



**S.Y.B.COM (ACCOUNTING AND
FINANCE)**

SEMESTER - III (CBCS)

BUSINESS LAW - II

SUBJECT CODE : UA_FFSIII.8

Prof. (Dr.) D. T. Shirke

Offg. Vice Chancellor
University of Mumbai, Mumbai.

Prin. Dr. Ajay Bhamare

Offg. Pro Vice-Chancellor,
University of Mumbai.

Prof. Prakash Mahanwar

Director
IDOL, University of Mumbai.

Programe Co-ordinator : Prof. Rajashri Pandit

Asst. Prof. in Economic,
Incharge Head Faculty of Commerce,
IDOL, University of Mumbai, Mumbai.

Course Co-ordinator : Mr. Vinayak Vijay Joshi

Asst. Professor in Accountancy,
IDOL, University of Mumbai, Mumbai.

Course Writer : Mr. Suyash Pradhan

In-charge Principal,
Anand Vishwa Gurukul Law College,
Thane, Maharashtra - 400082.

: Dr. Mahendra Pachadkar

Department of Business Law
Prahladrai Dalmia Lions College of Commerce and Economics,
Malad West, Mumbai - 400064.

January 2023, Print I

Published by

Director

Institute of Distance and Open Learning, University of Mumbai, Vidyanagari, Mumbai - 400 098.

DTP COMPOSED AND PRINTED BY

Mumbai University Press,
Vidyanagari, Santacruz (E), Mumbai - 400098.

CONTENTS

Chapter No.	Title	Page No
1.	Formation of Partnership and Types of Partnership	1
2.	Registration of Firms and Consequences of Non-Registration Relations Amongst The Partners and Dissolution of Firm	11
3.	Limited Liability Partnership Act, 2008	25
4.	The Factories Act, 1948	40

***Revised Syllabus of Courses of B.Com. (Accounting and Finance)
Programme at Semester III
with Effect from the Academic Year 2017-2018***

3. Core Courses (CC)

Business Law (Business Regulatory Framework) - II

Modules at a Glance

Sr. No.	Modules	No. of Lectures
1	The Indian Partnership Act - 1932	30
2	Limited Liability Partnership Act - 2008	10
3	Factories Act - 1948	20
Total		60

Sr. No.	Modules / Units
1	The Indian Partnership Act - 1932
	a) Concept of Partnership - Partnership and Company - Test for determination of existence for partnership - Kinds of partnership b) Registration and effects of non-registration of Partnership c) Rights and Duties of Partners d) Authority and Liability of partners e) Admission, Retirement and Expulsion of Partner f) Dissolution of Partnership
2	Limited Liability Partnership Act – 2008
	a) Nature of Limited Liability Partnership b) Incorporation of Limited Liability Partnership c) Extent and Limitation of Liability of Limited Liability Partnership and Partners d) Contributions e) Conversion Into Limited Liability Partnership f) Winding Up and Dissolution
3	Factories Act – 1948
	a) Definitions <ul style="list-style-type: none"> • Section 2 (k) – Manufacturing Process, • Section 2 (l) – Workers • Section 2 (m) – Factory b) Provisions pertaining to <ol style="list-style-type: none"> i. Health- Section 11 to Section 20 ii. Safety- Section 21 to Section 41 iii. Welfare- Section 42 to Section 49

Note: Relevant Law/ Statute/ Rules in force on 1st April immediately preceding commencement of Academic Year is applicable for ensuring examination after relevant year.

FORMATION OF PARTNERSHIP AND TYPES OF PARTNERSHIP

Unit Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Meaning and Definition
- 1.3 Who May Be a Partner
- 1.4 Essential Elements of Partnership
- 1.5 Partnership Deed or Articles of Partnership
- 1.6 Test of Partnership
- 1.7 Types of Partners
- 1.8 Types of Partnership
- 1.9 Distinguish Between. Partnership Firm With Joint Family Business, Company And Hindu Undivided Family Business
- 1.10 Summary
- 1.11 Questions

1.0 OBJECTIVES

After studying the unit students will be able to:

- Understand the meaning of Partnership and Partnership deed.
- Explain the features of Partnership
- Distinguish between Partnership and co-partnership, HUF and Company.
- Discuss about Dissolution of Partnership Firm

1.1 INTRODUCTION

Partnership form of business organisation have come into existence due to some of the limitations of sole trading concern such as limited capital, managerial ability etc.

Formerly partnership business was regulated by Indian contract act 1872 but subsequently authorities found it necessary to have a separate law for this purpose, as a result of which Indian partnership Act 1932 came into effect. The act was established to define and modify as and when required.

Partnership derived from the word 'part' and implies sharing. Persons come together to share profits and properties of the business. The relationship of partnership arises from contract and not status.

1.2 MEANING AND DEFINITION

Definition:

Section 4 of the Act defines Partnership as “the relation between the persons who have agreed to share the profits of business carried on by all or any of them acting for all”. Person who has entered into partnership with one another are called individually partners and collectively a firm. The name under which their business is carried on is called firm name.

1.3 WHO MAY BE A PARTNER

1. **INDIVIDUAL:** An individual who satisfies all conditions required for a valid contract can become a partner.
2. **MINOR:** A minor cannot become a partner. He may be entered into partnership business with consent of all other partners.
3. **LUNATIC:** A person of unsound mind is not competent to contract and therefore cannot become a partner.
4. **CORPERATE BODY:** A corporate body being an artificial person can become a partner and can enter into partnership agreement.
5. **A FIRM:** A firm cannot be a partner of another firm, though its partner can be in their individual capacity.

Who Are Not Partners:

- The members of Hindu undivided family carrying in family business. However partnership contract inter se between members of family is permissible.
- Lender of the money receiving a rate of interest from any person engaged in business or about to engage in business.
- An agent engaged in business receiving commission from principal.
- Widow or a child of deceased partner receiving a portion of profit as annuity.
- A previous owner or part owner of the business selling his business along with the good will and receiving a portion of the profit in consideration of sale.
- Joint or co-owners of property sharing profits arising from the business.

1.4 ESSENTIAL ELEMENTS OF PARTNERSHIP

Following are the elements of Partnership:

1. Two or More Persons:

Minimum two persons are required to form a partnership. In case of banking business maximum number of partners allowed is ten, while in any other business the numbers cannot exceed 20.

2. Competency:

All partners must have attained an age of majority and must be of sound mind to enable him to enter into contracts.

3. Agreement:

There has got to be an agreement to form partnership. This agreement may be expressed or implied. Express agreement arises out of words spoken or written. Similarly implied agreement arises out of the conduct and custom of business. Section 5 of the act states “The relation of the partnership arises from contract and not from status.

4. Lawful business:

Term business refers any lawful activity, which if successful would result in profits. It include every trade, occupation and profession. It is not necessary that a business be permanent undertaking. A Partnership may exist even for a single venture example: X and Y are partners for producing a film.

5. Profit Sharing:

An agreement entered into by all the partners concerned must be for sharing the profit of the business. Profit means net profit arrived at after providing for all expenses. It must be remembered that profit sharing is must irrespective of profit-sharing ratio. However, it must be noted that near sharing of profits between persons would not necessarily determine the existence of partnership.

For Example: Joint owner of a shop who shared the rent of the shop will not be called partners.

6. Mutual Agency between Partners:

Another important aspect of the definition of a partnership is that the business must be carried on by all the partners or by any (one or more) acting on their behalf of them, i.e., joint agency

1.5 PARTNERSHIP DEED OR ARTICLES OF PARTNERSHIP

Partnership may be expressed or implied. Express Partnership arises by words spoken or written. Implied Partnership may arise from conduct of

the parties. Partnership agreement must satisfy all conditions of valid contract such as offer, acceptance, competency, lawful business etc.

