the Factories Acts in the other by the Mines Acts and again in another by the Railway servants Hours of Employment Rules of 1931. Under such circumstances it may be suggested that there ought to be one compact body of rules which should be embodied in a statutory Act for the guidance of the Railway employers in all aspects of their lives. The question of working hours of the employees of the Railways has not only been badly treated by the legislation but some of the employees have been left without any protection. The Intermittent workers have no provision which might control their labouring period. So the best way to solve the difficulties is to frame one statutory Act under the denomination of Railway Employees Act of India which may govern all the employees working in the Railways of India. The Act should first classify very carefully the groups of different workers. Because the distribution of hours for work and rest, wages and safety provisions will depend upon classification. Workers who are in the loco or transportation department must be very careful in their work because on them depend the lives and goods of many a people, so a longer period of work cannot suit them. Again those who are in the engineering department may be guided by ordinary rules of work in the factory because their work may be commenced and terminated at a particular period which will not affect their work. The commercial and office staff can work in the normal working period whereas transportation, electrical and signal require special

provision for the fixation of the period of work. As regards the workers in the transportation, *i.e.* in the loco running and relative staff requires 10 hours' shift. One shift may be replaced by another shift and thus relieving the workers from strain and protecting the greater security of the passengers and goods. Those who are the intermittent workers or the watchmen or watermen, are not guided by any regulation of hours of work. They are not counted within the group of continuous worker so they are excluded from any protective clause. That is not at all far from any point of view. Their work ought to be regulated after considering their nature of work. In the absence of such regulation the most elementary rights of individual workers are violated. In framing the rules for the control of the working periods of the employees the legislator should take two important factors into consideration. One is the nature of the work and the other is the effect of the work upon the employees. If the nature of the work is not determined then the employers will be the loser. The nature of the work requires that the workers must be vigilant, sharp and active. But there is a limit to a man's carefulness because more a man grows tired he becomes less careful and less active. If one man is to attend all the running trains in a particular station for a very long period it would not be possible for him to work in the same strain and same skill all through. Then the question of the effect of the work on the workers is almost a paramount factor to be critically examined by the legislator before the fixation of hours of work. It has been mentioned before that the drivers, firemen and guards have to work up to 77 and 80 hours and even for a longer period in some lines. The effect of the work of an engine-driver is easily imaginable. The tremendous strain for the constant work with steam in a tropical country like India and specially in the hot summer can be fancied by any sane man. In addition to the fact of the arduous nature of the work, the longest period is allotted to

them. In such a case, the employees lose their vitality and life in a very short period of time. Lastly legislation should enforce one compulsory weekly holiday for every worker irrespective of his class.

Providend Fund.—The unemployment insurance system is not prevalent in the railways but the Providend Fund system has been introduced in almost all the railways in India. It may be pointed out that all the employees are not eligible to get the privilege of this Fund. As stated in the Report of the Royal Commission on Labour in India (p. 152) only 31% of the railway workers contribute to the providend funds. There is no provision for those employees who draw a monthly payment of Rs. 15/-, for the providend fund. The employees of the workshop and shed become eligible to get the privilege of the providend funds if they become entitled to get notice of a month before their discharge and have a continuous service for three months. The above rule for the workshop employees exists in the State Railways only. Under these circumstances, it may be suggested that the compulsory insurance system is essentially necessary for a country like India. Providend Funds can support a man on the expiry of the term of office but there is no provision for the intermittent unemployment, sickness or infirmity. The providend funds are made up of the contribution of the employees alone which become increased by interest. But insurance system which can cover all the workers of any nature, imparts the workers a greater privilege. The insurance funds is generally created by the contribution of the employees and the employers as well as by the state.

Seamen are required to be protected by some legislation regarding their recruitment and employment. They are

Marine and Docks.	generally recruited from Chittagong side through the licensed brokers at some places and through some contracting offices in other places. The process of recruit-
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ment through these middlemen is absolutely objectionable. The labourers at times have to pay equal or even half of their first payment as commission to those brokers. The officers in charge, generally, select the necessary number of employees from those who are presented before the office. The authorities ought to keep a special branch office in those parts from where seamen are recruited. The officers should announce on each week the number of vacancy and the nature of work required in each centre. Then workers can easily approach the office directly. Those officers should try to publicate through press, say by pamphlets or handbills the directions to get at the office, the system of recruitment and other informations required for the job.

The principle of rotation in employment of seamen is a curse. The union of the seamen wanted to make an equal distribution of employment to all the workers by introducing the system of rotation. The limitation of one year's service being fixed, lapse of a pretty long time would be required for all the workers to complete one rotation by turns.

The employment in docks is intermittent in character which runs from February to April in full force and slowly in the rest of the year. (3) In most of the docks there exist two types of labourers, one is permanent batch belonging to the establishment of the Port Trust and the other belongs to the casual workers. The main trouble is with those casual workers who are neither guided by any bye-laws framed by the Port Commissioners nor they have any fixity of remuneration, nor any fixed period of work, nor any surety of job. In cases of necessity the stevedors or the jamadars or the jotewalas call upon these people who flock in the streets and crowd in the gates of the docks. Those jamadars in their turn take two annas

(3) According to the evidence given by a representative of stevedoring firms in Rangoon.

in a rupee as commission for securing job for them. In Karachi the jamadars or the headmen usually recruit the casual labourers. In Calcutta they are supplied by one firm of contractors and is appointed by the commissioners directly. In Rangoon besides 30 labourers who belong to the warehouse, there exists not a single worker in the establishment of the Port Trust. In Madras, the most of the workers are brought from outside. In all these cases it may be marked that the absence of direct employment is conspicuous. The result of this absence of direct employment is that the foremen or the jamadars employ a fewer number of workers than the number specified and paid for and they misappropriate the payment of the rest. Those middlemen who supply workers, exact a commission from the poor labourers who perhaps only get a chance after a week or a fortnight to earn some coins.

Taking the hours of work into recognition, one is surely to be horrified to find the period of work allotted for those works which are far more arduous in nature than any of the factory works. The loading and unloading of a ship means a constant employment in handling with the heavy goods. That employment extends in Karachi up to 12 hours in winter and 11 hours in summer. In Rangoon the period of work is 11 hours without having any interval in the same shift. The eleven-hours of work is prevalent in Madras also but there is a system of an interval of one hour. Bombay employs the workers in the day shift for 9 hours and workers in the night shift for eight hours. Calcutta dock labourers usually work from 7 A.M. to 5 P.M. with two half an hour intervals. It is observed from the previous facts that Karachi, Madras and Rangoon have got unusually long period of work. Legislation ought under these circumstances help those poor labourers out of such hard labour. Like the Factories Acts and the Mines Acts the Port Trust Acts of India ought to allocate the hours of work in those docks.

The loading and unloading of ships is universally accepted at the most arduous task. If that be so then the period of work for such jobs necessarily requires to be reduced.

Indian Lagislature passed an Act in 1922 by which the local Government was compelled to frame some rules regarding the child labour in docks. It has prohibited the employment of any child under twelve in any work in the dock, jetty or piers of India. Considering the hardship in dock-labour, the minimum age restriction seems to be insufficient. A child of twelve does not develop his body to an extent which can resist the work of loading and unloading of ships without damaging their physique. Another legislation known as the Indian Dock Labourer's Act was passed through the central legislature in the year 1934. The gist of the provisions in the same may be dealt with here.

The Dock Labourers Act (Act No. XIX of 1934) extends to the whole of British India. This was given effect to the convention concerning the protection against accidents of workers employed in loading and unloading ships. Under this Act, the Governor-General has been entrusted with all the possible powers to frame rules with regard to the dock labour. To our astonishment we find this law which does not contain specific provision to safeguard the interest of the dock labour but every provision is to be made by the Governor-General in Council. S. 5 of the Act enumerates the powers of the Governor-General in Council to make regulations. He can provide for (i) the safety of working places on shore and of any regular approaches over a dock, wharf etc. ; (ii) prescribe the nature of the means of access to a ship which is lying alongside a quay, hulk or other vessel ; (iii) prescribe measures to ensure the safe transport of workers ; (iv) prescribe the means of access for the use of the workers ; (v) prescribe to protect hatchways accessible to

workers and other openings in a dock¹; (vi) provide for efficient lighting, fencing of machinery etc., safety appliances, precautions to be observed in regard to exhaust and live steam and means of escape of the workers; (vii) require the employment of competent and reliable persons to operate lifting or transporting machinery and a signaller; (viii) prescribe the measures to be taken in order to prevent dangerous method of working; (ix) prescribe the method of the use of stages and trucks; (x) prescribe precaution to guard against dangers out of dangerous or noxious goods; (xi) prescribe the measures to be taken to ensure that no hoisting machine, or gear is employed in the process on shore or on board ships unless it is in a safe and working condition; (xii) provide for first-aid and rescue of immersed workers; (xiii) prescribe the rule to put the abstract of this Act, to give notice of accidents etc. and the rules of exemptions; (xiv) specify the persons responsible for compliance with regulations. S. 4 empowers the Inspectors within the local limits to do the following acts:—(i) enter any premises or ship when the processes (4) are carried on; (ii) examine the premises, ships, machinery or any document; (iii) exercise any other power to be given by the Governor-General in Council. S. 8 makes it an obligatory duty to post abstracts of Act and regulations conspicuously. Next the Act deals with the penalties and procedure. The penalty under S. 9 for (i) wilful obstruction to the Inspector or failing to produce required documents, (ii) removal of fencing, gangway, gear, ladder etc. without authority or necessity, and (iii) failing to restore the removal of fencing etc. on necessity is a fine which may be up to rupees five hundred.

(4) This Act defines "workers" as any person employed in the processes. The term "processes" includes all work which is required for or is incidental to the loading or unloading of cargo or fuel into or from a ship and is done on board the ship or alongside it.

S. 10 has described the jurisdiction of the court. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or regulations made thereunder. All prosecutions are to be made with the previous sanction of the Inspector. The period of limitation in respect of prosecution is six months from the date on which the offence is alleged to have been committed. S. 12 is a saving clause to protect against suit or prosecution for anything done or intended to be done under this Act in good faith.

As adult male labour has been found to play an important part in the industries so they have done in the plantations. Plantation means a

Plantations. large-scale agriculture. All the plantations are formed in the Western ideal.

They are generally situated in large forest tracts and are managed by the Europeans. More or less 90% of the plantations in the North and almost all the concerns in the South and in Burma are purely managed and controlled by Europeans. The beginning of the plantation is with the indigo cultivation in large scale by the Europeans. The Indigo planters used to hire the labourers and made cultivation through them. The same principle is adopted to this day. The labourers are recruited from different parts of India to the plantation area where they get houses to live and are put to work for cultivation. One convenience of the labour in plantation is that they are not to be trained in a perfectly different line but they are to work in one kind of agriculture from another only.

They remain cent per cent agriculturist in character. Those planters require that the labourer should come along with their wives and children so that they may settle in the plantation area for a pretty long time even it may be for good. Women and children labour are largely prevalent in plantation because of their cheaper rate of wage. Tea, Coffee, rubber and cinchona are the plantation crops.

which can be named. Among them tea stands first in the list while cinchona the last. Cinchona is a monopoly of the Government of Bengal and Madras which have recently been adopted by the Rangoon Government as well. Tea, coffee, and rubber plantations are managed by private concerns.

The main problems attached with the labourer in plantation are the problems of recruitment, wage, hours of work and health and welfare. The character of the labourers of plantations is migratory. In the South they are sure to go back home at least once a year, if not twice or thrice. They are recruited by the labour suppliers who are known as Kangarus or Maistries. The Madras Planter's Act of 1903 has introduced a penal provision to protect the planters from the loss of the advances given. In the South the recruitment is made by giving certain sum as an advance to the labourers. The sum so advanced generally vary in different districts, but on average it may be said that Rs. 15/- for each labourer is to be advanced. The Madras Planter's Act was repealed in the year 1929. But there is no difficulty to the planters due to the repeal of the said Act. In Coorg the demand of the penal contract was made not only by the planters but also by the landholder class who used to bring hired cultivators from outside. Coorg Labour Act was passed in the year 1926 which remained in existence for a period of five years. The planters and the landholders were informed to make up their difficulties within the period when the Act would remain in force. The result of the abolition of these Acts is not at all bad rather it is good. In Madras fresh flow of immigrant labourer seems to have been increased since the abolition of the Madras Planter's Act, whereas the labour condition in Coorg is in no way worse than before when the penal contract was in force⁽⁵⁾. North Assam stands as first in the

(5) Labour Gazette, Vol. XII (Oct.).

plantation area. She has the largest number of tea gardens where the number of workers amount to half of the total labourer in the whole plantation area in India. Besides Assam, Darjeeling, the Terai and the Dooars in Bengal are the centres of plantation in the North. The recruitment of labour in the Assam district was governed by the Assam Labour and Emigration Act VI of 1901. The above Act was amended several times up to the year 1927 but the defects continued to remain. The main defect of the Act was that it was unintelligible to the common people. The Sardari system of recruitment which was introduced by the above Act seemed thoroughly unworkable. By the above Act the managers or other officers could not propagate the advantages of the tea-plantation, neither they could assist even the recruit to go to the plantation area. In the year 1932 another Act was passed which was known as the Tea Districts Emigrant Labour Act of 1932. It include British India and Santhal Pargana. Tea districts of Lakhimpur, Sibsagar, Nawagong, Darrang, Kamrup, Goalpara, Cachar, Sylhet and Balipara Frontier tracts.

LABOUR LIFE IN PRISON

The prisoners are no more the outcasts of society for their criminality but they are now recognised as social beings who deserve treatment for their abnormality. ⁽¹⁾ The civilization of to-day is wide enough to accommodate those who are generally spurned and are compelled to become desocialised. Penology now wants to teach people to regard the value of the lives of those criminals and to utilise them for social development. From the point of humanity also it can well be urged that there is no right of one part of mankind to cut off another because of the latter's weakness or disease without trying for its recovery. Amputation is recommended by surgery only where no other alternative is left. With the development of the science of penology the theory of punishment has also undergone a great change.

Italy has taken an important lead in this line of work. Her new penal laws are perfectly humane and adapted to the present needs of mankind. America has become conscious of the growing importance of prisoners. Germany is fast advancing in the treatment of criminals under the lead of Dr. Viernstein, the Director of Mental Hospital in Bavaria. England has improved her penal system by her recent laws regarding the criminals.

In India the problem of the treatment of the convicts requires an immediate recognition. Though the Prison Commission of 1919 in India has thoroughly investigated her

(1) See Oppenheimer : *Rationale of Punishment*, London, 1913 ; Ruggles-Brise ; *Prison Reform at Home and Abroad* (London 1924) ; *Annals of the American Academy of Political and Social Science* (Philadelphia, Sept. 1931), special number on the "Prisons of Tomorrow."

penal system and recommended a good many important reforms, they have not been carried into effect to this day. ⁽²⁾

Convict labour is daily increasing in number. If the statistics of 1930 be compared with that of 1926 it will be found that the convicts have increased by 223,466 (from 684,850 to 908,316). ⁽³⁾

The jail industry is also rapidly expanding. This expansion is being alleged to have given rise to a sort of competition between the jail administration and the private industrial organization.

Our penal laws are almost retributive in nature. Reformation is not possible where threat and unnatural confinement of the inner forces are the only weapons with which to fight out criminality. New penology does not advocate desocialisation but just the reverse of it. Socialisation of the prisoners is the basic principle of penal treatment in theory and practice.

Theories of punishment¹ can broadly be divided into three, rather four classes, viz., "retributive," "preventive," "reformative," and "deterrent". In primitive times mankind used to live in small families within a clan. The father of the clan had to do justice for the wrongs done by its members. Punishment in that age was based purely on revenge, i.e., ear for ear, nose for nose, and limb for limb. If A cut the ear of B, then A had to lose his ear. But people began to realise that pure revenge could not form the basis of punishment, because in that case neither the accused nor society would derive any benefit. So the preventive theory of punishment arose. People began to consider that punishment ought to be inflicted for the

(2) See *Indian Jails Committee Report, 1921* (Summary of Recommendations). For modern achievements in penal treatment see Sutherland, *Criminology* (New York, 1924).

(3) For figures relating to prison life see the *Statistical Abstract for British India, 1921-31*, p. 104.

prevention of further crime so that future society would derive the benefit of penalty. Later appeared the theory of reformation. This theory is the maximum evolution of human mind with regard to the penal laws. The reformatory theory of punishment upholds the view that penalty should be modified in such a manner as to reform the accused who will not reiterate the same action in future. The thief ought to be reformed into an honest man.

Finally, the theories of "expiative" or "deterrent" nature may be said to be the sub-divisions of the theories of retribution and prevention respectively. The deterrent theory of punishment puts forth that the ideal of punishment should be such as to threaten the prospective criminals in such a manner that they would be afraid of perpetrating similar offences. That is to say, punishment must be so severe as to deter others from doing the same action. The expiative theory of punishment affords compensation to the injured party and thereby releases the accused.

Now the question is often raised as to what is the true theory of punishment ?⁽⁴⁾ According to certain thinkers it is retributive, others again are of opinion that it is preventive, whereas another group upholds the reformatory theory as the truest theory of punishment. But in reality the combination of all the three demonstrates the true nature of punishment.

In India almost all the three theories of punishment exist behind her penal system. The system of flogging is retributive in nature, the system of rigorous imprisonment

(4) For an account of modern criminology as expounded by Lombroso, Tarde, Aschaffenburg, Parmelee and others see B. K. Sarkar's *Political Philosophies Since 1928*, (Madras). On the subject of criminality see Sorokin's critical observation in *Contemporary Sociological Theories* (New York, 1928), pp. 163-165, 559-561 and on punishment see Hobhouse's discussion of the idea of justice in *Social Evolution and Political Theory* (New York, 1911) chapter on "Evolution and Progress."

and cellular confinement preventive. Capital punishment may well be put under the group of retributive punishment as it implies a life for life. The system of fine stands in the group of expiatory theory of punishment. With the exception of juvenile punishment which can be grouped under the reformatory theory, there is no other form of punishment which can directly be brought under it.

But each form of punishment can be so interpreted as to imply a reformation of the delinquent. The idea of punishment implies that the delinquent must understand the cause of his punishment which lies in the violation of such rights that form the common or public good. That an actual violation of a right or omission to fulfil an obligation to society has given rise to the infliction of punishment ought to be impressed upon the mind of the delinquent. On the other hand, the authority punishing the man must also base his decision on the right conception of the violation or omission of a right or obligation which the accused could have refrained from if he had so desired.

The conception of right founded on relation to public good ought to be the criterion of punishment. That criterion alone would give rise to a "just punishment". The significance of the "just" may be said to exist in the complex condition of an individual in society for the realization of his capacity of contribution to social good. If the former conception of social good as the criterion of punishment stands confirmed then no other theory but the theory of reformation alone can be adopted. The theory of reformation must be such as to regard the subjective reforms rather than a physical reformation.⁽⁵⁾ The science of penology is based on the reformation of the subjective personality through the creation of environment and

(5) For an analysis of the different schools of criminology see *Encyclopædia Britannica*, XIIth Ed. (Article on Criminology), also the chapter on punishment in Parmelee's *Criminology* (New York, 1920).

the treatment of the mental and physical maladies of the criminal.

Mr. Robert Taylor in his presidential address at the 17th Annual General Meeting of the Punjab Chamber of Commerce made a sweeping remark against the rising competition between the jail industries and the private industrial enterprises. He remarked that Government's policy seemed to tend towards the conversion of jails into industrial concerns engaged in supplying all the needs of different departments of the Government⁽⁶⁾. There are reasons to suspect the rise of competition out of Government policy from the very position of the Government which is stronger than the private industrial concerns due to three reasons. The convict labourers are not paid regularly like those in the factories. The prison labour is put to a greater discipline and remains under stricter control than the factory labour. Lastly, it may be suspected that convict labour being not skilled produces the coarser quality of goods which may be sold in the market at a low price.

But such suspicion can well be shuffled away on considering the circumstances by facts and figures. It is better to compare at first the statistics of convict labour with that of factory labour. Next, the kind of production in prison and those of the factory ; and lastly, the question of skilled and unskilled labour in those places may be taken up for consideration. From the statistics of 1930-31 the total number of convicts engaged on working days is 123,464. Those who are employed in preparing articles for use like wheat-grinding and weaving of bed sheets and other sundry articles number 15,312 and those who are actually employed in manufacturing concerns number 40,670,⁽⁷⁾ whereas the

(6) *Labour Gazette* (Bombay), Sept. 1932, p. 31.

(7) *Indian Year Book* 1933, pp. 449 For figures relating to the employment of convicts sentenced to labour, see *Statistical Abstract for British India up to 1931*, Table No. 48.

number of workers engaged in the factories in the year 1930 is as follows :—

Men	...	...	1,235,425
Women	...	...	254,905
Children	...	...	37,972
Total			1,528,302

Leaving aside the numbers of workers engaged in different departments of prison other than the manufacturing concerns, we find that the number is negligible. The number of prison labour in actual manufacturing concerns amounts to 179,446 whereas the total number of factory workers is 1,528,302 in 1930. The difference of these two totals is sure to convince us that there is hardly any case for the competition of the jail production with that of the factory. Large-scale production in an Indian jail is almost a rare event. The main principle laid down with regard to jail manufactures is that the work must be penal. Care is taken that the jail shall not compete with local traders. Moreover, the production of the jail is not so varied in kind as to be in a position to compete with the factory products. Finally, the question of skill stands foremost to solve the doubt of rising competition of the jail products with that of the factory. It is absolutely true that all the jail hands are not trained in the multifarious kinds of work like those in the private factories. Unskilled labour in jails cannot produce finer stuff than the factory workers.

The regulation of jail production should be formed in such a manner as to avoid competition with private industries. The time has come when penal legislation ought to set before itself the ideal of treating the convicts for the purpose of rehabilitation. With the object of rehabilitation the method of payment should be introduced for the convict labour. The large expenditure for penal administration may well be realised from the statistics given by the

Government. (8) The payment may be made to the prisoners out of the sole products of the convict labour. In that case the Government would not be loser whereas the public also will not be able to think of an unjustified competition between the jail and private industry. Moreover, the Government will not be in a position then to make an undersale in the market. Thus the apprehension of economic competition can thoroughly be put an end to.

With the system of payment, if convict labour be put under the inspection of some officer belonging to the category of factory inspector, the question of overwork or strain and forced work may also be eliminated. Thus the Indian legislature may profitably pass some laws concerning the prisons of India with distinct provision for payment and inspection of convict labour by outside inspectors other than jail officials. The ground of introducing outside inspectors may be indicated to lie in an expectation of a better administration of the factory laws and a greater confidence of the people. The prison labour ought to be governed in cases of hours of labour and safety of health by the factory laws of India.

It is accepted on all hands that work is essential for the prisoners not only as a disciplinary method but also for training and reformation. (9) But the meaning of the term 'work' is not taken in the same manner by all the nations. Japan includes exercise, instruction, appearance before the court, even interrogation into the category of work, whereas the Swiss Cantons interpret the said term in a different way and confines it only to the work of free industry. Then, as regards the period of work, the hours are different in

(8) For amount of expenditure see *Statistical Abstract for British India up to 1930-31*, Table No. 52.

(9) Ruggles-Brise, *Prison Reform at Home and Abroad* (London, 1924). See also the *International Labour Review* (Prison Labour), April, 1932.

different countries. The principles on which those differences lie are two in number. They are as follows :—

(1) Some consider that the hours should be varied according to the nature of the sentence so that a proper correction may be expected. The example of this system may be found in the present Penal Code of Germany.

(2) Others are of opinion that within the walls of the prisons, the convicts are the same, so their working hour ought to be the same. There is some consideration for the women convicts who get certain privileges more than the males.

In England the maximum working hour is ten. The recent Berne Commission on the minimum standard rates has insisted upon fixing a maximum working period which may vary according to the nature of sentence. But the legislature before determining the maximum hours, variable according to the nature of the prisoners, ought to examine the nature of the work as well. For the nature of the prisoner would show one side of the card, whereas the other side, that is, the nature of work, would remain unknown, which requires investigation for a correct determination of a fixed maximum period.

There is another consideration with regard to the working period. It is in reference to the question whether a cessation in the work of the convicts is essential or not. The Berne Commission recommends that every prisoner should have the opportunity of satisfying the needs of his religious life. In America also prisons observe Sunday as the day of rest. Each Sunday ought to be reserved for the stoppage of every form of activity when moral or religious training can be imparted freely.

For the sake of rehabilitation or socialisation, the prisoners ought not be kept absolutely outside society. People with an intellectual ability and of social habits ought to be allowed to come in the prisons and to talk with their inmates. Because the prisoner ought not to get an oppor-

tunity to think that he is an outcast he must be trained to think that society will again welcome him if he only reforms himself. Means ought to be adopted through legislation by which the criminals can avoid that sort of mental degeneracy. Society on the other hand is to be so moulded as to guide and sympathise with the criminals like the diseased persons returning from the hospital.

Regarding the aim of the penal treatment Mr. Joseph Almaraj, President of the Supreme Council of Social Defence and Prevention in Mexico, says that the aim of penal treatment is not intimidation but cure, regeneration and re-adaptation⁽¹⁰⁾. The Indian Penal Laws ought to be framed upon the said principles of Joseph Almaraj.

With regard to the work of the convict labour, the 'Quota System' has been adopted by the civilised nations of the world. The task system or the quota system implies nothing but an assignment by law or by prison regulations of certain daily, or weekly quota of work fixed in advance for each prisoner. The Indian Penal Laws ought to consider the quota system carefully so that the prisoners may not become the victims of the warders who are no better than the prisoners themselves. According to the "principles for treatment of prisoners" (1923) in Germany the quota ought to have a basis in the average productive capacity of a healthy prisoner who is acquainted with the work. Another method of determining the quota consists in ascertaining the physical and mental ability of the convict to guard against any monotony of work, because the stereotyped work affects the psychology of a prisoner. The latter system of fixing a quota is better than the German system, because the German method has neglected to consider the psychology of a prisoner unlike that of the latter system. The reformation of a prisoner is the ulti-

(10) *The Annals of the American Academy of Political and Social Science*, Sept. 1932 (Prisons of Tomorrow).

mate aim of any prison law. Discipline is meant to bring about the normal psychology of a prisoner rather than to turn it into a blunt and shapeless one.

Prison Law should also include the health and safety provisions for convict labour. Like the ordinary factory labourer, the workers in the prison should be governed by protective laws against danger. In many countries provisions have been made for the compensation of injury dealt out by accident⁽¹¹⁾. Germany recognized the importance of such protective law for the prisoners as early as the beginning of the twentieth century. The Prisoners Accident Assistance Act of 1900 in Germany has enabled the prisoners and their dependants to claim an invalidity pension or survivor's indemnity. The Hungarian Act of 1927 includes all the undertakings of the employed persons confined in a reformatory or in a house of detention as well as those detained persons within the purview of the Accident Insurance System. In India the scope of the Workmen's Compensation Act may well be extended to the prisoners. In the alternative, a portion out of the payment to the prisoners may be deducted for the purpose of contribution in an insurance fund which will help in exigencies. So the Government shall have to bear little burden for such insurance system, whereas the prisoners would receive a great privilege.

There are three principal systems of Prison Labour Organisation, *viz.*, (1) the contract system, (2) the piece-rate system, (3) the state-management system. The contract system has been again sub-divided into three classes. The first is the lease system, the second is the general contract system, and the third is the special contract system.

The contract system implies the hiring out of prison labour to private persons, companies or associations. By

(11) Sarkar, "Accident Insurance in Comparative Legislation and Statistics" in the *Insurance World* (Calcutta), January, 1933.

the lease system, the lessee, or the person to whom prison labour has been given in contract, has to bear the whole burden of the prisoners and in exchange he would get the privilege of employing them. That is, the lessee has to bear the costs of boarding, lodging and clothing of the convicts and in addition to that he has to arrange for their guard also. In exchange of all these, he only gets the advantage of their labour. Under these circumstances, it can easily be surmised that the lessee hardly undergoes any loss by sympathising with the convicts. He must exact labour out of those convicts as much as possible to realise his outlay and to make profit over it.

In the general contract system, the prison labour is guarded and put in Government detention but the contractors supply the implements for work as well as fooding for which they get the prison labour at their disposal. The contractors have to pay large sums for the use of prison labour to the Government.

The special contract system is just like the general contract system, the only difference lying in the fact that the Government retains the whole administration of the jail in its own hand. The contractors have to supply the tools and raw materials and get in return the whole output. Prussia adopted the system of special contract. But it has now been abolished with the formulation of certain "principles for the treatment of prisoners," according to which the prisoners may be allowed to work under the private contractors only when the latter undertake any job on the prison account.

The piece-rate system affords the contractor the advantage of state control in the direction of prison labour and its general management and he receives the goods made according to his order by supplying raw materials at fixed price from the authority. The contractor does not pay for the spoilt products nor he has to repair any implement if supplied.

By the system of state management, the state provides the materials and tools, and also directs the prisoners to work according to its own purpose or for that of the public. If the products are meant for the state, it is called the state-use system, and if these are meant for the public it is called the public-account system. The state-use system is the best possible method in which the prisoners can be put to work. Work of the following nature generally falls under the state-use system : construction or maintenance of prisons, roads, public works, bridges, embankments, the clearing of the waste lands and other agricultural operations.

It may be suggested that, for Indian prisons, the combination of the state-management system with the piece-rate system is desirable⁽¹²⁾. The contract system has the greatest drawback in the fact that the prisoners would be over-worked and badly treated, for contractors will exact the maximum production of labour which has come within their control and for which they have to pay. The result of such work would tell upon the body and the mind of workers.

The piece-rate system may indirectly give rise to a sort of competition in business life. Moreover, the prisoners cannot be expected to get a continued supply of work under this system as the outside order cannot be expected to be continuous. Finally, the work for the state-use cannot be done at the same cost as that in the state-management system, because the state has to get that work done by hired labour from outside. So to keep the prisoners engaged and to give them a sort of lesson for rehabilitation, the combination of the two systems is best.

By the combination system, the prisoners would not only get a continued supply of work but they would also get a chance of coming across varieties of work which will

(12) For general regulations relating to factory and other industrial labour see, for instance, the Indian Factories Act, 1922, and *Report of the Indian Labour Commission* (1931).

eliminate the drudgery of monotony. To adopt pure state-management system is no doubt the best, but it would mean such a huge amount of initial expenditure to set up machineries and other things and to make proper arrangements for labour control that a poor country like India cannot launch into such an adventure in the very near future.

If we want to follow the new ideals of penology then we cannot forego the system of payment to the prisoners. The modern idea of treating a criminal is not based on revenge but on reform. If reformation is to be achieved it ought to be achieved from both the subjective and objective sides at one and the same time. Because they are almost inalienable twins. It would not be exaggeration to say that the mind requires first to be treated and then the body of the criminal. If that proposition be once taken for granted then the problem of payment can easily be solved. As in society we have the right to work and to get remuneration for that, so also a prisoner retains the right to claim payment for the service done to the society or the state. It does not matter whether the service is under compulsion or freely offered. The soldiers in times of war are often recruited under compulsion but for that reason they are not deprived of their remuneration or other privileges. The prisoners often come out with degenerated frames of mind at the expiry of their term due to exaction of forced labour. The reason behind it is nothing but the nauseous atmosphere of the prison life and the sordid indifference of society to put them in proper position.