Sometimes minor may be admitted to the benefits of the partnership with the consent of all the partners. As relationship of partners to one another is that of agency, no consideration is required to create partnership. The documents which contain the terms of partnership as agreed among the partner is called partnership deed.

Following are the contents or provisions of the deed:

- a) Name of the firm
- b) Name and address of all partners
- c) Nature and place of business
- d) Duration of the partnership.
- e) Amount of capital of each partner with profit sharing ratio.
- f) Interest on drawings and Interest on capital.
- g) Interest on loan advanced by partner.
- h) Salary or commission payable to any partner.
- i) Method of valuation of goodwill in case of admission, retirement or death of a partner.
- j) Settlement of account in case of retirement or death of a partner or dissolution of a firm.

1.6 TEST OF PARTNERSHIP

The true test of a partnership is the existence of a Mutual Agency. There are other circumstances where the sharing of profit exists but there is no partnership. But if an agency exists between the parties who run a business together and share profits it will be deemed that a partnership exists.

Following three tests must be undertaken to determine whether or not a group of persons doing lawful activity constitute partnership or not.

1. Agreement to share profits:

Sharing of profit is prima facie evidence of existence of partnership. The term profits mean net profit i.e surplus left after deducting all expenses paid or payable. In what ratio profit is to be shared is immaterial.

2. Mutual agency:

U/S 18 of the Indian partnership act a partner is both agent and principal. It means each partner is both agent and a principal. A partner is an agent of the other partner in the sense that by his act he can bind other partners.

He is principal in the sense that he can be held liable for the acts of the other partners.

3. Intention of parties:

The intention of the partners may be gathered from their conduct, course of dealings, circumstances of their entering into business.

1.7 TYPES OF PARTNERS

A partnership is when two or more people join together do engage in a particular venture and share the profits carried on from such venture or business. However, one must not always assume that all partners participate in the work or profits or even liabilities of the firm equally. In fact, there are various types of partners based on the degree of their liability, or their involvement in the firm.

1. Active Partner:

An Ostensible Partner or an active partner first type of partner. As the name suggests he takes an active part in the firm and carrying of the business activity. He performs on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day-to-day basis and with regards to all routine business of the firm.

2. Sleeping Partner:

This is a partner that does not take actual part in the daily functioning, i.e. he does not take an active part in the daily activities of the firm. He is bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires, he need not give a public notice of the same.

3. Nominal Partner

This is a partner that does not have any significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners in the partnership.

4. Partner by Estoppel:

When a person holds out to another that he or she is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he/she is not a partner. This actually means that though such a person is not a partner he/she has represented himself /herself as such, and so he becomes partner by estoppel.

5. Partner in Profits Only:

Such types of partners will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will not share any of the liability of the firm.

6. Minor Partner:

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm.

Such a minor partner on attaining majority has six months to decide if he wishes to become a partner of the firm. He must then declare his decision by giving a public notice. He will have to give the public notice in the circumstances whether he continues as a partner or decides to retire.

1.8 TYPES OF PARTNERSHIP

1. Partnership for a Fixed Term:

It is a partnership where at time period is fixed. Such a partnership gets dissolved at the expiry of the time period. Before the fix period it may be dissolved by mutual consent. However, if it continues after the fix period it becomes partnership at will

2. Particular Partnership (Section 8):

Where two or more persons agree to do business in a particular adventure or undertaking such partnership is called particular partnership.

E.g. X & Y enter into partnership for producing advertising film.

3. Partnership at Will:

It is a partnership in which duration is not fixed and can be dissolved by any partner by giving a notice. The firm may be dissolved by any partner by giving 14 days advance notice in writing to all the other partners indicating his intention to dissolve the firm.

1.9 DISTINGUISH BETWEEN PARTNERSHIP FIRM WITH JOINT FAMILY BUSINESS, COMPANY AND HINDU UNDIVIDED FAMILY BUSINESS

1. Distinguish Between Partnership and Co-ownership:

	Partnership	Co ownership
1	Business: To carry on business is an essential element of partnership.	Co ownership may exist without carrying on any business.

2.	Mutual agency: There exist mutual agency among the partners of the firm.	No mutual agency exists among co owners
3.	Creation: Partnership is created by an agreement	Co ownership is created by an agreement or by law or by virtue of status.
4.	Profit: An agreement to share profit is essential element of partnership.	Sharing
5.	Lien: A partner has a lien on the property of the firm owned in common	Co ownership has no lien on the property owned in common.
6.	Partition of property: A partner cannot demand the partition of property of the firm.	A co-owner is entitle to claim partition of property. ⁷
7.	Agreement: Partnership	Arises from an agreement
8.	No of partners: Minimum 2, maximum 10 for banking, 20 for other business.	There is no maximum limit of co-owners.

2. Distinguish Between Partnership and Company:

	Partnership	Company
1.	Meaning: Partnership is the relationship between the persons who have agreed to share profits of the business carried on by all or any one of them acting for all.	A company means a company formed and registered under company's act or an existing company.
2.	Legal person: A firm is not a legal entity.	A company is a legal person created in the eye of a law.
3.	Liability: liability of a partner is unlimited. Even personal property of the partner is liable to settle claim of creditor.	In case of company the liability of the member is limited to the extent of unpaid amount on calls.
4.	Transfer of share: in a firm a partner cannot his share without the consent all the partners.	In a company shareholder can transfer his shares subject to the provision of A.A.
5.	Agency: every partner is an agent of other partner.	Shareholder of the company is not an agent of the company.
6.	Registration: registration of firm is not compulsory under partnership act 1932.	Registration of company is compulsory under companies act 1956.

7.	Management: Management vests in the hands of the partners except in the case of sleeping partner	Management
8.	Creditors: Creditors of the firm are also the creditor of the partners individually as well.	Creditors are only the creditors of the company and not
9.	Accounts: Accounts of the partnership need not be audited by the auditors	Accounts
10.	Ownership of property: The property of the Firm collectively belongs to the partner.	The property of the company, belongs to the company, and not to the shareholders
11.	Effect of death: In case of a death or insolvency of a partner firm gets dissolved, unless there is contract to the contrary.	In case of company, death or insolvency of a member of the company does not results in to dissolution of the company.
12.	Disposal of property: A partner can dispose the property of the firm	A shareholder cannot dispose of the property of the company.
13.	No of members: Minimum 2, maximum 10 in case of banking and 20 in case of general business.	In case of private company maximum 50 members and public company can have any number of shareholder.
14.	Existence: Partnership has no perpetual or continuous life.	Company has long and stale life

3. Distinguish Between Partnership and HUF:

	Partnership	Hindu undivided Family
1.	Meaning: partnership is the relationship between the persons who have agreed to share profits of the business carried on by all or any of the acting for all.	A joint Hindu family which carries on business handed down from its ancestors.
2.	Agreement: It can arise only by an agreement of the partner	It arises by the operation of the law.
3.	Admission of new member: A new partner can be admitted in the partnership, only with the consent of all the partners.	A person becomes member only by birth in the family.

4.	Numbers:	maximum
5.	Mutual agency: There exist mutual agency among the partners i.e. all is acting for one and one is acting for all.	There is no such agency relationship between members of the family. The karta i.e. head or manager of the family is the only representative of the family.
6.	Implied authority: Every partner has an implied authority to bind the firm by his acts done in the ordinary course of the business.	Only karta has an implied authority to bind the family by his acts.
7.	Liability: A partner is personally liable for the business obligation of the firm. The share of each partner in the property and profits along with his private property is liable for the discharge of the debts of the firm.	A member is not personally liable for the business obligation of the family. Only his share of profits and property in the family is liable for discharge the debts of the family.
8.	Dissolution / partition: A partner has right to demand for dissolution of firm.	A partner has right to demand for dissolution of firm.
9.	Death / insolvency: Firm gets dissolved on death or insolvency of any one partner.	It is not dissolved on the death or insolvency of any of the members.

1.10 SUMMARY

Partnership:

Section 4 of the Act defines Partnership as “the relation between the persons who have agreed to share the profits of business carried on by all or any of them acting for all.”

Who can become a Partner:

Individual, Body Corporate.

Who can not become a Partner in Partnership:

The members of Hindu undivided family carrying in family business.
Lender of the money receiving a rate of interest from any person engaged in business or about to engage in business. An agent engaged in business receiving commission from principal. etc

Essentials of Partnership:

Two Or More Persons: Competency: Agreement: Profit Sharing: Mutual Agency between Partners:

Partnership Deed or Articles of Partnership:

Partnership Deed: Meaning: Partnership Deed is nothing but an agreement between the Partners in respect of the Partnership.

Contents:

- a) Name of the firm, Name and address of all partners, Nature and place of business, Duration of the partnership, Amount of capital of each partner with profit sharing ratio. etc
- **Types of Partnership:** Agreement to share profits: Mutual agency: Intention of parties:
- **Types of Partners:** Active Partner, Sleeping Partner, Nominal Partner, Partner by Estoppel, Partner in Profits Only, Minor Partner
- **Types of Partnership:** Partnership for a Fixed Term: Particular Partnership: Partnership at Will:

1.11 QUESTIONS

1. State and explain the concept of partnership and essential elements of partnership
2. How the Partnership Firm can be formed? State types of Partnership?
3. What are types of partners?
4. “Mutual Agency” is an essence of the Partnership’ Explain this statement.
5. Distinguish between Partnership and Company
6. Distinguish between Partnership and Joint Hindu Family Business.
7. Write Short Note on
 - a. Distinguish Partnership and co-ownership
 - b. Public notice
 - c. Partnership Deed
 - d. Who can become a partner in partnership?

REGISTRATION OF FIRMS AND CONSEQUENCES OF NON- REGISTRATION RELATIONS AMONST THE PARTNERS AND DISSOLUTION OF FIRM

Unit Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Consequences of Non- Registration of Partnership.
- 2.3 Rights, Duties and Liabilities and Authority of Partners
- 2.4 Rights of a Partner
- 2.5 Duties of Partners
- 2.6 Liabilities of Partners
- 2.7 Implied Authority of Partner
- 2.8 Mutual Relationship of Partners to Each Other
- 2.9 Relationship of Partners to Third Persons
- 2.10 Minor's Position in Partnership
- 2.11 Minor Become A Full-Fledged Partner.
- 2.12 Rights of the Minor If He Elects Not to Become A Partner
- 2.13 Effects or Consequenses of Dissolution
- 2.14 Public Notice
- 2.15 Summary
- 2.16 Questions

2.0 OBJECTIVES

After studying the unit students will be able to:

- Understand importance of registration of Partnership.
- Understand the consequences of non-registration of firm
- Understand rights duties and mutual rights duties of partners
- Understand the Minors position in partnership
- Understand Liability of Partners to the firm and to a third parties.
- Understand the concept of Dissolution and Effects of Dissolution.

2.1 INTRODUCTION

Registration of a partnership firm is not compulsory under law. The provisions under Partnership Act, 1932 made specifically that if the partners so wish to register, may register the firm with the Registrar of Firms of the state in which the firm's main office is situated. A partnership firm may be registered at the time when it is formed or at any time thereafter. Procedure for partnership Registration so that to get a partnership firm registered, an application in a prescribed form must be submitted with the Registrar of Firms. The application must include the following information:

- The name of the firm
- The principal place of business of the firm
- Names of other places where the firm's business is carried on.
- Names in full and permanent addresses of the partners.
- The date on which each partner joined the firm
- Duration of partnership, if specified

The filled and prescribed application should be signed and verified by each partner, after that it is to be submitted to the Registrar of Firms of the place in which the main office of the firm's business is located or proposed to be located. The registration fee is also deposited along with the application. On submission of the application, the registrar will scrutinize the application. If he is satisfied that everything that required to fulfill has fulfilled and all the legal formalities have been taken care, he will make an entry in the register of firms. He will also issue a certificate of registration. Any change in the information submitted at the time of registration should be communicated to the Registrar.

2.2 CONSEQUENCES OF NON-REGISTRATION OF PARTNERSHIP

The consequences of a partnership firm which is not registered are as follows:

- It cannot enforce its claims against the third party in a court of law.
- It cannot file a legal suit against any of its partners
- Partners of an unregistered firm cannot file any suit to enforce a right against the firm.
- A partner of an unregistered firm cannot file suit against other partners. It cannot claim adjustment for any sum exceeding Rs. One hundred.

Example: Suppose an unregistered firm owes Rs. 2000 to Sahil and Sahil owes Rs.1000 to the firm. The firm cannot enforce an adjustment of Rs.1000 in a court of law.

Partnership Property (Section 14):

Partnership Property is also known as property of a firm, partnership assets, joint stock, common stock, or joint estate. A partnership property includes all property and rights, and interest in property that the purchases by partnership firm.

These properties are collectively owned by all the members of the in the course of partnership business which includes Goodwill.

Therefore, a partnership property includes of the following items if there is no agreement between the partners showing any contrary intention. All property and rights and interest in property that the partners purchase in the common stock as their contribution to the common business purpose.

Goodwill of the business:

To arrive at the conclusion or to decide whether a particular property is partnership property or not it depends on the fair and true objective or agreement between the partners.

Therefore, if a firm uses the property of a partner for its purposes, it does not make it a partnership property unless that was the real intention. At any time, the partners may agree to convert the property of a partner or partners into partnership property.

2.3 RIGHTS, DUTIES AND LIABILITIES AND AUTHORITY OF PARTNERS

The Partnership Deed includes the mutual rights, duties and obligations of the partners, in certain cases, the Partnership Act also makes a compulsory provision in respect of the rights and obligations of partners. When Partnership Deed is silent.

2.4 RIGHTS OF A PARTNER

The rights of a partner are as follows:

1. Right of the partner to take active part in the day-to-day affairs of the firm.
2. Right to be consulted and heard when taking any decision regarding the business.
3. Right as agent of the firm and implied authority to bind the firm for any act done in carrying the business.
4. Right to share the profits equally or as agreed upon by the partners as per the provisions under partnership deed.

5. Right to get interest on capital contributed by the partners to the firm.
6. Right of access to books of accounts and call for the copy of the same for inspection.
7. Right to prevent admission of new partners/expulsion of existing partners.
8. Right to enjoy interest on advances paid by the partners for business purpose.
9. Right to the use of partnership property exclusively for partnership business only not for his personal use or benefit.
10. Right to retire with the consent of other partners and according to the terms-and conditions of deed.