The compulsory system of work in prison stands as an obstacle to the realisation of the new ideals of penology. The link of compulsion in jail work can be eliminated by two processes. In the first place, the system of remuneration may be introduced, and in the second place, the system of allotment of task by qualified supervisors may be enforced to do away with the idea of compulsory work. Two benefits are derived from the system of payment for work to the

prisoner. They would not think it a drudgery to serve and so an initiative to work would be given to them by such system. They would get a training to work and to earn in prison-life which they may profitably use when they would come back to society. One of the best means of socialisation is the system of payment for work in prisons.

Arguments can also be put forth from the financial point of view. The prisoners might contribute to the penal administration themselves. In the penal system of Italy it has been ascertained that the prisoner maintains himself out of the remuneration he gets from service. In England there exists no legal provision for payment to the prisoners. The system of remunerating the prisoners had its origin in the Continent. In Swiss cantons the prison authorities determine the payment of the different prisoners. France has a system of indirect payment, *i.e.*, once a sum is credited in the name of the prisoner, he will receive that for good. The new Italian Penal Code has made it obligatory to pay the prisoners. The Penal Code of the U. S. S. R. goes even further than the new Italian Code by giving prisoners the right to sue the state for sums due to them. Now it can be suggested that Indian Penal Law ought to recognise this system of payment from both the financial and psychological aspects. The system of payment is required to be made obligatory instead of depending on the whims of the authorities in charge⁽¹³⁾.

Another most important question relating to prison labour that often arises in the mind of a penal law reformer consists in the consideration as to whether prisoners ought to work together or should work separately, in other words, whether prisoners should work in associated confinement or cellular confinement. There exist three systems of imprisonment throughout the world, *viz.*, the classical form of

(13) *International Labour Review*, March and April, 1932; *The Annals of the American Academy of Political and Social Science*, September, 1931 (Prisons of Tomorrow).

cellular confinement or the Pennsylvania system, then the collective detention or the Auburn system, and lastly, the Irish system.

The Pennsylvania system is based on the conviction that complete isolation would induce the prisoner to reflect within himself and thus there would be a self-reformation. This conviction, however, is associated with a deformed notion of psychology. The modern theory states that a man in cellular confinement loses his divinity and becomes more demoralised and gets lasting moral and mental disorders. By the end of the 19th century the whole of Europe abandoned the Pennsylvania system and adopted the New Pennsylvania system which implies work and isolation combined.

The Auburn system means that the prisoners would work in the day in groups but at night they would be separated. Finally, the Irish system has classified the prisoners and their work. The prisoners get promotion from one group to another upon the earning of conduct marks. The sentence begins with cellular confinement, followed by work in common and separation at night. In each higher conduct class, the restriction to liberty is further relaxed. The "intermediate prison" is the last stage from which the final discharge is available. The Irish system is also known as the "progressive stage system".

The Indian penal law may adopt the Irish system for the prisoners with long sentence and the New Pennsylvania system for those delinquents who have a short-term sentence. The short-term prisoners will not have the time to pass through all the stages of the Irish systems nor will they be able to receive proper training in all those stages. So the Pennsylvania system along with the fixed quota of work would afford the short-term prisoners a great aid.

N.B.—This article was published in the *Calcutta Review* for June 1984 under the title *International Prison Legislation with special Reference to Labour.*"

TRIPLE LEGISLATION FOR LABOUR

1. Workmen's Compensation
Act, 1923.

2. Trade Union's Act, 1926.

3. Trade Disputes Act, 1929.

Workmen's Compensation Act, 1923.
Act No. VIII of 1923.

(As modified up to the 2nd July, 1934.)

**An Act to provide for the payment by certain classes
of employers to their workmen of compensation
for injury by accident.**

WHEREAS it is expedient to provide for the payment
by certain classes of employers to their workmen of compensation for injury by accident ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the
**Short title, extent and
commencement.** Workmen's Compensation Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

*Note :—*This Act has no application in cases of injuries by accident occurring beyond Brit. India. Vide Hicks *vs.* Monton 125 L. T. 135 ; Tomalin *vs.* Pearson, (1900) 2 K. B. 61.

(3) It shall come into force on the first day of July, 1924.

2. (1) In this Act, unless there is
Definitions. anything repugnant in the subject or
 context,—

(a) “adult” and “minor” mean respectively a person
 who is not and a person who is under the age
 of fifteen years ;

Note :—“Children under fifteen” includes brothers
 and sisters as well as infant members of the family.

Ref. Campbell V. Portland Colliery Co., (1926), p. 512.

“Illegitimate child” not decided Ref. (1929) A.C. 409
 (H.L.)

(b) “Commissioner” means a Commissioner for
 Workmen’s Compensation appointed under
 section 20 ;

Note :—The court decides the question of compensation
 and not on damage. Ref. 28 R.C.L. 757.

(c) “compensation” means compensation as provided
 for by this Act ;

²[(d) “dependant” means any of the following relatives
 of a deceased workman, namely :—

Note :—Widowed daughters and widowed sisters may be
 allotted a share of compensation. Vide Fort St. Geo. Gaz.,
 8th March 1932, pp. 137-141.

Payment to the dependants amounts to the payment to
 the injured employee himself. Ref. 28 R.C.L. 769.

Two things to be proved to be entitled to get compensa-
 tion (i) must be relative as mentioned in the schedule
 (ii) was dependant upon or maintained by the injured
 person. Ref. 134 I.C. 108.

1 For Statement of Objects and Reasons, see Gazette of India, 1922,
 Pt. V, p. 313.

2 This Clause was substituted by s. 2 of the Workmen’s Compensa-
 tion (Amendment) Act, 1933 (15 of 1933).

Who are dependants—28 R.C.L. 770 ; (1930) A.I.R. (Cal.)—358.

Dependency in question of fact—3 B.W.C.C. 305 ; 2 W.C.C. 108.

Proof of dependency—1918 B. 747 ; 28 R.C.L. 772.

Dependency must be “at the time of his death.” I.K.B. 159 ; 22 B.W.C.C. 152.

- (i) a wife, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother ; and
- (ii) if wholly or in part dependent on the earnings of the workman at the time of his death, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or, where no parent of the workman is alive, a paternal grandparent ;]
- (e) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him ;

Note :—A receiver of an insolvent employer is equally liable to pay compensation as the employer himself—28 R.C.L. 738.

A loaned servant to whom belong—3 B.W.C.C. 223.

Employer is the proper person to pay compensation—23 B.W.C.C. 91. 2 K.B. 336. 3 B.W.C.C. 373.

- (f) “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer ;
- (g) “partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time : provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

*Note :—*Loss or reduction of earning power is the basis for an allowance of compensation. But injury resulting in disfigurement only without loss of earning power may be the ground of compensation. *Ball V. Hunt*, 5 B.W.C.C. 459.

Lessening the capacity to obtain work is sufficient—25 B.W.C.C. 422.

Total or partial incapacity is a question of fact—16 B.W.C.C. 74.

- (h) “prescribed” means prescribed by rules made under this Act ;
- (i) “qualified medical practitioner” means any person registered under the Medical Act, 1858, or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in

force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act ;

*(j)

(k) "seaman" means any person forming part of the crew of any ²* * ship, but does not include the master of ³[the] ship ;

(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement : provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent. ;

(m) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment ;

Note :—In computing wages it will be necessary to estimate the value of any concessions given by the employer. (Vide Gaz. of India, 16th Sep. 1922, pp. 314-316.)

* 1 Clause (j) was omitted by s. 2 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

2 The word "registered" was omitted, *ibid.*

3 This word was substituted for the words "any such", *ibid.*

The earnings or wages of workman are whatever he receives from his employer in return for his services which include not only actual cash but also money's worth. But the term "wages" involves a sense of contract.

Ref. 119 I.C. 772 = A.I.R. Lah. 573. 1 K.B. 331. 7 W.C.C. 114.

Boarding and Lodging and the use of a cottage would form part of his wages. 1 K.B. 86. 3 W.C.C. 194. 23 B.W.C.C. 668.

Extra income of workman—It will include all such receipts under contracts of service as can be taken into account as "earnings" for the purpose of assessing compensation—1 K.B. 360 ; 4 B.W.C.C. 16 ; 2 K.B. 108.

Tips to workman may be taken into account in estimating earnings if the employment be opened to such tips. I.K.B. 766 ; 1 B.W.C.C. 401 ; 10 B.W.C.C. 654.

Bonus given to a workman on tour by his employers, can be taken into account in estimating his remuneration. 1 K. B. 360 ; 4 B. W. C. C. 16.

(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

*Note :—*The cardinal rule under the definition is that there must be the relationship of master and servant. 1 K.B. 851 ; 5 W. C. C. 114 ; 4 B. W. C. C. 249.

The following points require to be judged to discern whether a person is workman or not : (i) the character and terms of engagement ; (ii) the payment of wages or remuneration ; (iii) the power of dismissal ; (iv) the power of controlling the work of the servant. 1 K. B. 543 ; 15 B. W. C. C. 131.

For compensation, a contract of employment should have existed between the claimant and the alleged employer. 1 K. B. 851 ; 5 W. C. C. 114.

A person who works for another of his own accord without the knowledge or request of anyone in authority cannot be a workman for the purpose of damage. 1 I.R. 137 ; 19 B.W.C.C. 810.

The question as to the contract of service or a contract for services is of fact to be decided by the arbitrator. This is not a question of law unless the arbitrator Commissioner has misdirected himself, a court of appeal ought not to interfere. 1 K.B. 543 ; 3 B.W.C.C. 200.

Illegal employment cannot afford compensation. 3 K.B. 543 ; 7 B.W.C.C. 422 ; 10 B.W.C.C. 601.

“Employment of a casual nature”—If a man be employed for the purposes of the trade of business the employer is liable for the casual employment even. 1920 A.C. 781 ; 146 I.C. 1027.

The onus of proving the casual nature of the employment would be on the employer. 145 I.C. 273 = 35 Bom. 410.

When upon all the facts there is a reasonably debatable question whether employment is casual or not, the case becomes one of question of facts for the arbitrator. 8 B.W.C.C. 196 ; 1 K.B. 499 ; 12 B.W.C.C. 34.

(i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed ^{1*} * * * on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such

1 The words “either by way of manual labour or” were omitted by s. 2 of the Workmen’s Compensation (Amendment) Act, 1933 (15 of 1933). This sub-section was substituted, *ibid.*

contract is expressed or implied, oral or in writing ; but does not include any person working in the capacity of a member of His Majesty's naval, military or air forces or of the Royal Indian Marine Service ; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependant or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

Note :—The causal relation between the employment and the disease must be shown. (1920) 3 K. B. 544.

² (3) The Governor-General in Council, after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which he is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply to such classes of persons :

Provided that in making such addition the Governor-General in Council may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.]

Note :—This section corresponds to Sec. 13 of the English Workmen's Compensation Act 1906. The definition of the word "dependant" has been slightly departed from the English Act.

Dependent—A widow of a deceased workman is not bound by any agreement made during the life time of her husband where she was not a party to the agreement.

Manton vs. Cantwell (1920) K. C. 781=89 L. J. P.
Williams vs. Vanshall (1907) 2 K. B. 433. The dependent

of the deceased workman has a direct and independent statutory right against his employer and a decision of a previous litigation between a workman and his employer is not binding on the dependants.

Herper vs. Dick (1921) W. N. 7 ; *Tucker vs Oldbusy* (1912) 2 K. B. 317.

Wages—Where a workman worked only for eighteen days before his death, compensation was awarded on the basis of the applicants average weekly earnings during that period.

Gibs vs. Belford 72 L. J. K. B. 569 = (1903) 1 K. B. 843 ; see also *Jones vs. Ocean* (1899) 2 Q. B. 124 ; *James vs. Ocean Coal Co.* 73 L. J. K. B. 915 = (1904) 2 K. B. 213. The fact that average weekly earnings of the workmen after the accident would have been greater but for the injury, cannot be taken into consideration.

Pomphery vs. Southwork, 70 L. J. Q. B. 909 = (1901) 1 K. B. 80 ; *Chandler vs. Smith* (1899) 2 Q. B. 506 ; *Irons vs. Davis* (1899) 2 Q. B. 330. The measure of compensation is not wages but “earnings in the employment” which need not always come from the employer. *Pen vs. Spiers and Pond* (1908) 1 K. B. 766. “Earnings” means the actual amount, whether in money or in kind, which the worker receives from his employers.

Houghton vs. Sulton 70 L. J. K. B. 61.

Injury—Injury by over-strain or over-exertion sustained by a man in doing his work is injury by “accident” within the meaning of this Act.

Fenton vs. Thorly (1903) A. C. 443 = 72 L. J. K. B. 687 ; *Hewart vs. Wilton and Clyde Coal Co. Ltd.*, 5 Fraser 120.

Accident—The word accident involves the idea of something fortuitous and unexpected.

Hensy vs. White 69 L. J. Q. B. 188 = (1900) 1 Q. B. 481.

Clover vs. Hughes (1901) A. C. 242. Injury by over-strain or over-exertion sustained by a man in doing his work is injury by "accident". *Fenton vs. Thorly* (1903) A. C. 443; *Boardman vs. Scott* 71 L. J. K. B. 3. In the case of death by blood-poisoning the death is the result of an injury by accident.

Thompson vs. Ashington 84 L. T. 412. "A man may suffer an accident and be entitled to recover in respect of the injury caused by the accident within the meaning of the Workmens Compensation Act although the strain which sets up and puts in motion the cause of his death may arise in the ordinary exercise of his work which he is employed to do and is not of a special or momentary character". *Farlane vs. Hutton* 96 L. J. K. B. 357 (C. A.) 29 Bom. L. Ry. 1544; 29 Bom. L. R. 349.

CHAPTER II

WORKMEN'S COMPENSATION.

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Employer's liability
for compensation.

Note :—An "accident" is something which is unforeseen and the element of the event being unforeseen by the injured workman forms the basis of every right of recovery. (1910) A.C. 242; 3 B.W.C.C. 275.

"Accident" denotes or includes any unexpected personal injury resulting to the workman in the course of his employment for any unlooked for mishap or occurrence. (1903) A.C. 443.

The mishap or occurrence must be looked at from the workman's standpoint, and whatever its cause or origin, it will be accidental unless it was designed by the workman himself. 7 B.W.C.C. 274; 1914 A.C. 667.

“Question of fact and law.” The accident producing the injury must arise both out of and in the course of the employment, and whether or not it falls within the description is a question of fact. 5 B.W.C.C. 431. But where the fact is unquestionable and admitted and the inference to be drawn on the admitted facts, then the accident arose out of the employment is a question of law and not of fact. (1917) A.C. 479 ; 10 B.W.C.C. 280 ; 26 B.W.C.C. 3.

Whether or not an injury is sustained by accident is a mixed question of law and fact. 83 L.T.471 ; 3 W.C.C. 23.

The question whether the cause or causes of an injury amount to an accident within the meaning of an Act is a question of law on which the decision of the trial judge is not final. (1903) A.C. 443 ; 5 W.C.C. 1.

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ¹[seven] days ;

(b) in respect of any ²[injury, not resulting in death, caused by] an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

*Note :—*Intoxication of employee as element affecting compensation.—When the employee is under the influence of drink or drugs at the time when he sustained the injury has been held to be a reason for refusing an award of compensation. To defeat the workman’s claim the injury must be directly attributable to the influence of drink or drugs. 14 B. 303 ; 59 S.L.R. 66 ; 126 L.T.R. 386 ; 15 B. 77.

¹ This word was substituted for the word “ten” by s. 3 of the Workmen’s Compensation (Amendment) Act, 1933 (15 of 1933).

² These words were substituted for the words “injury to a workman resulting from,” *ibid.*

Suicide may be consequential to an injury sustained by accident, as when it results from insanity or mental derangement consequent on personal injury by accident. 1.K.B. 734 ; 8 B.W.C.C. 69.