2.5 DUTIES OF PARTNERS

The duties of a partner are as under:

a. To carry on the business to the greatest common advantage:

Every partner is bound to carry on the business of the firm to the greatest common advantage. In other words, the partner must use his knowledge and skill in the conduct of business to provide maximum benefits for the firm.

b. To be just and faithful to each other:

Every partner must be faithful to other partners of the firm. Every partner must observe utmost good faith and fairness towards other partners in partnership activity.

c. To render true accounts:

Every partner must render true and proper accounts to his co-partners, as they are mutually related.

d. To provide full information:

Every partner must provide full information and details of activities affecting the firm to the other co-partners. No information should be hide.

e. To attend diligently to his duties:

Every partner is bound to attend diligently and faithfully to duties in the conduct of the business of the firm.

f. To indemnify for loss caused by fraud or willful neglect:

It is the duty of the partners to indemnify the firm for loss If any caused to the firm because of a partner's willful neglect in the conduct of the business or fraud commit by him against a third party.

g. Should not hold and use partnership property exclusively for the firm:

The partners must hold and use the partnership property exclusively for the purpose of partnership activity of the firm not for their personal advantage.

h. No Secret Profit and to account for personal profits:

If a partner secured any personal benefit or profit from partnership transactions or from the use of the property of the firm or business connection the firm or the firm's name, he must account for such profit and reimbursed it to the firm.

i. Not to carry on any competing business:

A partner must not engage in competing activities to that of the firm. If he carries on and earns any profit then he must account for the profit made and pay it to the firm.

j. To share losses:

When there is no agreement as to partnership, partners have to share the losses of the firm equally as per profit sharing ratio

2.6 LIABILITIES OF PARTNERS

- a. Joint & Several:** Every partner is liable jointly and severally for all the acts of the firm done while he was a partner. The liability of a partner is unlimited.
- b. Liability for Secret Profits:** A partner is liable to account for and pay to the firm any personal profits earned from the business of the firm or property.
- c. Liability for Profits from Business of a same nature:** If a partner carries on any business of the same nature and competing with that of the firm, he would be liable to account for and pay to the firm all profits made by him in that business.
- d. Liability to Render True Accounts:** A partner is liable to render true statements of accounts to other partners. He is liable to disclose all the accounts which fall within the scope of business of the firm.
- e. Liability for Losses of the firm:** As a partner has a right to share the profits of the firm likewise is he liable to share the losses equally unless otherwise agreed upon.

2.7 IMPLIED AUTHORITY OF PARTNER

The authority of a partner to bind the firm is called his "implied authority". Partners in the partnership firm are playing dual role that is as an agent and at the same time Principle. An authority which is in the

form of express or by words spoken and the Indian Partnership Act is has not specifically mentioned any authority by expression. In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not confer any rights to him to-

- a. Submit a dispute relating to the business of the firm to arbitration,
- b. Open a banking account on behalf of the firm in his own name,
- c. Acquire immovable property on behalf of the firm,
- d. Admit any liability in a suit or proceeding against the firm.
- e. Suspend any claim or portion of a claim by the firm,
- f. Depart a suit or proceeding filed on behalf of the firm,
- g. Transfer immovable property belonging to the firm enter into partnership on behalf of the firm.

2.8 MUTUAL RELATIONSHIP OF PARTNERS TO EACH OTHER

Each partner has a right to share in the profits of the partnership. Unless the provisions made in the partnership deed otherwise, partners share profits equally. Moreover, partners must contribute equally to partnership losses unless a provision made in the partnership deed for another arrangement.

Each partner has a **right to participate equally in the working of management of the partnership**. In many partnerships a majority vote resolves disputes relating to management of the partnership. Except, some decisions, like as admitting a new partner or expelling a partner, require the consent from all the partners.

Each partner owes a **Fiduciary duty** to the partnership and to copartners. This duty requires that a partner deal with copartners in Good Faith, and it also requires a partner to account to copartners for any benefit that he or she receives while engaged in partnership business. If a partner generates profits for the partnership, for example, that partner must hold the profits as a trustee for the partnership.

2.9 RELATIONSHIP OF PARTNERS TO THIRD PERSONS

A partner is an agent of the partnership:

When a partner has the actual authority and acts on behalf of the firm, the partner binds the partnership and every partner for the obligations.

Similarly, a partner's admission concerning the partnership's affairs is considered an admission of the partnership. A partner may only bind the partnership, however, if the partner has the authority to do so and

undertakes transactions while conducting the usual partnership business. **If a third person, however, knows that the partner is not authorized to act on behalf of the partnership, the partnership is generally not liable for the partner's unauthorized acts.** Moreover, a partnership is not responsible for a partner's wrongful acts or omissions committed after the dissolution of the partnership or after the dissociation of the partner. A partner who is new to the partnership is not liable for the obligations of the partnership that occurred prior to the partner's admission.

2.10 MINOR'S POSITION IN PARTNERSHIP

A person who has not attained the age of 18 years of his or her age is known as minor as provided to Section 3 of the Indian Majority Act.

Section 4 of the Indian Partnership Act, 1932, defines partnership and partner as follows:

“Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”.

Persons who have entered into a partnership business with one another are called “partners” individually and collectively it is called as “firm”, and the name by which their partnership business is carried on is called the “firm name”.

As per Indian Contract Act, 1872, minors can neither take an active part in any partnership business nor to enter into any agreement. An agreement involving a minor is void-ab-initio. However, the Indian Partnership Act has its own sets of legal rules in respect of minors.

Minor admitted to benefits of partnership:

A partnership firm cannot be formed with a minor as the only other member. The relation of partnership arises from a contract

“Section 30 of the Indian Partnership Act, provides that a minor cannot become a partner, however with the consent of the adult partners, he may be admitted to the benefits of partnership.

A minor can only be admitted to the benefits of a partnership, and that partnership has to exist independently. Also, there cannot be a contract between two minors.

Rights of Minor:

A minor admitted to the benefits of a partnership in consultation and unanimous consent of all the other major partners.

- Such minor is entitled to his agreed shares of the property and of the profits of the firm.

- Such minor has the right to access and taking copies of the book of accounts of the firm. But has no right of access to those other books of the firm which do not contain matters of account.
- Such minor is not personally liable to the third parties for the debts of the firm, but his liability is limited only up to his shares in the partnership assets and profits.
- Such minor is not entitled to take part in the conducting of the actual business activities as he has no capacity to contract

2.11 MINOR BECOME A FULL-FLEDGED PARTNER

On attaining the age of majority, the minor has his own choice whether to continue with the same partnership or not and accordingly he should specify his interest with in a time specified that is within six months on attaining the majority. If he fails to do the same, he becomes personally liable to the third parties for all the debts of the firm with retrospective effect from the date of he gets admitted to the benefits of partnership.

2.12 RIGHTS OF THE MINOR IF HE ELECTS NOT TO BECOME A PARTNER

- His rights and liabilities shall continue to be those of a minor up to the date of giving public notice;
- His share shall not be liable for any acts of the firm done after the date of the notice;
- He shall be entitled to sue the partners for his share of the property and profits.
- If after attaining the age of majority but before choosing to become a partner the minor represents and knowingly permits himself to be represented as a partner in the firm, he will be personally liable to anyone who on the faith of such representation granted credit to the firm on the ground of 'holding out'.

From the above discussion, we can say that a partnership firm cannot be formed with a minor as the only other member. The relation of partners in partnership business come into existence from a contract. Section 11 of Indian Contract Act states that a minor is not competent to contract and hence not entitled to have the contractual relations amongst the other partners as he is not able to form the sensible judgment and such contracts are void ab initio as mentioned in the landmark judgement in the case of **Mohoribibi V/s Dharmodash Ghosh**.

Dissolution of Firm:

Meaning of Dissolution:

Partnership, as we are aware is a result of an agreement. All agreements can be discharged or terminated. This termination of the contractual relationship in case of partnership is called as dissolution. Dissolution under the partnership law can be mean “Dissolution of the firm” as well as “Dissolution of partnership”. Commonly both are taken to mean the same and are used interchangeably. However, legally there is a difference in the two. Dissolution of the firm means complete breakdown of the relations among all partners. Whereas dissolution of the partnership means, the relationship between same partners came to be an end while the firm continues. It would be right for us to say dissolution of the firm necessarily implies dissolution of partnership whereas dissolution of partnership does not necessarily involve dissolution of firm.

Example:

1. A, B,C, D. are partners in a firm. A, dies B, C, D decides to close down the firm. This amount to dissolution of the firm.
2. A, B, C, D, and E are partners in a firm. There is an agreement that the firm shall not be dissolved on the death, retirement or expulsion of any partner. C dies, this amounts to dissolution of partnership as the firm continues. Only relationship with C. comes to an end.

Modes of Dissolution:

There are modes of dissolution of a firm

- 1) Voluntary dissolution.
- 2) Dissolution by operation of law.
- 3) Dissolution by intervention of court.

1. Voluntary dissolution:

It includes dissolution by any of the following manner.

- a) **By consent:** All partners may consent for the dissolution of the firm. This can happen whether the firm is for a fixed duration or not.
- b) **By agreement:** A firm may be dissolved in accordance with a contract. For example partnership formed for a specific period or for a particular venture.
- c) **By Notice:** Whenever a partnership is at will any partner can give 14 days’ clear notice in advance indicating his intention to disassociate from the firm.

2. Dissolution by operation of law:

It includes dissolution in any of the following manner.

- a) **Compulsory dissolution:** In this case firm is compulsorily dissolved due to insolvency or some new law makes the business of the firm unlawful
- b) Some event making the business unlawful, if carried on in partnership, due to change in its number, example a firm carrying in banking business by more than 10 person
- c) On happening of certain contingencies such as expiry of fixed period or particular venture for which it was formed, on death of a partner and on insolvency of a partner.

3. Dissolution by intervention of court:

It arises on the following ground:

a) Insanity of a partner:

When a partner becomes of unsound mind. The other partner can institute case against such partner to dissolve the firm.

b) Permanent incapacity:

In case a partner becomes permanently incapable in discharging his duties, the court may order dissolution of the firm.

c) Misconduct of a partner:

When a partner is guilty of misconduct which adversely affects the business of the firm then court may order dissolution of the firm provided other partner take legal action.

d) Willful or persistent breaches of agreement:

Sometimes, a partner willfully or persistently commits a breach of agreement relating to the management of the affairs of the firm or conducts the business in such a way that the other partners find it difficult to carry on business with him. In such a cases any partner other than the guilty partner may approach the court for dissolution.

e) Transfer of interest:

Sometimes a partner may transfer the whole of his interest or share to a third party or the share may be charged or the share has been sold for the recovery of arrears of land revenue in which cases the other partner or partners may seek for dissolution of the firm

f) Losses in Business:

Where the business of the firm cannot be carried on except at a loss the court can order for dissolution.

g) Any other just an equitable ground:

Where the court is satisfied that is just an equitable to dissolve the firm.

2.13 EFFECTS OR CONSEQUENCES OF DISSOLUTION

Dissolution of firms:

Section 39 of the Indian Partnership Act, 1932 defines the dissolution of partnership firms. **“The dissolution of the firm means to stop all the business activities with the firm”** There is a difference between the dissolution of the firm and the dissolution of the partnership.

When all the activities in respect of partnership business comes to an end and all the profit and loss is settled among the partners is called dissolution of the firm and when the partner retires or dies even though the firm continues to perform its partnership business with existing partners is called dissolution of a partnership.

Rights of A Partner on Dissolution of A Firm:

1. Rights to have the business wound up.
2. Right to repayment of premium on premature dissolution.
3. Where the firm was dissolved on account of fraud or misrepresentation by a partner, the innocent partner can rescind the contract and also have right to retain surplus if any for the capital and sum paid to be indemnified for all debts paid with regard to the firm.
4. Right to restrain partners from the use of the firm name or firm property.

Liabilities of Partners on dissolution:

Liabilities for an act of the partners on dissolution specified under Section 45 of the Indian Partnership Act, 1932

1. According to this section, the partners of the firm are liable to the third party for any act done by any of them unless they give public notice of the dissolution of the firm.
2. It also states that the partner who dies, retires, becomes insolvent or that of a person who the third party is not aware of being the partner of the firm, is not liable under this section.

Return of premium after dissolution

Section 51 of the Indian Partnership Act specifically tells about the return of premium after dissolution. At the time of entering into a partnership firm, the partner has to pay an amount as premium. However, when the firm gets dissolved before the maturity due to any reason, then such partners are entitled to the repayment of premium at the time of admission.

2.14 PUBLIC NOTICE

Section 72 of Indian Partnership Act describes the manner and the in which the public notice of certain matters relating to partnership firm is to be given. According to this section, public notice must be given in the following circumstances:

- a) On retirement or expulsion of a partner from a registered firm.
- b) On the dissolution of a registered firm.
- c) On the election of a minor to become or not to become a partner on attaining majority.

Following are the modes by which the public notice pertaining to the above matter is to be given are as under:

- a) By notice to the Registrar of firm under Section 63.
- b) By, publication in the Official Gazette.
- c) By publication in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Following are the repercussions or Consequences when public notice is not given:

- When a minor admitted to benefits of partnership fails to give public notice within six months of his attaining majority, he becomes a partner in the firm on the expiry of the said period and would be liable as a partner.
- If a partner does not give a public notice of the retirement, he and the other partners shall continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before retirement.
- If in case of expulsion of a partner, a public notice is not given, the expelled partner and other partners shall continue to be liable to third parties dealing with the firm as in the case of a retired partner.
- If on dissolution of a registered firm a public notice is not given, the partners shall continue to be liable to third persons for any act done by any of them which would have been an act of the firm done before dissolution.

2.15 SUMMARY

Registration of Partnership:

Registration of a partnership firm is not compulsory under law

Consequences of Non- Registration of Partnership:

It cannot enforce its claims against the third party in a court of law. It cannot file a legal suit against any of its partners, Partners of an unregistered firm cannot file any suit to enforce a right against the firm.

Registration of Firms and
Consequences of Non-
Registration
Relations amongst the Partners
and Dissolution of Firm

Rights of a Partner:

Right of the partner to take active part in the day-to-day affairs of the firm.
Right to be consulted and heard when taking any decision regarding the business.

Duties of Partners:

- To carry on the business to the greatest common advantage: To be just and faithful to each other: To render true accounts:
- To provide full information: To attend diligently to his duties: No Secret Profit and to account for personal profits: Not to carry on any competing business:

Liabilities of Partners:

Joint & Several: Liability for Secret **Profits: Liability for Profits from Business of a same nature: Liability for Losses of the firm:**

Implied authority of Partner:

Submit a dispute relating to the business of the firm to arbitration, open a banking account on behalf of the firm in his own name, acquire immovable property on behalf of the firm,

Mutual Relationship of Partners to Each Other: Each partner has a right to share in the profits of the partnership. Each Partner has right to participate equally in the working of management of the partnership. Fiduciary Duty.

Relationship of Partners to Third Persons:

A partner is an agent of the partnership. If a third person, however, knows that the partner is not authorized to act on behalf of the partnership, the partnership is generally not liable for the partner's unauthorized acts.

Minor's Position in Partnership:

Minor admitted to benefits of partnership, Rights of Minor, Minor become a full-fledged Partner.

Dissolution of Firm: MODES OF DISSOLUTION:

Voluntary dissolution. Dissolution by operation of law. Dissolution by intervention of court.