The expression "arising out of employment" is not confined to "the mere nature of the employment." It applies to the employment as such, to its nature, its conditions, its obligations and its incidents. No compensation can be claimed for "an added point" produced by the worker himself. 60 Cal. 421 = 37 C.W.N. 81.

The question of "the added peril" by a workman is generally solved through the test of his own indolence or purely from his own convenience. 1917 A.C. 352 ; (1929) A.C. 570.

- (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen, ³* *

(2) If a workman employed in any employment involving the handling of wool, hair, bristles ⁴[or animal carcasses or parts of such carcasses, or in the loading, unloading or transport of any merchandise, or in any work in connection with animals infected with anthrax] contracts the disease of anthrax, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease

³ The word "or" and clause (c) were omitted by s. 2 of the Workmen's Compensation (Amendment) Act, 1929).

⁴ These words were substituted for the words "hides or skins" by s 2 of the Workmen's Compensation (Amendment) Act, 1926 (29 of 1926).

specified therein as an occupational disease peculiar to that employment, the contraction of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purposes of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer.

Note.—Industrial or occupational diseases whether include non-occupational diseases like pneumonia, typhoid, cholera etc. is a question of much importance. A disease which is gradually produced as a natural result of being engaged in a particular employment is not within the Act unless it falls within the special provisions of the Act as to industrial diseases, *e.g.*, :—Paralysis caused through the continued exertion of riding a carrier tricycle. 2 B. W. C. C. 20 ; 6 B.W.C.C. 720 ; (1930) S.C. 1120.

A disease which is not idiopathic or industrial has been held to be a personal injury. 106 L.T. 741 ; 5 B.W.C.C. 259.

The doctrine of proximate cause will govern the case of a prolonged sufferance ending in ensuing incapacity due to some accident. (1908) A.C. 443 ; 28 R.C.L. 814.

If a workman is subject to epileptic seizures and the master is ignorant about the said fact, then death due to sudden attack of fit will not afford compensation—28 R.C.L. 817.

The whole thing to be considered with regard to compensation in such matters is to find out whether infection should have been the result of contract at some one particular time which time should be during the course of employment. 2 K.B. 798.

Cumulative effect of a number of slight injuries and not one specific and definite accident may be ascribable

to the resulting illness then the workman is disentitled to the benefit of the statute. 13 B. 277 ; (1921) W.C. Rep. 12.

“Personal Injury” includes Hernia—28 R.C.L. 795.

“Arising out of” and “in the course of” employment are the expressions which have received greatest amount of judicial consideration. The injury must not only arise “in the course of” but also “out of” the employment. Proof of the one except the other will not bring the case within the Act. An accident arising out of an employment almost consequentially occurs in the course of it whereas the converse does not arise. The nature of the occupation may sometimes supply causative relation. The court has directed to judge what has happened proximately, and not to search for causes or conditions lying behind as would be the case if negligence on the part of the employer had to establish. (1917) A.C. 127.

Public safety broken—

Street accidents do not afford compensation—

28 R.C.L. 804.

Falling building and death in consequence arises out of employment—146 I.C. 973 ; A.I.R (1933) P.C. 225.

Mounting a tramcar in motion though done in a negligent way, an act which is within the scope of his employment and consequently sustains injuries, he is entitled to compensation. 1 K.B. 1 (C.A.)

Accident while travelling in train if arises out of the employment of the deceased workman and he did not take any greater risk than an ordinary traveller would do while travelling then that risk is of life generally—29 Bom. L.R. 1544 = (1928) B. 1.

Accident caused while returning from work—If the accident arises out of and in the course of the employment as the incidence of the agent's employment compensation should be awarded. 1 K.B. 1.

A workman's employment begins, in the ordinary course when the time has arrived and when the locality has been reached at which he is employed. He is acting in the course of his employment when he is engaged in doing something he was employed to do, or what is in other words, when he is doing something in discharge of a duty to his employer, directly or indirectly imposed upon him by his contract of service. 1 K.B. 221 ; 110 L.T.R. 496.

"In the course of employment" is a different thing from "during the period of employment." It connotes, the ideas that the workman or servant is doing something which is part of his service to his employer or master. 121 L.T.R. 293.

If a man in the place of his employment and during its hours uses such intervals otherwise than in working, and while doing so is injured by any one of the dangers to which the employment exposes him, that may be an accident within the statute. (1909) A.C. 31 ; 99 L.T.R. 781.

A workman during an interval for food was injured while fetching his mate's cap and it was held that the accident arose out of the employment.

(1921) W.C. Rep 75 ; 13 B. 305.

Presumptions ; burden of proof ; sufficiency of evidence—

"Although the onus of proving that the injury by accident arose both "out of" and "in the course of" the employment rests upon the applicant, these essentials may be inferred when the facts proved justify the inference." If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture then the onus is on the applicant.

2 K.B. 718 ; 89 L.J.K.B. 609 122 L.T.R. 162.

(3) The Governor-General in Council, after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like

notification; add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational disease peculiar to those employments.

(4) Save as provided by sub-sections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is ¹* * directly attributable to a specific injury by accident arising out of and in the course of his employment.

Note.—Disease resulting *naturally* and unavoidably from the accident—“*Natural*” because one infection opened the way for other infections. The word “unavoidably” does not imply “absolutely incapable” but that “a thing is generally considered unavoidable when common prudence and foresight cannot prevent it.”

Williams v. Thompson, 1 N.C.I.C. 142, (1929).

Idiopathic implies a morbid condition when the antecedents giving rise to it are entirely unknown. 3 B.W.C.C. 586.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

¹ The words “solely and” were omitted by s. 3 of the Workmen’s Compensation (Amendment) Act. 1933 (15 of 1933).

- (b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

Note :—A new presentation of a plaint to a person who is not a proper officer is not institution. 18 W. R. 72 ; 6 B. H. C. R. 254.

4. ¹[(I) Subject to the provisions of this Act. the amount of compensation shall be as follows, namely :—

A. Where death results from the injury—

- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

- (ii) in the case of a minor—two hundred rupees ;

B. Where permanent total disablement results from the injury—

- (i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

- (ii) in the case of a minor—twelve hundred rupees ;

C. Where permanent partial disablement results from the injury—

- (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable

¹ This sub-section was substituted by s 4 of the Workmen's Compensation (Amendment) Act, 1938 (15 of 1938).

in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ;

Explanation.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries ;

D. Where temporary disablement, whether total or partial, result from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of seven days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor—of one-half of his monthly wages, subject to a maximum of thirty rupees :

Provided that—

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be : and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.]

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

Note :—So far as compensations are concerned, the results of injuries are fourfold viz :—

- (i) Death (ii) Permanent total disablement
- (iii) Permanent partial disablement and
- (iv) Temporary disablement.

Death “resulting from the injury”—If there was no new cause, no *novus actus interveniens*, death has in fact resulted from the injury. 2 K.B. 533 ; 18 T.L.R. 645 ; 4 W.C.C. 102. 100 L.T.R. 869.

The words “result from” in S.4 are wider than “solely and directly attributable” and the requirement of the law is satisfied even if the injury can be traced to the accident as the unnatural cause thereof. The true test is not whether the disablement is the direct or even probable Result of the injury or the injury the natural cause then of, cf, but whether the disablement can be traced to the injury even as an unusual but not unconnected result here of. 2 K.B. 533 ; 31 C.W.N. 286.

When a workman by reason of the accident, becomes insane, with the result that he commits suicide, the death is held to result from the injury. 36 T.L.R. 123 ; 90 L.J.K.B. 349 ; 13 B. 353.

Even where death is not directly caused by, but only accelerated by the injury, it none the less results from the injury. (1910) A.C. 242 ; 29 L.J.K.B. 470 ; 102 L.T.R. 340.

Claims in respect of death or incapacity alleged to be due to, “lowered vitality” caused by an earlier accident require careful watching, especially if a long interval has elapsed. 88 L.J. (K.B.) 462 ; 12 B.W.C.C. 1.

If death from surgical operation occurs then to decide whether death is due to accident or not one should test

whether in the circumstances the operation was a reasonable step to be taken to obviate the consequences of the accident. 2 K.B. 51 ; 25 T.L.R. 451 ; 2 B. 342.

Disablement for which compensation is awardable is that incapacity to earn or disablement which is due to the injury. 1 K.B. 1009 ; 4 B.W.C.C. 159.

Whether incapacity is total or partial is a question of fact. 16 B.W.C.C. 74 ; 13 B.W.C.C. 168.

The true test for the assessment of compensation for partial incapacity is the amount of the physical incapacity for work caused by the accident, and not the actual loss of wages resulting from the incapacity 20 B.W.C.C. 350.

A second accident which results in injury is an intervening or a new cause ; proceedings must be based on it alone, even though the first accident was as contributory cause to the incapacity arising from the second. 1 K.B. 46 ; 5 B.W.C.C. 7 ; 14 B.W.C.C. 186.

When a workman would have recovered from the effects of the accident but for negligent and defective medical treatment, his continued incapacity is held due not to the original injury. 5 B.W.C.C. 142.

Inability to obtain work resulted from his disfigurement caused by the accident, he was entitled to compensation. 1 K.B. 1048 ; 104 L.T.R. 327 ; 27 T.L.R. 323.

A minor was employed in hewing coal and while so employed a piece of coal worked itself into his knee, with the result that blood poisoning set in and the workmen died, Held, that the death was the result of an "injury by accident."

Thompson vs. Ashington 34 L.T. 412, *Lloyd vs. Sugg* 69 L. R. B. 190 = (1900) 1 R. B. 481.

When a workman's injuries were caused by an accident "arising out of and in the course of his employment" he is entitled to compensation.

Wilkes vs. Dowell & Co. 74 L. K. B. 572 = (1905) 2 K. B. 225. *Brintons vs. Turvey* (1965) A. C. 230.

Where a game-keeper, while engaged in the discharge of his duties, was attacked and beaten by poachers as a result of which he was injured held that the game-keeper had been injured by "accident" within the meaning of this Act. *Anderson vs. Balfour*, (1910) 2 Ir. R. 497.

Previous ill-health of the workman does not disentitle him to the compensation. *Clover vs. Hughes* (1910) A. C. 242. A claim for compensation is not maintainable where the death or disablement is equally consistent with disease as with accident.

Honer vs. Painter (1911) 4 B. W. C. C. 188. On the question of right to compensation, the test is not whether the man's present condition is the natural result of the injury, but whether it is the fact.

Dunham vs. Clare (1902) 2 K. B. 292.

Method of calculating wages.

¹[5. (1)] For the purposes of ²[this Act] the monthly wages of a workman shall be calculated as follows, namely:—

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

¹[(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of

1 This section was re-numbered by s. 3 of the Workmen's Compensation (Amendment) Act, 1929 (5 of 1929).

2 These words were substituted for the word and figure "section 4" by s. 5 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality ;]

Note :—Casual employment—

When a workman is casually employed he cannot be held to be in permanent service and when there are breaks in his service for various periods, though each period in itself is not more than 14 days he cannot be held to be in continuous service, when the workman has worked during the intervals under another employer.

140 I.C. 46 = 1932 cr. C. 704.

An applicant, a relative of the deceased workman, in a suit for compensation against a Dubashe firm contended that there was no continuous service of the deceased workman. Held that it was the firm to show that the service was continuous.

22 B. 124 ; 44 T.L.R. 563. 120 I.C. 510.

²[(c)] in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

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Explanation.—A period of service shall, for the purposes of [this sub-section] be deemed to be continuous which has

1. This clause was inserted by s. 5 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

2. Original clause (b) was relettered clause (c) *ibid.*

3. The provision was omitted, *ibid.*

4. These words were substituted for the words "this section" by s. 3 of the Workmen's Compensation (Amendment) Act, 1929 (5 of 1929).

not been interrupted by a period of absence from work exceeding fourteen days.

Note :—"Wages" or "earnings" include not only money payments, but other things the value of which are capable of being estimated in money, such as board and lodging, clothes or other articles or advantages by which the workman is in fact remunerated 1 Q.B. 453.

Sums given to the workman for expenses connected with his duties are earnings for the purposes of assessing compensation for example, a railway guard's expenses when his duties required him to be away from home for a night. 1904 A.C. 349 ; 6 B.W.C.C. (O.S.) 119.

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6. (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

Note :—Half monthly payments are not open to review unless there has been some change in the condition or circumstances of the party since it was fixed. To entertain an application for review without any alteration of the conditions under which the original compensation was fixed would be in effect to allow an appeal from the award to the commissioner himself. 5 B.W.C.C. 648 ; 10 B.W.C.C. 166.

Basis of original calculation cannot be altered in review because that matter is resjudicatar 22 Q.B. 622 ; 2 W.C.C. 141 ; 1 K.B. 685 ; 3 B.W.C.C. 185.

Res Judicata—1 K.B. 235, C.A.

5. Sub-section (2) was omitted by s. 5 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

The onus of proof rests on the party seeking to vary the award ; Consequently when once compensation has been awarded the onus of proving that the workman has recovered is on the employer. 1 K.B. 1009.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

Commutation of half-monthly payments.

*Note :—*Half monthly payment which has been ascertained by agreement or settled by the commissioner and which represents the full measure of compensation to which the workman is entitled. 2 K.B. 469 ; 21 B.W.C.C. 203.

Subject to the time condition, the employer has an absolute right to reduce half-monthly payment when the necessary conditions are satisfied. 5 B.W.C.C. 335 ; 22 B.W.C.C. 509.

8. ¹[(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such pay-

Distribution of compensation.

1 Sub-sections (1) —(3) were submitted s. 4 of the Workmen's Compensation (Amendment) Act, 1929 (5 of 1929).

ment made directly by an employer shall be deemed to be a payment of compensation :

Note :—Compensation “shall” be paid to the commissioner. 123 I.C. 133 = 7 Rang. 660.

Subject to the observance of the provisions of S. 8, the commissioner has power to order the re-deposit of the compensation. 123 I.C. 133.

²[Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensatson and repaid to the employer.] ;

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in receipt of any compensation deposited with him.]

(4) On the deposit of any money under sub-section (1) ¹[as compensation in respect of a deceased workman] the Commissioner ²[shall deduct] therefrom the actual cost of the workman’s funeral expenses, to an amount not exceeding ³[twenty-five rupees) and pay the same to the same person by whom such expenses were incurred, and

2 This proviso was substituted by s. 6 of the Workmen’s Compensation [Amendment] Act, [15 of 1933].

1 These words were inserted by s. 4 of the Workmen’s Compensation [Amendment] Act, 1929 [5 of 1929].

2 These words were substituted for the words “may deduct” by s. 6 of the Workmen’s Compensation [Amendment] Act, 1933 [15 of 1933].

3 These words were substituted, *ibid.*

shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

⁴[(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under subsection (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in his behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.]

⁴ Sub-sections [5]—[7] were substituted for original sub-section [5] by s. 4 of the Workmen's Compensation [Amendment] Act, 1828 [5 of 1828].

¹[(8)] Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Note :—The right of dependants to compensation under this Act, when death ultimately results from the injury, is a separate and independent right and cannot be released by the workman. *Williams vs. Vauxball* (1907) K. B. 433. All the dependants must present themselves before the commissioner before distribution takes place. *Kerr vs. Stewart*, 43 L. J. 119. The commissioner is to settle the amount to be distributed.

Daniels vs. Ocean Coal Co. (1900) 22. B. 250. *Manchester vs. Carlton Iron Co.* 89 L. T. 730. After the death of the widow, the commissioner can allot her share to the children.

Ivey vs. Ivey (1912) 2 K. B. 118.

²[(9)] Where the Commissioner varies and order under subsection (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, imper-

1 Original sub-section (6) was renumbered as (8) by s. 4 of the Workmen's Compensation Amendment Act, 1929 (5 of 1929.)

2 This sub-section was added, *ibid.*

sonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.]

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Compensation not to be assigned, attached or charged.