Rights of A Partner on Dissolution of A Firm:

Rights to have the business wound up. Right to repayment of premium on premature dissolution. Where the firm was dissolved on account of fraud or misrepresentation by a partner, the innocent partner can rescind the contract and Voluntary dissolution: Dissolution by operation of law; Dissolution by operation of law.

2.16 QUESTIONS

1. Define partnership. Explain its features
2. What are the effects of non-registration of Partnership Firm?
3. Explain Test of partnership
4. What do you mean by the property of the firm ?
5. Explain kinds of partnership
6. What do you mean by dissolution of the partnership firms? How dissolution takes place by operation of law?
7. Explain dissolution by intervention of court.
8. What are the modes of dissolution of Partnership?
9. Distinguish between partnership & co-ownership
10. Distinguish between partnership & company
11. Distinguish between partnership & Hindu undivided family.
12. Write a Short Note:
 - a. Partnership
 - b. Partnership Deed
 - c. Particular Partnership
 - d. Dissolution of Partnership

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Unit Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Nature and Features of LLP
- 3.3 Advantages of Limited Liability Partnership
- 3.4 Disadvantages of Limited Liability Partnership
- 3.5 Procedure for Incorporation of LLP
- 3.6 Extent and Limitation of Liability of the LLP
- 3.7 Conversion into Limited Liability Partnership (Section 55)
- 3.8 Dissolution of LLP
- 3.9 Distinguish Between Limited Liability Partnership and Partnership
- 3.10 Questions

3.0 OBJECTIVES

After studying this chapter, you will be able to understand:

- The meaning of the term Limited Liability Partnership and its features
- The advantages and disadvantages of Limited Liability Partnership
- The procedure for incorporation of the Limited Liability Partnership
- The procedure for winding – up of an Limited Liability Partnership

3.1 INTRODUCTION

The concept of limited liability partnership has originated from France as early as beginning of the nineteenth century and it has become popular throughout the world in India we have sole proprietorship concern, partnership, The Hindu undivided family and the company.

The partnership lost its popularity because of two major reasons unlimited liability and the presence of concept of mutual agency.

To solve the problem of partnership mentioned above, Naresh Chandra committee recommended the formation of limited liability partnership so that the organisation can exist at an international level. The recommendations of J. J. Irani Committee also played a very important role for introduction of the concept of limited liability partnership. The limited liability Partnership Act 2008 was approved by the president of India on 27th of January 2009 and the act came into force on 31st of March 2009.

3.2 NATURE AND FEATURES OF LLP

1. An LLP is a body corporate separate from its partners.
2. The liability of the LLP is unlimited where as the liability of the partners shall be limited. Partner shall not be liable for the act of other partners but the LLP will continue to remain liable for any act done by other partners.
3. The rights and duties of every partner is decided by agreement between the LLP and the partners full stop because LLP is having separate legal status comma it can enter into partnership agreement on its own.
4. LLP must have at least two partners and two more persons as designated partners comma out of which at least one partner must be resident in India.
5. An LLP is required to carry out audit every year and submit the statement of solvency to the registrar every year. However the central government has the power to exempt certain LLP from this formality.
6. In case of any problem the central government will have power to investigate the affairs of the LLP.
7. Any private company comma unlisted public company, any firm can be converted into an LLP.
8. The winding up of the LLP can be carried out either by the High Court or by the Tribunal.
9. The limited liability partnership act is applicable limited liability partnership and therefore the Indian Partnership Act 1932 does not become applicable to any limited liability partnerships.

Advantages and Disadvantages of LLP

3.3 ADVANTAGES OF LIMITED LIABILITY PARTNERSHIP

1. An LLP has a separate legal status
2. An LLP is easy to form
3. An LLP enjoys long and continuous life i.e. perpetual succession
4. An LLP has Global recognition
5. There is no limit on maximum number of partners of LLP
6. Action by 1 partner does not make all the other partners under the concept of LLP. in other words concept of mutual agency is not present in LLP
7. LLP can be formed at a very low cost.

3.4 DISADVANTAGES OF LIMITED LIABILITY PARTNERSHIP

Limited Liability
Partnership Act, 2008

1. LLP cannot raise capital from general public.
2. Partners may not be liable for act of any other partners however the LLP continues to remain liable for the act of any of its partners.
3. There is no separation of ownership and Management in case of LLP.

3.5 PROCEDURE FOR INCORPORATION OF LLP

1. The incorporation of LLP is done under the jurisdiction of the Registrar of Companies where the Principal Place of Business of LLP is situated. Under the LLP Act, 2008, the entire procedure incorporation of the LLP has to be carried out in virtual mode i.e. online mode.

The procedure for incorporation is as follows:

a. Requirement before Incorporation:

Every designated partner is required to obtained digital signature certificate into bracket DSE. This is mandatory is required to be obtained as it is needed to be affixed on all documents submitted for incorporation.

The LLP has to obtain and directors identification number i n for every disease LLB the d i n is one time unique number and is mandatory to be obtained for every designated partner of the LLP.

1. **Approval of name:** the name of the LLP must be approved from the registrar of the companies as no two LLP can be incorporated with same or similar names. the approval for name can be obtained by filing LLP form number 1. the name once approved is valid only for a period of 60 days it will be presumed that the name is withdrawn, if incorporation proceedings are not completed within that period
2. **Application for certificate of Incorporation:** the second step after obtaining all of the name is to get the of Incorporation. For certificate of Incorporation by filing LLP form number 2 and submitting it with the required documents.
3. If the registrar that all the documents and application is we will issue certificate of Incorporation seal and signature the conclusive evidence of incorporation of the LLP after receiving the certificate of Incorporation the LLP has to apply for LLP identification number. after receiving the LP identification number should apply for permanent account number (PAN) within a period of 30 days.
4. **LLP agreement:** partners and LLP are required to execute LLP agreement and register the same after payment of the stamp duty and registration charges. The LLP agreement contains all the rights and duties of the partners. This LLP agreement must be submitted to the

Registrar within 30 days from the Incorporation in the form of LLP Form Number 3. The formality of LLP agreement must be completed within a period of 30 days from receiving the certificate of Incorporation.

3.6 EXTENT AND LIMITATION OF LIABILITY OF THE LLP

Section 26- partners as agent of LLP: every partner is considered as an agent of LLP but not the agent of every other partner. Therefore top mutual agency present in LLP.

Section 27 limitation of liability: the liability of LLP can be Limited in case does something outside his authority. But the LLP will be liable if a partner does any wrongful act during the course of business.

Section 30 - in case of fraud the liability will be unlimited for LLP for the partner who commits the fraud.

Section 31- whistle- blowing

- a. the court or Tribunal can wave off any kind of penalty which is charged on a particular partner on the basis of information received under whistle - blowing from that particular partner only, if it leads to obtaining any material information helpful for investigating the wrongful activities of the LLP or which can lead to conviction of any of the partner of LLP.
- b. no LLP or its partners can suspend, remove, demote, restrict any partner who has been involved in the act of whistle-blowing because of which there is any kind of enquiry or complaint on that particular LLP.

3.7 CONVERSION INTO LIMITED LIABILITY PARTNERSHIP (SECTION 55)

1. any particular form can be converted into LLP as per the provision of IInd schedule of the LLP act.
2. a private company can be converted into an LLP as per the provision of IIIrd schedule of the LLP act.
3. an unlisted public company can also be converted into an LLP under the provision of IVth schedule of the LLP act.
4. the conversion of different organizations into an LLP is under Section 55 of the LLP act of 2008.
5. any organization wanting to convert into an LLP must make an application to the registrar with necessary documents required for incorporation.

6. the registrar after verification, if he is satisfied, he will issue certificate of incorporation under his seal and signature.
7. If the certificate of incorporation is issued all the Assets and liabilities will be transferred to the LLP.
8. it is mandatory to execute an LLP agreement and register it as per the provisions of LLP Act 2008.

3.8 DISSOLUTION OF LLP

An organisation created by law can only and by the provision of law the central government has formed limited liability partnership (dissolution and winding up) Rules 2010 effect from 30th of March 2010 for the purpose of winding up of LLP.

There are two types of winding up:

1. voluntary winding up
2. winding up by Tribunal or Court

Voluntary Winding up:

it can happen under the following situations

- i. when term specified in LLP agreement comes to an end
- ii. where the L LP passes special resolution for winding up of its business
- iii. any other situation where LLP agreement requires its winding up

The Procedure for winding up is as follows:

Step 1 - Passing of Resolution:

The LLP has to pass special resolution requiring to two - third or 75% majority. this resolution must be submitted to the registrar within a period of thirty days in the manner of form number 1 declaration of solvency - the LLP and its designated partners to declare solvency as per the format provided in form number to given under the LLP act. The liabilities must be paid off within a period of one year from the date of dissolution and the resolution for the same in prescribed from form number 2 must be submitted within a period of 15 days from the date of passing of the resolution.

Along with this LLP should submit form number 3 statement of assets and liabilities it should also submit a copy of valuation report for such assets or liabilities.

Step 2 - Declaration of Solvency:

It is the duty of majority of designated partners to make declaration as per the format which is given under Form Number 2 along with an affidavit

stating that the LLP has no debt or if it has so, it will pay the entire debt within a period not exceeding one year from the date when the winding of has commenced. It is necessary to submit this declaration to the Registrar in the format provided in Form Number 3 within the 15 days of passing resolution for voluntary winding up. This must be accompanied with the following:

Statement of Assets and Liabilities: this must be provided in the format of Form Number 4 containing statement of all the assets and liabilities, prepared on the date immediately before making of the declaration. The same should be duly attested at least 2 designated partners.

Valuation Report: providing the valuation of Assets of the LLP. This is to determine that the LLP has provided true and fair value of the assets without any undue inflation to misrepresent any value of the assets.

Step 3 - To obtain consent of creditors for winding up:

In case there is existence of any creditors whether secured or unsecured, the approval of the creditors is necessary for the winding up. The copy of declaration, stating the amount due to every creditor along with the offer for accepting the mentioned claim is required to be sent to the creditors by registered or speed post or any other type of communication as per Rule Number 15 of the 2009 LLP Partnership Rules. It is necessary that the creditors must record their opinion within 30 days from the date of receiving the declaration. At least two third creditors are required to give their consent for voluntary winding up. If the case arises that the amount due to the creditors would not be payable from the amount received by realizing the Assets of the LLP, consent by the creditors is voluntary. Where LLP is unable to pay the amount proposed and the LLP is to be wound - up by the Tribunal, the LLP is required to file an application within 14 days. Thereafter, notice of any decision of the creditors is required to be given by the LLP to the registrar in the Format of Form Number -5 within a period of 15 days from receiving consent of the creditors.

Step 4 - Publication of Resolution:

Within 14 days of the receipt of the creditors consent LLP is required to give the notice of resolution by the way of advertisement in the newspaper circulating in the district where the registered office or the principal office of the LLP is situated.

Step 5 - Appointment of Liquidator:

Within 30 days from the date of passing resolution, where there is no existence of creditors or in case of creditors, where they have intimated decision to the registrar, the liquidator of the LLP is required to be appointed with the consent of the partners.

Step 6 - Audit of LLP liquidator's Account:

As per the procedure laid down in rule 56, it is necessary to audit the accounts of the LLP liquidator.

Step 7 - Liquidators Report:

After winding of the LLP, the LLP liquidator is required to prepare a report in the format given in Form Number 9, stating the manner in which the winding up has been carried out, property has been disposed of, how the loans have been paid. The said report should have approval of the partners. It is mandatory that at least two third of the total partners consent on the approval of the report indicating that they are satisfied by the steps of the liquidator. Resolution for such approval shall be passed within 30 days from the date of the report of the winding up and the audit of accounts and the explanation for the dissolution of the LLP.

Step 8 - Dissolution of LLP:

After the LLP's winding up is carried out, the LLP liquidator is required to prepare report as specified in Form Number 9 explaining how the winding up process has been conducted and how the property has been disposed of. The report must also state how the of the LLP's debts has been discharged. Within 15 days from the date of passing of the resolution, it is necessary for the LLP liquidator to file with the Registrar a copy of final winding up action of accounts and report in Form Number 10 and application filed with the Tribunal, requesting to pass the order of the Dissolution. The Tribunal on the satisfaction about the following of the process, order for dissolution of LLP, within a period of 60 days from the date of receiving the application. The LLP is required to file order of dissolution of the LLP with the Registrar within 30 days in the form given in the format form number 11.

Section 64: Circumstances where LLP can be wound up by the Tribunal:

An LLP can be wound up by the Tribunal under any of the following circumstances:

- i. if the limited liability partnership decide that the winding up to be by the Tribunal.
- ii. if for a period of more than 6 months comma partner of the LLP is reduced below 2
- iii. if the LLP is unable to pay its dues
- iv. if the LLP has acted against the interest of the show Sovereignty and integrity comma the security of the state or public order
- v. if the LLP has made default in filing with the registrar account insolvency for any five consecutive financial years
- vi. if the Tribunal is of the opinion that it is just and equitable that the LLP should be wound up

Procedure For Winding - Up Through Tribunal:

An application for winding up shall be made in a manner by LLP or creditors the contributory or contributories all or some of the above mentioned parties or by the Registrar of Companies or by the Central Government. After receiving the Petition, the Tribunal shall enquire into the merits and accordingly pass order whether LLP is required to be wound up or not. If the Tribunal is of the opinion that LLP should be wound-up, the Petitioner shall within a period of 30 days from the date of passing of the order, submit the copy of the order to the Registrar of the Companies, otherwise there is a penalty of 100 Rupees for each and every day of default.

In case where the LLP is to be wound off by the Tribunal, the partners are required to appoint qualified person act as a provisional liquidator for the purpose of winding up. It is however to be noted that the liquidator shall always be subject to the provisions of the Central Government as well as the Tribunal, to ensure that the LLP is round up as per the rules and regulations given in.

The appointed Liquidator shall have all the powers so that there is timely completion of the process of winding up. In the process of winding up, the liquidator shall take over the control of the business of the LLP and accordingly dispose off the assets and pay off all the statutory dues and after setting off all the liabilities, the excess, if applicable, will be distributed between the partners in the manner that is agreed by them as per the provisions of LLP Agreement.

A report of liquidation must be submitted to the Registrar, who then issue the final winding-up order in the name of the LLP, after removing the name from the Register mentioned by him.

3.9 DISTINGUISH BETWEEN LIMITED LIABILITY PARTNERSHIP AND PARTNERSHIP

Limited Liability Partnership	Partnership
The Limited Liability Partnership is governed by the provisions of the Limited Liability Partnership Act, 2008	The Partnership is governed by the provisions of the Indian Partnership Act, 1932
Limited Liability Partnership requires minimum two partners and there is no limit specified on the maximum number of partners	Partnership required minimum two partners and maximum of ten for the Banking Business and twenty for the non-banking business.
Incorporation of an Limited Liability Partnership is mandatory under the provisions of the Limited Liability Partnership Act, 2008	Except for the State of Maharashtra, Registration of Partnership is voluntary.