*Note ;—*Where an applicant under this Act appeals unsuccessfully against the amount of compensation awarded to him the costs of appeal will be set off against his costs in the court below.

Case of Colonial Wharves 53 W. R. 514.

An employer who has been found liable to pay compensation by way of weekly payments under the Act to a workman is not entitled to set off against those payments a sum awarded to him as costs against a workman in an application for the diminution of the weekly payments.

Roswel Gas Coal Co. *vs.* M.'vicar 7 F 290.

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months from the date of death :

Notice and claim

*Note :—*Whether a notice is given "as soon as practicable" must depend, upon circumstances. It may be fatal to delay giving notice for ten weeks 8 B.W.C.C. 44,

Notice need be given only when the workman realises he has suffered an injury entitling him to compensation

and, under the circumstance of the case, the mere fact that notices were put up in the factory enjoining workmen to give notice of even the slightest accident does not entitle the claimant to compensation. 95 L.J.K.B. 667.

Provided that, where the accident is the contracting of disease in respect of which the provision of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Note :—Ignorance of the existence of the Act and of the provision contained therein that the claim should be instituted within six months from the date of the accident is no “sufficient cause” within the meaning of proviso to S. 30. 9 Rang. 118=1. R. 1931 ; Rang 124=131 I. C. 60.

¹[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the maintenance of proceedings—

(a) if the claim is made in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer had knowledge of the accident from any other source at or about the time when it occurred].

Provided, further, that the Commissioner may admit and decide any claim to compensation in any case notwithstanding—

¹ This proviso was inserted by s. 7 of the Workmen's Compensation (Amendment) Act, 1938 (15 of 1938).

ing that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

Note :—A workman employed as a cooly in a factory met with an accident on the 23rd February, 1927. On the 28th. March, 1927 while he was admitted in a hospital as an indoor patient he sent a notice addressed to the proprietors of the factory. It subsequently came back with the endorsement “left” on it. On the same date he also sent a notice addressed to the solicitors of the proprietors and the same was received by the addressee on the 21st April, 1927. Held (1) that the notices constituted sufficient compliance with S. 10 (3) of the Workmens Compensation Act; (2) That having regard to the ignorance of and serious nature of the injury received, the notice must be taken to have been given as soon as practicable within the meaning of S 10 (1); (3) that in any case, the case was covered by proviso 2 to S. 10 (1). The proviso would apply even where no notice has been given. 31 Bom. L. R. 1059 = A. I. R. 1929 Bom. 400.

In Sec 10 (2) The words “any one of” were substituted for “any one or” by Act VII of 1924.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon ²[any one of] several employers, or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

³[3] The Local Government may require that any

² These words were substituted for the words “any one or” by s. 2 and First Schedule of the Repealing and Amending Act, 1924 (7 of 1924).

³ Sub-sections (3) and (4) were substituted by s. 7 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.]

*Note :—*The whole scheme of section 8 of the Workmen's Compensation Act is designed for the protection of the employer against claims in respect of accidents where his liability is admitted or established. If he does so pay the compensation he is protected against the claims of all the dependants whether or not they have applied to be parties to the distribution. If he makes the distribution himself he lays himself open to the attack by persons who afterwards turn up and claim to be dependants. But if he pays the correct amount to the only person who is a dependant it is not open to that person to claim the amount over again and if he makes to him the payment of less than the correct amount he can only be required to pay the difference. 7 R. 660.

¹[10A. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

**Power to require from
employers statements
regarding fatal
accidents.**

¹ Sections 10-A and 10-B were inserted by s. 8 of the Workmen's Compensation (Amendment) Act, 1938 (15 of 1938).

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10B. (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death :

Reports of fatal accidents

Provided that where the Local Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

(2) The Local Government may, by notification in the local official Gazettee, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.]

11. (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any

Medical examination.

workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstruct the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner and compensation, if any, shall be payable accordingly.

Where a workman's hand was scaled while at work and it appeared that the injuries had been aggravated because of his disregard of the medical officer's instructions who however continued to attend on him. Held that Sec. 11 (6) Workmen's Compensation Act, applied and that the workman's claim for compensation must be assessed upon the bases of an injury of the same nature and duration as might reasonably have been expected if the workman had been regularly attended by a qualified medical practitioner.

32 C. W. N. 535 ; 115 I. C. 93.

12. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him ; and where compensation is claimed from the

principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, ¹[or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Note :—Contract subject to series of persons—Workman dying while under service of last contractor—Liability of original contractor—Rights inverse of employers, 32 C. W. N. 452 = A. I. R. 1928 Cal. 399 = 113 I. C. 18. A tindal was receiving Rs. 10 a month from the Dubashes and also received pay at the rate of Rs 2-8-0 per day, when he was employed in supervising the coolies working for the Dubashes ; that is to say, he kept Rs. 2 for himself out of Rs 25/- paid to him daily for the payment of his gang, one of whom

¹ These words were inserted by s. 9 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

was the deceased workman. The workman received injuries during the course of and arising out of the employment which resulted in his death. Held, that the tindal was not a contractor. 1930 Cr. C. 65 = 120 I.C. 510 = A.I.R. 1930 Sind 49. The G. I. A. Railway in connection with the electrification of their line were building a power station near Kalyan and erecting a transmission line to carry electric power to various sub-stations on the railway. The work of constructing the transmission line had been entrusted on a contract to A Co. and the deceased was employed by the Company as a fitter. His work was to assist in the erection of the steel towers which would carry the overhead cable. These towers were not erected on the railway track but on land adjacent thereto, the distance from the railway lines varying from 400 to 700 ft. While carrying materials from the store near Kalyan Station to the site of the work he was knocked down by a train and killed. In an action to recover compensation, Held, (1) that the work of constructing the overhead cable was not ordinarily part of the business of the railway. The word "ordinarily" in S. 12 applies just as much to a Government department as it does to any other principal, (2) that in constructing the electric cable the railway company was exercising the powers and duties conferred on them by Statute, (3) that a state railway is a department of the Government within the meaning of S. 2 (2) of the Workmen's Compensation Act, and (4) that the claim for compensation was not maintainable against the Railway Co.

53 Bom. 203 = 31 Bom. L. R. 211 = 117 I. C. 431 = A.I.R. 1929 Bom. 179.

13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid

**Remedies of employer
against stranger.**

and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

*Note :—*Claim to indemnity when compensation was paid by agreement—

The principal may claim an indemnity even though the payment of compensation and the amount of it have been settled by agreement. But he may say, that although the amount of compensation fixed by the agreement was compensation paid under the Act, yet still it was not an amount which it was not reasonable for the employer to agree to pay, having regard to the nature of the injury and the condition and circumstance of the workman. 1K. B. 428 ; 72 L. J. K. B. 222. 19 T. L. R. 206.

The Act preserves to the workman the right of recovering compensation either from the principal or the contractor but not from both. 92. B, 521 ; 100 L.T.R. 99 ; 25 T.L.R. 103 2. B. 181. (The English rules would seem to allow both being made respondents in the same section).

14. (I) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of **Insolvency of employer.** the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act, 1920, or under section 230 of the Indian Companies Act, 1913, are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under

section 7, and a certificate of the commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1),

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

*Note :—*The workman is protected against loss in the event of the bankruptcy of their employers.

Special provisions relating to masters and seamen. 15. This Act shall apply in the case of workmen who are masters of* ships or seamen subject to the following modifications, namely :—

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

(3) Where an injured master or seaman is discharged or left behind in any part of His Majesty's dominions or in a foreign country, any depositions taken by any Judge or

1 The word "registered" was omitted by s. 10 of the Workmen's Compensation (Amendment) Act, 1933 (p5 of 1933).

Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Governor General in Council or any Local Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made ;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness ; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub section (4) of that section.

(5) No¹ [half-monthly payment] shall be payable in

1 These words were substituted for the words "monthly payment" by s. 2 and First Schedule of the Repealing and Amending Act, 1924 (7 of 1924).

respect of the period during which the owner of the ship is, under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

“Who is a seaman” is the most controversial question. In *Chislett V Macbeth & Co.*, (1909) 2 K. B. 811 on an appeal, (1910) A. C. 220, it was held, that a workman employed on board a steam-ship in helping to unmoor and warp her from one berth to another across a large dock in Liverpool, was not a “seaman”. “I do not think”, said Lord Macnaghten, “the term can be properly applied to a person who is not by occupation a sea-faring man and is not at the time of the accident employed in the ordinary duties of a “seaman”.

The word must be held to bear its ordinary signification 21 S. L. R. 407.

16. The Governor General in Council may, by notification in the Gazette of India, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Governor General in Council may direct.

17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

A claim for compensation for the death of a workman is not barred by a release by the deceased in his lifetime, contained in his application for admission into a railroad relief association, and by a further release by his widow on receipt of the death benefit from the said association.

28 R. C. L. 737.

18. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 7 or section 8 of the Indian Factories Act, 1911, before the occurrence of the injury shall be conclusive proof of the age of such person.

Penalties, ²[18A. (1) Whoever—

- (a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or
- (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or
- (c) fails to send a report which he is required to send under section 10B, or
- (d) fails to make a return which he is required to make under section 16,

shall be punishable with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.]

2 This section was inserted by s. 11 of the Workmen's Compensation (Amendment) Act, 1938 (15 of 1938).

CHAPTER III.

COMMISSIONERS.

19. (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by ¹[a Commissioner].

Reference to
Commissioners.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

Commissioner has no power to set aside a previous order for compensation made by him under a mistake 1930 Cr. C. 801 = A.I.R. 1930 Lah. 657.

The Workmen's Compensation Act allows appeals to the High Court from certain orders only. There is no authority conferred by the Act or by the rules framed thereunder on the Financial Commissioner or any other officer of Government to direct the commissioner to reverse any decision at which he may have arrived. In so far as the Financial Commissioner purports to direct the commissioner to reopen such proceedings his action is ultra-vires. It is open, of course, to any one to make such suggestions are made by a superior officer of Government it is desirable that they be not made in such a form as to be capable of interpretation as order. 7 R. 660.

¹ These words were substituted for the words "the Commissioner" by s. 12 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

20. (1) The Local Government may, by notification in the local official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

Appointment of Commissioners.

¹[(2) Where more than one Commissioner has been appointed for any local area the Local Government may, by general or special order, regulate the distribution of business between them.]

²[(3)] Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry,

¹[(4)] Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

21. (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder be done by or before ³[a commissioner] for the local area in which the accident took place which resulted in the injury :

Provided that, where the workman is the master of a ³* ship or a seaman, any such matter may be done by or before ²[a commissioner] for the local area in which the owner or agent of the ship resides or carries on business.

(2) If a commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other

1 New sub-section (2) was inserted and the old sub sections (2) and (3) were re-numbered (3) and (4) by s. 13 *ibid*.

2 Sub-section (2) and Sub-section (3) were renumbered as (3) & (4). respectively.

3 These words were substituted for the words "The Commissioner" by s. 14 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

3 The word "registered" was omitted, *ibid*.

commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other commissioner all documents relevant for the decision of such matter and where the matter is transferred to disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings :

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a commissioner in the same province save with the previous sanction of the Local Government or to a commissioner in another province save with the previous sanction of the Governor General in council, unless all the parties to the proceedings agree to the transfer.

(3) The commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein and, if the matter was transferred for report, return his report thereon or if the matter was transferred for disposal continue proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

½(5) The Local Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.]

1 This sub-section was inserted by s. 14 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

22. (1) No application for the settlement of any matter by a Commissioner, ²[other than an application by a dependant or dependants for compensation] shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

Form of
application.

(2) ³[An application to a Commissioner] may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely :—

- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims ;
- (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for omission ;
- (c) the names and addresses of the parties ; and
- (d) ⁴[except in the case of an application by dependants for compensation] a concise statement of the matters on which agreement has and ⁵[of] those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

2 These words were inserted by s. 15, *ibid.*

3 These words were substituted, *ibid.*

4 These words inserted, *ibid.*

5 This word was substituted for the word "on" by s. 2 and First Schedule of the Repealing and Amending Act, 1925 (87 of 1925).

¹[22A, (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman

**Power of
Commissioner
to require
further deposit
in cases of
fatal accident**

whose injury has resulted in death and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

*Note :—*Cases arise in which the amount of compensation deposited on account of fatal accident is inadequate. It is vague under the existing law whether the commissioner can take steps on his own initiative to secure that the full amount of compensation is deposited. This new section came into existence to make up an adequate deposit to the proper amount.

Vide Ft. St. George Gazette, 8th March, 1932,

pp. 137-141.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit deficiency.]

23. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects. ²[and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898.]

**Powers and procedure
of Commissioner**

¹ This section was inserted by s. 16 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

² These words were added by s. 5 of the Workmen's Compensation (Amendment) Act, 1929 (5 of 1929)

Note :—The proceedings before the commissioner are judicial proceedings. 28 T. L. R. 16 C. A.

The technicalities of the law are not strictly observed whether in respect of forms of pleading, the rule respecting parties or the rules of evidence.

Subject to the special procedure laid down in the Rules, the general procedure follows that in an ordinary Civil court action.

Parties to the proceedings—The person applying for proceedings to be taken under the Act is “the applicant”, and all other persons whose presence may be necessary to enable the commissioner to settle the questions involved are called “respondents”.

More persons than one may be joined as “applicants”.

Pleadings—The nature of the injury only need be stated in the particulars not its effects.

The request for award of compensation and particulars must generally be in accordance with forms set out, and a copy of the notice of the accident appended or annexed or, if not possible the reason of the omission furnished.

The respondents file the “answer” certain number of days before the day of hearing. The answer must set these matters out concisely and contain the respondent’s name and address and that of his solicitor.

As the power to issue a commission is not mentioned in the Act itself, or in any of the rules thereunder, a commissioner appointed under the Act has no power to issue a commission for the examination of witnesses. 125 I.C. 831.

It is an absolute duty of the commissioner to take a note of the points of law raised the facts in dispute, and the proceedings generally whether requested to do or not.

102 L. T. 154, 3 B. W. C. C. 119.

Assumption of risk, contributory negligence, and the fellow servant doctrine are to be abrogated and unavailable as a defence of the workman’s action. 28 R. C. L. 831.

After the words "material objects" the words within square brackets have been newly added by Act V of 1929. Under Workmen's Compensation Act the commissioner exercises power of a court only under certain provisions of the code and S. 151 C. P. code not being one of them, the commissioner does not possess any inherent power contemplated by the aforesaid section. 1930 Cr. C. 801 = A. I. R. 1930, Lah. 657.

24. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal particular or other person authorised in writing by such person.

**Appearance
of parties.**

25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record :

**Method of recording
evidence.**

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record :

Provided, further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

26. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Costs.

*Note :—*General Rule as to costs is that costs of the proceedings under this Act are in the discretion of the commi-

ssioner. The commissioner cannot award a lump sum for costs. 3 B. W. C. C. 245 C. A.

Where an applicant was only partially successful it was held that the gestion of costs was entirely in the discretion of the commissioner. 18 B. W. C. C. 20.

21 B. W. C. C. 220.

Where the only question at issue was whether the incapacity has ceased, and the judge determined that it had and made declaration of liability which the employers did not resist, it was held that in such a case an order directing the employers to pay the costs should not be made.

1 K.B. 640, 9 B. W. C. C. 122.

27. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

28. (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable ¹[to a woman or a person under a legal disability]² * * a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner :

Provided that—

(a) no such memorandum shall be recorded before

1 These words were substituted for the words "to a person under a legal disability" by s. 6 of the Workmen's Compansation (Amendment) Act, 1929 (5 of 1929).

2 The words "or to a dependent" were repealed by s. 3 and Second

seven days after communication by the Commissioner of notice to the parties concerned :

*(b)

(c) the Commissioner may at any time rectify the register ;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable ⁴ [to a woman or a person under a legal disability] ⁵* * ought not to be registered by reason of the inadequacy of sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement ¹ [and may make such order] including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding any thing contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

*Note :—*This section primarily refers to cases where the parties have arrived at an agreement prior to any hearing before the court. 114 I.C. 372.

Under workmen's compensation Act, commissioner has power in contested proceeding before him to pass any

Schedule of the Repealing and Amending Act, 1924 (7 of 1924).

3 Clause (b) was omitted by s. 6 of the Workmen's Compensation (Amendment) Act, 1929 (5 of 1929).

4 These words were substituted for the words "to a person under any legal disability", *ibid.*

5 The words "or to any dependant" were repealed by s. 3 and Second Schedule of the Repealing and Amending Act, 1924 (7 of 1924).

order or decree by consent of parties and appeal from such decree or order does not lie to the High Court. 30 Bom L.R. 1

The term "Genuineness" in this section signifies not merely that the agreement has in truth been entered into but also that it is one capable of being enforced. 2 K.B. 141 ; 5 B.W.C.C. 394.

A registered agreement is enforceable not only in favour of the workman to secure payment, but also in favour of the employer by way of estoppel. 1 K.B. 224 ; 8 B.W.C.C. 276.

The Workmen's Compensation Act read with the rules made by the Governor-General in Council contemplate an agreement prior to any hearing by the Commissioner.

30 Bom. L. R. 1610 = 114 I. C. 371 = A. I. R. 1929 Bom. 68.

29. Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Effect of failure to register agreement.

*Note :—*Where the finding is based upon no evidence, as substantial question of law arises and an appeal lies. 1929 Cr. C. 518 = A.I.R. 1929 Cal. 774. When in a contested matter the commissioner passed an order by consent of parties and the validity of the order was impugned in appeal on the ground that the commissioner had no jurisdiction to pass the order. Held that the order was validly passed and that there being no substantial question of law the High Court could not interfere in appeal. 30 Bom. L. R. 1610 = 114 I. C.

A finding as to wilful disobedience is a finding of fact which might be arrived at on evidence and hence it cannot be interfered with in appeal by the High Court. 1930 Cr. C. 10 = A.I.R. 1930 Cal. 58. 1930 Sind 49 = 120 I. C. 510.

A. I. R. 1930 Sin 221.

30. (1) An appeal shall lie to the High Court from the following orders of a Commissioner namely :—

Appeals,

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum :

(b) an order refusing to allow redemption of a half-monthly payment :

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant ;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of subsection (2) of section 12 ; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

1 These words were substituted for the words "or may make such order" by s. 2 and First Schedule of the Repealing and Amending Act, 1924 (7 of 1924).

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

¹[Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section.

*Note :—*The High Court will interfere with the decision of the commissioner only if the statement of law by him or its application to the facts is obviously wrong.

145 I.C. 273 = 34 Bom. L.R. 410.

²[30A. Where an employer makes an appeal under clause (a) of sub-section (1) of section 30, the Commissioner may, and if so directed by the High Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with him.]

31. The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

Recovery.

1 This proviso was added by s. 17 of the Workmen's Compensation (Amendment) Act, 1938 (15 of 1938).

2 This section was inserted by s. 18, *ibid.*

CHAPTER IV.

RULES.

32. (1) The Governor General in Council may make rules to carry out the purposes of this Acts. —
Power of the Governor General in Council to make rules (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate ;
- (b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for examination under sub-section (1) of section 11 ;
- (c) for prescribing the procedure to be followed by Commissioners in the disposal⁽¹⁾ of cases under this Act and by the parties in such cases ;
- (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases ;
- (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;
- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance ;

¹ For Workmen's Compensation Rules 1924 see General Statutory rules and Orders, Vol. V. p. 262.

- (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;
- (h) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same and
- (i) for any other matter which is not, in the opinion of the Governor General in Council, a matter of merely local or provincial importance.

33. The Local Government may, subject to the control of the Governor General in Council, **Power of Local Government to make rules.** make rules to provide for all or any of the following matters, namely :—

- (a) for regulating the scales of costs which may be allowed in proceedings under this Act ;
- (b) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ;
- (c) for the maintenance by Commissioners of registers and records of proceedings before them ;^{1*}
- ²[(d) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10, and the form of such notice-books ;
- (e) for prescribing the form of statement to be submitted by employers under section 10A ;
- (f) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner ; and] ;

1 The word "and" was omitted by s. 19 of the Workmen's Compensation (Amendment) Act, 1933 15 of 1933).

2 Clauses (d), (e) and (f) were inserted, *ibid.*

³[*g*] generally for carrying out the provisions of this Act in respect of any matter which is in the opinion of the Local Government, a matter of merely local importance in the province.

34. (1) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication.

Publication of rules (2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act.

⁴[**35.** The Governor General in Council may, by notification in the Gazette of India, make rules for the transfer to any part of His Majesty's Dominions or to any other country of money paid to a Commissioner under this Act for the benefit of any person residing or about to reside in such part or country and for the receipt and administration in British India of any money awarded under the law relating to workmen's compensation in any part of His Majesty's Dominions or in any other country, and applicable for the benefit of any person residing or about to reside in British India.]

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation

3 Old clause (*d*) was re-lettered (*g*), *ibid.*

4 This section was inserted by s. 20, *ibid.*

SCHEDULE I.

[See sections 2 (1) and 4.]

List of injuries deemed to result in permanent partial disablement.

Injury	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow ...	70
Loss of left arm above or at the elbow ...	60
Loss of right arm below the elbow ...	60
Loss of leg at or above the knee ...	60
Loss of left arm below the elbow ...	50
Loss of leg below the knee ...	50
Permanent total loss of hearing ...	50
Loss of one eye ...	30
Loss of thumb ...	25
Loss of all toes of one foot ...	20
Loss of one phalanx of thumb ...	10
Loss of index finger ...	10
Loss of great toe ...	10
Loss of any finger other than index finger ...	5

Note—Complete and permanent loss of the use of one limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

SCHEDULE II.

[See section 2 (1) (n).]

List of persons who, subject to the provisions of section 2 (1) (n), are included in the definition of workmen.

The following persons are workmen within the meaning of section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is—

¹[(i) employed, otherwise than in a clerical capacity on a railway, in connection with the operation or maintenance of mechanically propelled vehicles ; or

(ii) employed otherwise than in a clerical capacity in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process, as defined in clause (4) of section 2 of the Indian Factories Act, 1911, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used ; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty or more persons have been so employed ; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within

¹ These clauses and the explanation were substituted by s. 21 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

the precincts whereof, on any one day of the preceding twelve months, ten or more persons have been so employed ; or

- (v) employed, in any mine as defined in clause (f) of section 3 of the Indian Mines Act, 1923, in any mining operation, or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground :

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosive have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause ; or

- (vi) employed as the master or as a seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled, or

(b) any ship not included in sub-clause (a) of fifty tons net tonnage or over ; or

- (vii) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Indian Ports Act, 1908, of goods which have been discharged from or are to be loaded into any vessel ; or

- (viii) employed in the construction, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above

- the ground or twenty feet or more from the ground level to the apex of the roof, or
- (b) any dam or embankment which is twenty feet or more in height from its lowest to its highest point ; or
 - (c) any road, bridge, or tunnel ; or
 - (d) any wharf, quay, sea-wall or other marine work including any moorings of ships ; or
 - (iv) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any over-head electric line or cable or post or standard for the same ; or
 - (x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer ; or
 - (vi) employed in the service of any fire brigade ; or
 - (xii) employed upon a railway as defined in clause (4) of section 3, and sub-section (1) of section 148 of the Indian Railways Act, 1890, either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration ; or
 - (xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department ; or
 - (xiv) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas ; or
 - (xv) employed in any occupation involving blasting operations ; or
 - (xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been em-

ployed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or

- (xvii) employed in the operation of any ferry boat capable of carrying more than ten persons ; or
- (xviii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twentyfive or more persons have been so employed ; or
- (xix) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas ; or
- (xx) employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse Act, 1927 ; or
- (xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; or
- (xxii) employed in the training, keeping or working of elephants or wild animals ; or
- (xxiii) employed as a diver.

Explanation.—In this Schedule, ‘the preceding twelve months’ relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.]

SCHEDULE III.

(See section 3.)

List of occupational diseases.

Occupational disease.	Employment.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparation or compounds.
Mercury poisoning or its sequelæ	Any process involving the use mercury or its preparation or compounds.
Poisoning by benzene and its homologues, or the sequelæ of such poisoning.	Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.
Chrome ulceration or its sequelæ.	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium or their preparations.
Compressed air illness or its sequelæ.	Any process carried on in compressed air.]

1 These entries were added by s. 22 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

¹[**SCHEDULE IV.**]

(See section 4.)

Compensation payable in certain cases.

Monthly wages of the workman injured.		Amount of compensation for—		Half-monthly payment as compensation for Temporary Disablement of Adult.
		Death of Adult.	Permanent total Disablement of Adult.	
1		2	3	4
More than	But not more than			
Rs.	Rs.	Rs.	Rs.	Rs. a.
0	10	500	700	Half his monthly wages.
10	15	550	770	5 0
15	18	600	840	6 0
18	21	630	882	7 0
21	24	720	1,008	8 0
24	27	810	1,134	8 8
27	30	900	1,260	9 0
30	35	1,050	1,470	9 8
35	40	1,200	1,680	10 0
40	45	1,350	1,890	11 4
45	50	1,500	2,100	12 8
50	60	1,800	2,520	15 0
60	70	2,100	2,940	17 8
70	80	2,400	3,360	20 0
80	100	3,000	4,200	25 0
100	200	3,500	4,900	30 0
200	..	4,000	5,600	30 0]

1 This Schedule was substituted by s. 23 of the Workmen's Compensation (Amendment) Act, 1933 (15 of 1933).

Indian Trade Unions Act, 1926.

ACT NO. XVI OF 1926.

An Act to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India.

Whereas it is expedient to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India ; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Indian Trade Unions Act, 1926.

Short title extent and commencement

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Pargans.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions

(a) “executive” means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted ;

(b) “officer”, in the case of a Trade Union, includes any member of the executive thereof, but does not include an auditor ;

(c) “prescribed” means prescribed by regulations made under this Act ;

- (d) "registered office" means that office of a Trade Union which is registered under this Act as the head office thereof ;
- (e) "Registered Trade Union" means a Trade Union registered under this Act ;
- (f) "Registrar" means a Registrar of Trade Unions appointed by the Local Government under section 3, and "The Registrar", in relation to any Trade Union, means the Registrar appointed for the province in which the head or registered office, as the case may be, of the Trade Union is situated ;
- (g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all person employed in trade or industry whether or not in the employment of the employer with whom the Trade dispute arises ;

Note :—This definition is taken from sec. 5 of the British Trade Disputes Act, (1906.—Sec. Quinn vs Leathun (1901) A. C. 495 ; Dallimore vs. Williams (1912) ; 29 T. L. R. 679.

The dispute must be something fairly definite and of real substance and not merely a personal quarrel. Convey vs Wade (1909) A. C. 506 ; Vacher vs London Society, (1912) 3 K. B. 547. In Convey vs Wade Supra, Lord shaw said : "I cannot see my way to hold that trade dispute, necessarily includes accordingly every case of personal difference between any one workman and includes accordingly every case of personal difference between any one workman and or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded it may be, upon personal animosity, may come to

be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute ; but until it reaches that stage I cannot hold that a trade dispute necessarily exists.”

- (h) “Trade Union” means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions :

Note :—This definition is based on that contained in section 23 of the British Trade Union Act 1871. As to the meaning of regulation, vide *Gozni vs. Bristol Trade and Provident Society* (1909) 1 K. B. 900 C. A. ; *Osborne vs. Amalgamated Society of Railway Servants*, (1909) 1 ch. 163 C. A.

Provided that this Act shall not affect—

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

CHAPTER II.

*Registration of Trade Unions.***Appointment of Registrars.**

3. Each Local Government shall appoint a person to be the Registrar of Trade Unions for the province.

Note :—Registrars of Trade Unions are appointed by the Local Governments.

Registration is purely voluntary and it is open to a registered trade union to apply for cancellation of registration at any time. For the forms of application vide Encyclopaedia of forms and Precedents, vol. XIV. p. 515.

Mode of registration.

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

Application for registration.

5. (1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely :—

- (a) the names, occupation and addresses of the members making the application ;
- (b) the name of the Trade Union and the address of its head office ; and
- (c) the titles, names, ages, addresses and occupations of the officers of the Trade Union.

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

such form and containing such particulars as may be prescribed.

*Note :—*This section corresponds to Ss. 13 (1) and 17 of the British Trade Unions Act, 1871. The information is required to enable the Registrar to satisfy himself that the organisation applying for registration is a Trade Union and that its rules satisfy the requirements of clause 6.

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

Provision to be contained in the rules of a Trade Union.

- (a) the name of the Trade Union ;—
- (b) the whole of the objects for which the Trade Union has been established ;
- (c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act ;
- (d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the officers and members of the Trade Union ;
- (e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as officers required under section 22 to form the executive of the Trade Union ;
- (f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members ;
- (g) the manner in which the rules shall be amended, varied or rescinded ;

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

Note :—This is adopted from the First schedule of the British Trade Unions Act, 1871. In deciding whether any association comes within the definition of a Trade Union its objects and rules must be read as a whole. *Chamberlains Warf vs. Smith* (1900) 2 ch. 605. The objects which could be specified in the rules included only objects strictly within the scope of the Trade Unions Act (1910) A. C. 87. and the rules were held to constitute an exhaustive code (1900). 17 T. L. R. 39 C. A. ; (1913) 1 ch. 259, 266.

7. (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

**Power to call for
further particulars
and to require alter-
tion of name.**

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

Note :—An application to register, and printed copies of the rules with a test of the titles and names of the officers, must be sent to Registrar who upon being satisfied that the Union, has complied with the regulations in force respecting, registry, must register the union and the rules. [Vide Ss. 13 (1), 13 (2), 17 of the Trade Unions Act 1871] Subsection (2) corresponds to section 13 (3) of the Trade Unions Act, 1871, of also R. V. Registrar of friendly societies (1872) L. R. 7. B. 741.

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

Note :—The Registrar may not register any combination as a Trade Union unless in his opinion, having regard to the constitution of the combination its principal objects are statutory objects.

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

Note :—The Registrar, on registering the union, issues a certificate which, unless known to have been withdrawn or cancelled, is conclusive evidence that the regulations with respect to registry have been complied with. Vide Ss. 13 (4) British Trade Unions Act 1871.

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

(a) on the application of Trade Union to be verified in such manner as they may be prescribed, or

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

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

*Note :—*Until the withdrawal or cancellation of its certificate a registered union can be sued in its registered name notwithstanding that one of its objects is illegal (1913) 1 ch. 366.

11. (1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such

period as may be prescribed, appeal to
Appeal. such Judge, not below the grade of an
additional or assistant Judge of a principal Civil Court of
original jurisdiction, as the Local Government may appoint
in this behalf.

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

(3) For the purpose of the inquiry, the Judge may summon and enforce the attendance of witness and compel

them to give evidence as if he were a Civil Court ; and he may also direct by whom the whole or any part of the costs of the inquiry shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the Civil Procedure Code, 1908.

(4) In the event of the dismissal of an appeal under subsection (2), the person aggrieved shall have the right of appeal to the High Court.

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

*Note :—*This section corresponds to sec 15 of the British Trade Union Act 1871. Apparently this provision does not in itself confine the Union to the jurisdiction of the Courts within whose jurisdiction the office is situated.

Mackendrick vs National Union of the Dock Labourers (1910) 148 Sc. L. R. 17 ; Halsbury Vol 27 p 625.

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

Incorporation of registered Trade Unions.

*Note :—*In England the Trade Unions were not the creation of statute. (1909) 1 ch 163 ; (1910) A.C. 87 ; They had their existence in common law and they were either lawful or unlawful as their objects and rules did or did not violate the general principles of law. (1909) 1 K. B., 901 ; (1912) A. C. 421 ; Halsbury Vol. 27 p 600. By this section all trade Unions registered under this Act are corporate bodies

and enjoy all the privileges and are liable to all the responsibilities of a corporate body.

See. also (1891) 3 ch 159 ; (1901) A. C. 426 ; (1905) A. C. 256 ; (1910) 48 sc. L. R. 67 ; (1912) A. C. 421.

14. The following Acts, namely :—

- | | |
|--|---|
| Certain Acts not to apply
to registered Trade
Unions. | (a) The Societies Registration
Act, 1860, |
| | (b) The co-operative Societies
Act, 1912, |
| | (c) The Provident Insurance Societies Act, 1912, |
| | (d) The Indian Life Assurance Companies Act, 1912,
and |
| | (e) The Indian Companies Act, 1913, |

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

*Note :—*This clause does not affect the existing registration of a Trade Union under any other Act until that Union has secured registration under the Trade Unions Act.

CHAPTER III.

Rights and Liabilities of registered Trade Unions.

15. The general funds of a registered Trade Union shall not be spent on any other objects
Objects on which general funds may be spent. than the following namely :—

- (a) the payment of salaries, allowances and expenses to officers of the Trade Union ;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union ;

- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs ;
- (d) the conduct of trade disputes on behalf of the Trade Union or any member thereof ;
- (e) the compensation of members for loss arising out of trade disputes ;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members ;
- (g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident of unemployment ;
- (h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members ;
- (i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such ;
- (j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds

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

- (k) subject to any conditions contained in the notification, any other object notified by the Governor General in Council in the Gazette of India.

*Note :—*The object on which the funds may be spent have been limited to objects generally recognised as legitimate Trade Union objects. As, however, the clause may not provide sufficiently elastic in practice, it is proposed to empower the Government of India to add to the list of objects. This will make it possible to provide for the extension of the scope of registered trade unions if the development of the trade union movement renders that desirable

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

Constitution of a separate fund for political purposes.

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

- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Government of India Act or of any local authority, before, during, or after the election in connection with his candidature or election ; or
- (b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or
- (c) the maintenance of any person who is a member of any legislative body constituted under the Government of India Act or of any local authority ; or

(d) the registration of electors or the selection of a candidate for any legislative body constituted under the Government of India Act or for any local authority ; or

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

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1) ; and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund ; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

*Note :—*This clause is based on Sec. 3 (3) of the British Trade Unions Act. 1913.

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

Criminal conspiracy in trade disputes.

*Note :—*Under the existing criminal law an agreement to do an "Illegal act" includes all acts which provide ground for civil actions. Thus, for example, two men who agree to persuade workmen to break their contracts with their employees are guilty of criminal conspiracy. The clause which is similar in its effects to the corresponding provisions of the English law, protects Trade Unions from prosecutions for criminal conspiracy when the agreement

into which they have entered is not an agreement to commit an offence.

Sec. (1909) 1 K. B. 901 C. A. ; 23 Q. B. D. 598 ; (1891) 2 Q. B. 549. When no trade dispute can be shown to exist a general strike called by the Trade Union Congress is illegal (1926) 1 ch. 536.

18. (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any officer or member thereof in respect of any act done in 'contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Immunity from civil suit in certain cases.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

Note :— The first part of this clause corresponds to section 1 and 3 of the Brit. Trade Disputes Act 1906, and protects trade unions and their officers and members from certain civil actions. An important type of action which this clause will prevent is a suit arising out of the personation exercised on trade union members and others to join in a strike, where that strike (as is frequently the case) involves breach of contract on the part of workmen. The second part of this clause gives trade unions a large measure of immunity from liabilities arising out of acts of their agents, and is in accordance with a recommendation made by the majority of

the Royal commission on Trade Disputes and Trade combinations in England in 1906.

See, also (1892) A. C. 25 (1900) ; 82 L. T. 796 (1903) ; 19 T. L. R. 360 ; (1909) A. C. 506.

19. Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade :

Enforceability of agreements.

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

*Note :—*The first paragraph is based on Sections 1 and 3 of the Brit. Trade Unions Act, 1871. The proviso which is taken from paragraph (1) of section 4 of that Act, will render it possible for a trade union member to sue for benefit withheld, but members of trade unions cannot be compelled by suit to strike or not to strike or to accept any agreed condition of work.

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

Right to inspect books of Trade Union.

*Note :—*This clause is designed to enable members of Trade Unions to exercise supervision over the financial conduct of the union, if they so desire. The right to inspect the books may in a proper case be exercised by the agency of an accountant, subject to an understanding by him to divulge the information so obtained only to his clients.

Norey V. keep (1909) 1 ch. 56 ; see also Bevan vs Webb (1901) 2 ch. 59 C. A.

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

Rights of minors to membership of Trade Unions.

*Notes :—*It is desirable that members and officers of registered trade unions should have attained an age sufficient to enable them to discharge their responsibilities and to enjoy the privileges conferred by the Bill (Notes on clauses). A cannot be expelled in the absence of a rule, giving power member to expel, and if such power exists he cannot be expelled without having an opportunity of obtaining a hearing. (1912) 2 ch. 371 ; 1 ch. 366, Halsbury vol. 27 p. 627.

Provided that no person who has not attained the age of eighteen years shall be an officer of any such Trade Union.

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

Proportion of officers to be connected with the industry.

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

*Notes :—*This provision is intended to ensure that those for whose benefit the Trade Union exists participate in its control. (Notes on clauses).

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

name.

*Notes :—*This section corresponds to section 11 of the Brit. Trade Unions Act, Amendment Act (1876) (39 to 40 vict. C. 22).

- 24.** Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

*Notes :—*This section corresponds to section 12 of the Brit. Trade Unions (Amalgamation) Act. An injunction will be granted to restrain amalgamation if necessary consent is not shown.

Wolfe vs. Mathews (1882) 30 W. R. 838.

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

*Notes :—*This section corresponds to Sec. 11 & 13 of the British Trade Unions Act Amendment Act, 1876 (39 and 40 vict C. 22).

This section corresponds to section 13 of the British Trete Unions Amendment Act, 1876 (39 and 40 vict C. 22).

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

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

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

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

**Effects of change of
name and of amala-
gation.**

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

27. (1) When a registered Trade Union is dissolved,

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

Dissolution.

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

Notes :—Sub-section (1) corresponds to section 14 of the British Trade Unions Amendment Act, 1876 (39 and 40 vict. c. 22). The funds should be divided among the members in proportion to the amounts contributed by each of them, disregarding amounts paid for fines forfeitures or annuities. (1899) 2 ch. 184.

28. (1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner,

Returns.

of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of March next preceeding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of March. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Notes :—The annual audit is essential for the protection of trade union members from the effects of speculation or the dissipation of funds on extraneous objects. The supply of the list of the officers annually and of the rules is required to enable the Registrar to satisfy himself that the union continues to observe the provisions of the Act.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of

officers made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar.

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

CHAPTER IV.

Regulations.

29. (1) Subject to the control of the Governor General in Council, the Local Government may

Power to make regulations. make regulations for the purpose of carrying into effect the provisions of

this Act.

Notes :—In the draft bill previously published, the rule making power vested with the Government of India is discussed. It is preferable that the necessary power should be delegated to Local Government.

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

(a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration ;

(b) the transfer of registration in the case of any registered Trade Union which has changed its head office from one province to another ;

(c) the manner in which, and the qualifications of persons by whom, the accounts of registered Trade Unions or of any class of such Unions shall be audited ;

(d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections ; and

(e) any matter which is to be or may be prescribed.

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

Publication of regulations.

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

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

CHAPTER V.

Penalties and Procedure.

31. (1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every officer or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such officer or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues :

Failure to submit returns.

Notes :—By this section and the next the necessary penalties have been provided for breaches of the provisions of the law-section. As to who may be an informer where no person is specified, vide *Cole vs Coulten* (1860) 2 E & E.695.

The union may be sued for such penalties by its registered name. *Taff Vale Railway vs Amalgamated society of Railway servant*.

Provided that the aggregate fine shall not exceed fifty rupees.

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

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

Supplying false information regarding Trade Unions.

Notes :—Section 18 of the Trade Union Act 1871 (34 & 35 vict C. 31) runs as follows. “It is a mean misdemeanour to give, with intent to mislead or defraud, to any member or intending member of a registered trade union a copy of any rules or alterations or amendments of rules other than those in existence for the time being, on the pretence that the same are the existing rules or that there are no other rules ; or with such intent, to give a copy of any rules

to any person on the pretence that they are the rules of a union registered which is not registered.

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

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

The Trade Disputes Act, 1929.

ACT No. VII of 1929.

An Act to make provision for the investigation and settlement of trade disputes, and for certain other purposes.

Whereas it is expedient to make provision for the investigation and settlement of trade disputes, and for certain other purposes hereinafter appearing ; It is hereby enacted as follows :—

1. (1) This Act may be called the Trade Disputes Act, 1929.

**Short title, extent,
commencement and
duration.**

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

(4) It shall remain in force for a period of five years only.

2. In this Act, unless there is anything repugnant in the subject or context,—

Interpretations.

(a) “Board” means a Board of Conciliation constituted under this Act ;

(b) “Court” means a Court of Inquiry constituted under this Act :

(c) “employer”, in the case of any industry, business or undertaking carried on by any department of the Government, means the authority prescribed in this behalf or, where no authority is prescribed, the head of the department ;

(d) a person shall be deemed to be “independent” for the purpose of his appointment as the chairman

or other member of a Court or a Board if he is unconnected with the dispute with reference to which the Court or the Board is appointed and with any trade or industry directly affected by the dispute ;

- (e) “lock-out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons, or of aiding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ;
- (f) “prescribed” means prescribed by rules made under this Act ;
- (g) “public utility service” means—
 - (i) any railway service which the Governor General in Council may, by notification in the Gazette of India, declare to be a public utility service for the purposes of this Act ; or
 - (ii) any postal, telegraph or telephone service ; or
 - (iii) any industry, business or undertaking which supplies light or water to the public ; or
 - (iv) any system of public conservancy or sanitation ;
- (h) “railway company” means a railway company as defined in section 3 of the Indian Railways Act 1890 ;
- (i) “strike” means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;

- (j) "trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any person ; and
- (k) "workman" means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward, but does not include any person employed in the naval, military or air service of the Crown or in the Royal Indian Marine Service.

3. If any trade dispute exists or is apprehended between an employer and any of his workmen, the Local Government or, where the employer is the head of a department under the control of the Governor General in Council or is a railway company, the Governor General in Council may, by order in writing,—

Reference of disputes to
Courts or Boards.

- (a) refer any matters appearing to be connected with or relevant to the dispute to a Court of Inquiry to be appointed by the Local Government or the Governor General in Council, as the case may be ; or
- (b) refer the dispute to a Board of Conciliation to be appointed by the Local Government or the Governor General in Council, as the case may be, for promoting a settlement thereof :

Provided that, where both parties to the dispute apply, whether separately or conjointly, for a reference to a Court, or where both parties apply, whether separately or conjointly, for a reference to a Board, and the authority having the power to appoint is satisfied that the persons applying represent the majority of each party, a Court or a Board, as the case may be, shall be appointed accordingly.

Courts of Inquiry.

4. (1) A Court shall consist of an independent chairman and such other independent persons as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person.

Constitution of Courts.

(2) A Court, having the prescribed quorum, may act notwithstanding any vacancy in the number of its members other than the chairman.

5. (1) A Court shall, either in public or in private, at its discretion, inquire into the matters referred to it and report thereon to the authority by which the Court was appointed.

Duties of Courts.

- (2) A Court may, if it thinks fit, make interim reports.

Boards of Conciliation.

6. (1) A Board shall consist of a chairman and two or four other members, as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person.

Constitution of Boards

(2) Where the Board consists of more than one person, the chairman shall be an independent person and the other members shall be either independent persons or persons appointed in equal numbers to represent the parties to the dispute ; all persons appointed to represent any party shall be appointed on the recommendation of that party :

Provided that any party fails to make the necessary recommendation within the prescribed time, the appointing authority shall select and appoint such persons as it thinks fit to present that party.

(3) A Board, having the prescribed quorum, may act notwithstanding any vacancy in the number of its members other than the chairman :

Provided that, where a Board includes an equal number of persons representing the parties to the dispute and the services of any such person cease to be available before the

Board has completed its work, the authority appointing the Board shall appoint, in the manner specified in sub-section (2), another person to take his place, and the proceedings shall be continued before the Board so re-constituted.

7. (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement

Duties of Boards. of the same, and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period sufficient in its opinion to allow the parties to agree upon terms of settlement,

(2) If a settlement of a dispute is arrived at by the parties thereto after it has been referred to a Board and during the course of the investigation thereof, a memorandum of the settlement shall be drawn up by the Board and signed by the parties, and the Board shall send a report of the settlement together with the memorandum, to the authority by which the Board was appointed.

(3) If no such settlement is arrived at during the course of the investigation, the Board shall, as soon as possible after the close thereof, send a full report regarding the dispute to the authority by which the Board was appointed, setting forth the proceedings and steps taken by the Board for the purpose of ascertaining the facts and circumstances relating to the dispute and of bringing about a settlement thereof, together with a full statement of such facts circumstances and its findings thereon and the recommendation of the Board for the determination of the dispute.

(4) The recommendation of the Board shall deal with each item of the dispute, and shall state in plain language

what in the opinion of the Board ought and ought not to be done by the respective parties concerned.

General.

8. No order of the Governor General in Council or of a Local Government appointing any person as a member of a

**Finality of orders
constituting a Court
or Board.**

Court or a Board shall be called in question in any manner.

9. (1) Courts and Boards shall subject to the provisions of this Act, follow such procedure as may be prescribed.

**Procedure and
powers.**

(2) Courts and Boards shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

- (a) enforcing the attendance of any person and examining him on oath ;
- (b) compelling the production of documents and material objects ; and
- (c) issuing commissions for the examination of witnesses ; and shall have such further powers as may be prescribed ; and every inquiry or investigation by a Court or Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

10. (1) If the services of the chairman or of any other independent member of a Court or Board cease to be available at any time for the purposes

**Filling of
vacancies.**

of the Court or Board, the appointing authority shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy and the proceedings shall be continued before the Court or Board so re-constituted.

(2) Where the Court or Board consists of one person only and his services cease to be available as aforesaid, the appointing authority shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

11. The report of a Court or Board shall be in writing and shall be signed by all the members of the Court or Board :

From of report. Provided that nothing in this section shall be deemed to prevent any member or a Court or Board from recording a minute of dissent from a report or from any recommendation made therein.

12, (1) The final and any interim report of a Court or Board, together with any minute of dissent recorded therewith, shall, as soon as possible after its receipt by the authority by which the Court or Board was appointed, be published by that authority in such manner as it thinks fit.

Publication of result of inquiry.

(2) The said authority may publish or cause to be published from time to time, in such manner as such authority thinks fit, any information obtained, or conclusions arrived at, by the Court or Board as the result or in the course of its inquiry or investigation.

*Note :—*The report of Court or Board, is to be published.—The publication is made compulsory on the basis of English rule. “We have amended this clause on the lines of the English Act to make it quite clear that every report of a Court or Board, whether a final or interim report, must be published, and that only the publication of such information or evidence as the appointing authority thinks fit should be left to its discretion”. Report of the Select Committee.

13. (1) Notwithstanding anything contained in section

12, there shall not be included in any report or publication made or authorised by a Court or Board or the authority appointing a Court or Board any information obtained by the Court or Board in the course of its inquiry or investigation as to any Trade Union or as to any individual business (whether carried on by a person, firm or company which is not available otherwise than through evidence given before the Court or Board, except with the consent in writing of the Secretary of the Trade Union or of the person, firm or company in question ; nor shall any individual member of the Court or Board or any person concerned in the proceedings before it disclose any such information without such consent.

(2) If any member of a Court or Board or any person present at or concerned in the proceedings before a Court or Board discloses any information in contravention of the provisions of sub-section (1), he shall, on complaint made by or under the authority of the Trade Union or individual business affected, be punishable with fine which may extend to one thousand rupees :

Provided that nothing in this sub-section shall apply to the disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code.

14. Subject to such conditions and restrictions as may be prescribed, any party to a dispute under inquiry or investigation by a Court or Board shall be entitled to be represented before the Court or Board by a legal practitioner.

Representation of parties.

Special provision regarding Public Utility Services.

15. (1) Any person who, being employed in a public

utility service, goes on strike in breach of contract without having given to his employer, within one month before so striking, not less than fourteen days' previous notice in writing of his intention to go on strike or, having given such notice, goes on strike before the expiry thereof, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

**Sudden strikes and
lock-outs in utility
services.**

(2) Any employer carrying on any public utility service who locks out his workmen in breach of contract without having given them, within one month before such lock-out not less than fourteen days' notice in writing of his intention to lock them out, or, having given such notice, locks them out before the expiry thereof, shall be liable to imprisonment which may extend to one month, or to a fine which may extend to one thousand rupees, or with both.

(3) Where the employer committing an offence under sub-section (2) is a corporation, company or other association of persons, any secretary, director or other officer or person concerned with the management thereof shall be punishable as therein provided unless he proves that the offence was committed without his knowledge or without his consent.

(4) No Court shall take cognisance of any offence under this section or of the abetment of any such offence save on complaint made by, or under authority from, the Governor General in Council or the Local Government.

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

Notes.—The second part of the Bill consists of clause 15 which relates to public utility services. 'Public utility services is defined in clause 2 (f) ; and it will be observed that, in accordance with this definition clause 15 is only

applicable to such railway services as have been notified by the Governor in council. The clause makes it penal offence for workers employed on monthly wages in public utility services to strike without previous notice. The clauses are based on the principle that persons whose work is vital to the welfare of the community generally should not be entitled to enter into a strike before sufficient time has been given to examine the merits of their grievances and to explore the possibilities of arriving at a peaceful settlement. Provisions of a somewhat similar type already exists in the Indian Post office Act and in a number of Municipal Acts in India and the principle is one which is widely accepted in other countries.—Statement of objects and reasons. The strike must be in the breach of a definite contract between the employer and workmen.

16. (1) A strike or a lock-out shall be illegal which—

**Illegal strikes and
lock-outs.**

(a) has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged ; and

(b) is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action.

(2) It shall be illegal to commence or continue, or to apply any sums in direct furtherance or support of any such illegal strike or lock-out.

(3) For the purposes of this section—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen or between workmen and workmen, in that trade or industry, which is connected with the employment or non-

employment or the terms of the employment, with the conditions of labour, of persons in that trade or industry ;

- (b) without prejudice to the generality of the expression "trade or industry", workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with agreements made with the same employer or group of employers.

(4) A strike or a lock-out shall not be deemed to be calculated to compel the Government unless such compulsion might reasonably be expected as a consequence thereof.

Notes. Sections 16 to 19 contain special provisions relating to illegal strikes and lock-outs. These clauses follow closely the provisions of sections 1, 2, and 7 of the British Trade Disputes and Trade Unions Act of 1927. They are applicable only in the case of strikes and lock-outs which satisfy both the two conditions ; in the first place, the strike or lock-out must have other objects than the mere furtherance of a trade dispute within the industry to which the strikers or employers belong, and in the second place, the strike or lock-out must be designed to coerce the Government either directly or by inflicting hardship on the community. If these conditions are satisfied, the strikes or lockouts are liable to punishment and are deprived of the protection granted to them by the Indian Trade Unions Act while persons refusing to take part in it are protected from Trade Union disabilities to which they might otherwise be subjected". Statement of objects and Reasons.

17. (1) If any person declares, instigates, incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Provided that no person shall be deemed to have committed an offence under this section by reason only of having ceased work or refused to continue to work or to accept employment.

(2) No Court shall take cognisance of any offence under this section save on complaint made by, or under authority from, the Governor General in Council or the Local Government.

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

18. (1) No person refusing to take part, or to continue to take part, in any strike or lock-out which is illegal under the provisions of section 16 shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

Protection of persons with-holding from illegal strike or lock-out.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

Rules.

19. (1) The Governor General in Council in respect of
of industries, business and undertak-
Power to make rules. ings carried on by him or under his
authority, or by a railway com-
pany, and the Local Governments in respect of other
businesses, industries or undertakings within their respective
provinces, may make rules for the purpose of giving effect
to the provisions of this Act.

(2) In particular and without prejudice to the genera-
lity of the forgoing power, such rules may provide for all or
any of the following matters, namely :—

(a) the powers and procedure of Courts and Boards,
including rules as to the summoning of witnesses, the
production of documents relevant to the subjectmatter of an
inquiry or investigation and the number of members
necessary to form a quorum ;

(b) the allowances admissible to members of Courts
and Boards and to witnesses ;

(c) the ministerial establishment which may be
allotted to a Court or Board and the salaries
and allowances payable to members of such
establishments ;

(d) the conditions and restrictions subject to which
persons may be represented by legal practi-
tioners in proceedings under this Act before a
Court or Board ;

(e) any other matter which is to be or may be
prescribed.

(3) All rules made under this section shall be
published in the Gazette of India or the local official
Gazette, as the case may be, and shall, on such publication,
have effect as if enacted in this Act.

INDEX

The figures refer to Pages.

W.C. = Workmen's Compensation ; T.U. = Trade Union ; T.D. = Trade Disputes ; M. = Mines.

Abuse of child labour. ...	30	Compulsory work in Prison... ..	133
Accommodation. ...	74	Compulsory holiday ...	78
Agreement between the parties, (W. C.) ...	158	Conception of right. ...	124
Almaraj, Joseph, ...	129	Conditions of child labour in India ...	22
Appeals (W.C.). ...	188	Confidential matters (T.D.) ...	230
Appeals (T.U.). ...	207	Constitution of Boards (T.D.)	226
Appearance of parties (W. C.). ...	184	Constitution of Courts (T.D.)	226
Amalgamation of T.U. ...	216	Constitution of a separate fund for political purpose (T.U.)	211
Amount of compensation W. C.). ...	152	Contracting out (T. U.) ...	176
Appointment of Commissioners (W. C.) ...	179	Contract (W.C.) ...	169
Appointment of Registrars. (T. U.). ...	203	Contract system. ...	130
Application for Registration. (T. U.). ...	203	Convention of the International labour organisation. } ...	55
Auburn system. ...	135	Costs (W.C.) ...	184
Berne commission ...	128	Court (T.D.) ...	223
Board (T.D.). ...	223	Criminal conspiracy (T.U.) ...	212
Causes of efficiency of labour. ...	47	Definition of terms. ...	56
Certain Acts not to apply to Regd. (T.U.) ...	209	Definition (W.C.) ...	137
Certificate of Registration (T. U.). ...	206	Development of Mines Act ...	95
Certifying surgeon. ...	88	Development of factory Act. ...	58
Change of name (T.U.) ...	216	Different Theories of wages. ...	49
Child in drain. ...	33	Difference of wage-rate. ...	98
Child in Egypt. ...	27	Dissolution (T.U.) ...	218
Child in Mines ...	34	Distribution of compensation (W.C.) ...	159
Child and young person's Act in England ...	36	Disciplinary method for reformation. ...	127
Classification of factory. ...	73	Dock Labour's Act, 1922 ...	116
Cleanliness ...	74	Do 1934. ...	116
Cognisance of offence (T.U.)...	222	Doctrine of Socialism ...	8
Combination system, ...	132	Double employment. ...	33
Commutation of payments. (W. C.) ...	159	Duties of the factory owners and occupiers. ...	73
Communications (T.U.) ...	208	Duties and responsibilities of the owners. (M.) ...	99
Compensation attachable or not (W. C.) ...	163	Duties of Boards (T.D.) ...	227
Complete prohibition of work. ...	53	Duties of Courts (T.D.) ...	226
		Economic interpretation of "Labourer" ...	1

Effect of industrialisation ...	13	Italian Law for mother's ...	68
Effect of failure to register agreements (W.C.) ...	187	Italian Prisoners ...	121
Effect of change or amalgamation (T. U.) ...	217	Kale, V. G. ...	48
Employer's liability for compensation (W.C.) ...	145	Keeping of Registers ...	80
Employer (T.D.) ...	228	Labour and Emigration Act ...	120
Enactment of France. ...	57	Latrine and Urinals ...	74
Enforceability of agreement (T.U.) ...	214	Law against moral danger ...	54
Executive (T.U.) ...	200	Legal minimum for women labour ...	47
Extent of factory Act. ...	73	Legal position of child ...	28
Exemption of owner or agent (M.) ...	99	Legal Proceedings and Penalties ...	82
Expiative Theory. ...	123	Lighting ...	74
Extent (W.C.) ...	186	Limitation to suit ...	86
Factory Acts for Women ...	52	Living Wage ...	46
"Factory" according to the Act of 1934. ...	71	Lock out (T. D.) ...	224
Failure to submit return (T.U.) ...	220	Marine & Dock ...	113
False information (T.U.) ...	221	Maternity in Japan ...	63
Filling of vacancies (T.D.) ...	228	Maternity Benefit legislation International ...	55
Financial obstruction for prison improvement. ...	134	Maternity Benefit, India ...	64
Finality of orders (T.D.) ...	228	Maternity, Varied Legislations ...	57
Form of application (W.C.) ...	181	Meaning of "Persons" ...	78
Form of Report (T.D.) ...	229	Means of escape ...	75
Frederick whyte. ...	3	Machinery ...	72
General clauses Act, 1879. ...	192	Medical examination ...	167
Grounds of exemption. ...	87	Measures against mischief ...	81
Hazard of employmet ...	53	Measures against fire ...	75
Health and safety for Prisoners. ...	130	Method of recovering evidence (W. C.) ...	184
Health and safety for miners ...	100	Method of Calculating Wages (W. C.) ...	156
Heavy weight regulation ...	54	Mining operation and Management (M) ...	96
History of protective measures ...	51	Mode of Registration (T. U.) ...	203
History of Women Labour Legislation- ...	47	Necessity for legislation for children in India ...	18
Hours of Work. ...	76	Necessity for amending factory Acts ...	68
Hours of work in Dock ...	115	Need for varying the Working period ...	43
Hours and Limitations. ...	104	Neo-capitalism ...	21
How Notice to be put up. ...	79	Non-competing jail product ...	125
Illegal strikes etc. (T.D.) ...	232	Notice and claim (W. C.) ...	163
Illiteracy ...	36	Notice of change in the period of work ...	50
Importance of Adult Works. ...	66	Notice of accident ...	78
Immunity from Civil Suit (T.U.) ...	213	Do (M) ...	102
Incorporation of Regd. (T.U) ...	208	Notice of change in name etc. (T. U.) ...	126
Independent (T.D.) ...	223	Number of workers and wages (M) ...	96
Indian Penalty ...	123	Objects of spending general funds (T. U.) ...	209
Insolvency of employer (W.C.) ...	172	"Occupier" ...	72
Inspectorial system ...	87		
Intermittent Dock labour ...	114		

[III]

Officers (T. U.)	...	200	Powers of the Governor		
Origin and continuation of			General in Council (W. C.)	190	
child labour	...	19	Powers of the Local		
Other disputable points	...	86	Governments	...	90
Penalties (W. C.)	...	177	Powers of the Governor		
Penalty for contravention	...	82	General in council	...	92
Penalty for double employment	85		Power of the Local Government		
Penalty for illegal strikes			to exempt	...	92
etc. (T.D)	...	293	Power of Legislation	...	2
Penalties and Procedures (M)	106		Publication of rules (W. C.)	192	
Penal Laws in England	...	122	Public Relief	...	61
Pennsylvania system	...	135	Publication of Regulation	...	220
Perils and Pit-falls	...	51	Publication of enquiry (T. D.)	229	
Persons employed in Factory	72		Public utility service (T. D.)	224	
Philosophy of freedom	...	12	Quota system	...	129
Piece-rate system	...	181	Railway and its departments	109	
Plantations	...	118	Recovery (W. C.)	...	189
Pledging of child	...	31	Reference to Board	...	225
Prescribed (T. U.)	...	200	Reference to Commissioner		
Prescribed (T. D.)	...	224	(W. C.)	...	178
Prescribed rules for working			Registrar (T. U.)	...	201
hours in railway	...	110	Registrar's power to call for		
Principle of wage regulation	47		information (T. U.)	...	205
Principle problem with			Registration (T. U.)	...	206
Plantation Labour	...	119	Registration of agreements		
Prisoners and society	...	121	(W. C.)	...	185
Problem of State interference	5		Registered office (T. U.)	...	201
Product of Industry is present			Registered (T. U.)	...	201
day labour	...	15	Regulation of jail production	126	
Proceedings	...	85	Rehabilitation	...	128
Procedure and powers (T. D.)	228		Remedies of employer (W. C.)	171	
Programme for helping child			Reports of fatal accidents		
labour	...	87	(W. C.)	...	167
Proof of age (W. C.)	...	177	Representation of parties		
Proportion of officers (T. U.)	215		(T. D.)	...	230
Prosecution (M)	...	108	Rest	...	76
Protection of children in			Returns as to compensation		
England	...	294	(W. C.)	...	176
Protection of persons (T. D.)	234		Returns (T. U.)	...	218
Providend fund	...	113	Right of absence	...	56
Provisions in the rules			Right of inspection (T. U.)	214	
of (T. U.)	...	204	Right of minors	...	215
Provision for over-time work	77		Rules of Transfer of money		
Poor achievement	...	41	(W. C.)	...	192
Power to make rules (T. U.)	219		Rule-making power of		
Power of the Local Govern-			Governor (T. D.)	...	235
ment (M)	...	103	Rule making power of Local		
Power of the chief			Government (W. C.)	...	191
Inspector M)	...	101	Russell Bertrand	...	13
Power to submit case (W. C.)	185		Sarkar Benoy, (Prof)	...	2,20
Power and procedure of			Saving clause	...	94
commissioner (W. C.)	...	182	Schedule I (W. C.)	...	193
Power to claim deposit (W. C.)	182		" II "	...	194
Power to require statement			" III "	...	198
(W. C.)	...	166	" IV "	...	199
			Single Act for Railway	...	111

Special contract system ...	131	Theories of Taussig and Marshall ...	51
Special provisions for masters etc. (W. C.) ...	174	Three systems of convict employment. ...	130
Special provision for night relay (M) ...	105	Title and extent of (W.C.) ...	136
Spread over ...	76	Do of (T.U.) ...	200
Standardisation of wages ...	45	Do of T.D.) ...	223
State interference in child labour ...	19	Trade Dispute. (T.U.) ...	201
State management system ...	132	Trade Union ...	202
Statistics for adult labour ...	67	Trade Dispute. ...	225
Strike (T. D.) ...	224	Treatment of convicts ...	121
Sudden Strikes & lock outs (T. D.) ...	231	Two types of Jute Mill. ...	42
Suggestion for India ...	65	Ventilation. ...	74
Suggestion for prison ...	132	Vienstein, Dr. ...	121
Swami Vivekananda ...	18	Wages, the return of labour. ...	48
System of payment to the convicts ...	127	Wage Regulation (M.) ...	96
Table of child workes ...	25	Watering ...	74
Taylor, Robert ...	125	Welfare works. ...	38
Theory of Individualism. ...	6	Withholding of payments (W.C.) ...	189
Theories of Punishment. ...	122	Working hours in Prison of England. ...	128
		Workmen (T.D.) ...	225
		What India needs ...	16
		Working system of convicts. ...	135