An Limited Liability Partnership enjoys a perpetual succession	Partnership does not enjoy perpetual succession
A Partner is a agent of an Limited Liability Partnership, but not of other partners	A Partner is a principal as well as an agent of all other partners.
Limited Liability Partnership can sue and be sued in its own name	Partnership cannot sue or be sued in its own name.
Act of a Partner binds the Limited Liability Partnership, but not every other partner	Act of Partner binds all other partners as well.
Transfer of Interest in an Limited Liability Partnership is governed by the LLP Agreement	Transfer of Interest of a Partner in Partnership is not possible, unless, there is consent by all other partners.

Difference between Limited Liability Partnership and Company:

Limited Liability Partnership	Company
Limited Liability Partnership is governed by the provisions of the Limited Liability Partnership Act, 2008	Company is governed by the provisions of Companies Act, 2013
Limited Liability Partnership is managed through Designated Partners	Company is managed through Board of Directors
Limited Liability Partnership cannot collect capital from outsiders	A Public Company can collect capital from outsiders, by way of an public issue.
Meetings are not mandatory for Limited Liability Partnership	A Company is required to hold Annual General Meeting every year.
An Limited Liability Partnership does not require to pass resolutions to record the decisions taken by them.	A Company requires decision to be recorded in the form of Resolution.
The Limited Liability Partnership Agreement is the most important document for an Limited Liability Partnership	Memorandum of Association and Articles of Association are the most important documents for the Company.

Exercise:

1. The liability of a Partner of the LLP is _____.
(unlimited, unknown, limited, variable)

2. An LLP shall be a _____.
(body corporate, non-existent corporate, unrecognized organization, no separate existence)
3. Every LLP must have at least ____ partners.
(4, 3, 2, 1)
4. An LLP is an _____ form of business
(unknown, outdated, monotype, renowned)
5. An LLP is _____ to form.
(easy, difficult, complicated, time consuming)
6. An incorporated LLP has _____.
(no life, perpetual succession, short life, no existence)
7. In LLP there is freedom to _____.
(deliver, manage, plan, discuss)
8. Indian Partnership Act is _____ to an LLP.
(not applicable, applicable, superior, guiding force)
9. One of the Designated Partner must be a _____ in India.
(business man, non – resident, resident, government employee)
10. An Application for Registration of an LLP must be filed with _____.
(Registrar of Firms, Registrar of co-operative society, Registrar of HUF, registrar of Companies)
11. A person who makes false statement at the time of application for incorporation of LLP shall be liable to pay a fine of Rs. _____.
(1 lakh, 3 lakhs, 5 lakhs, 10 lakhs)
12. The Registrar shall grant certificate of incorporation within _____ day of submission of the form.
(14, 28, 30, 7)
13. In case of Fraud, the liability shall be _____.
(limited, unlimited, no liability, shared by creditors)
14. The liability in case of fraud under the LLP Act, 2008 is laid down u/s. _____.
(30(a), 30(b), 30 (d), 30)

15. Section 31 of LLP Act, 2008 talks about the term _____.
(whistle-blowing, role of designated partners, dissolution of LLP, Registration of LLP)
16. _____ is not compulsory for an LLP.
(business, registration, capital, partners)
17. When LLP is wound up after duration is completed is an example of _____ winding up
(compulsory, court order, registrar order, voluntary)
18. For winding up, consent must be obtained from atleast _____ creditors.
(one-third, two-third, one – tenth, half)
19. _____ must be appointed within 30 days of passing the resolution.
(Liquidator, Receiver, Debtor, partners)
20. Resolution must be published within _____ days of receipt of creditors consent.
(30, 28, 21, 14)
21. The liquidator is required to file a copy of order of dissolution within _____ days.
(60, 45, 30, 15 €)
22. Audit of _____ Account is required during winding up .
(LLP, Liquidator, Designated Partner, partners)
23. In winding up be the tribunal, the tribunal should appoint _____ to act as provisional liquidator .
(advocate, CA, CS, qualified professional)
24. In winding up through Tribunal, after order of winding up is obtained, it should be filed with the _____.
(ROC, Central Government, High Court, Supreme Court)
25. In LLP, a partner _____ personally liable.
(is, can be, should be, is not)
26. Individual Partner of an LLP should not be a _____.
(adult, minor, woman, person above 50 years of age)

27. An LLP _____ into contract in its own name.
(cannot enter, should not, can enter, may not)
28. S. _____ of LLP Act 2008 defines the term Body Corporate .
(2(a), 2(b), 2c, 2(d))
29. A _____ can be allowed to be converted into an LLP.
(Private Company, Government Company, listed Public Company, Dead Individual)
30. _____ has power to enquire into the affairs of an LLP.
(Registrar of Company, Registrar of co-operative society, Central Government, Registrar of Firms)
31. Audit of LLP is mandatory if annual turnover exceeds Rs _____.
(20 Lakhs, 40 Lakhs, 60 Lakhs, 80 Lakhs)
32. Audit of LLP is mandatory if contribution exceeds Rs _____.
(50 Lakhs, 52 Lakhs, 10 Lakhs, 5 Lakhs)
33. An LLP _____ raise money from public.
(may, can, could, cannot)
34. Names of 2 incorporated LLP _____.
(cannot be similar, can be similar, can be same to same, should be same to same)
35. Section _____ of LLP Act 2008 defines the term Partners.
(2, 3, 4, 5)
36. An LLP is managed through.
(Designated Partners, Partners, Creditors, Court)
37. The profits are determined by _____.
(LLP Registration, LLP Agreement, LLP winding up order, decision of the court)
38. An LLP can appoint a Designated partner who is a resident outside India. This statement is
(True, False, partly true, somewhat true)
39. If any designated partner becomes a whistle blower, the court can _____ penalty on him.
(charge, order, waive off, compensate)

40. A person who is involved in whistle blowing _____ be removed from the LLP.
(cannot, can, should, must)
41. An LLP _____ allowed to issue shares to general public.
(can be, must be, should be, cannot be)
42. A _____ company cannot be converted into an LLP.
(Private Company, partnership, one person, public)
43. An LLP does not exist outside India .
(True, False, partly true, absolutely true)
44. _____ consent is required at the time of winding up of the LLP.
(Debtors, Bank, Creditors, Auditors)
45. A _____ can also file a petition for winding up of LLP.
(Private Company, Public Company, Central Government, State Government)
46. LLP Act is a _____ act.
(Local, State, Central, Universal)
47. The concept of LLP originated from.
(Germany, US, Australia, France)

Ans:

1. c
2. a
3. c
4. d
5. a
6. b
7. b
8. a
9. c
10. d
11. c

12. a
13. b
14. d
15. a
16. c
17. d
18. b
19. a
20. d
21. c
22. b
23. d
24. a
25. d
26. b
27. c
28. d
29. a
30. c
31. b
32. b
33. d
34. a
35. d
36. a
37. b
38. b
39. c
40. a

- 41. d
- 42. d
- 43. b
- 44. c
- 45. c
- 46. c
- 47. d

3.10 QUESTIONS

1. What do you mean by Limited Liability Partnership? Explain its features.
2. Explain the advantages and disadvantages of a Limited Liability Partnership.
3. State the difference between Limited Liability Partnership and Partnership Firm.
4. State the difference between Limited Liability Partnership and Company.
5. Explain the procedure for incorporation of Limited Liability Partnership.
6. Explain the Procedure for Dissolution and Winding up of the Company.
7. Write Short Notes:
 - a. Whistle Blowing
 - b. Extent of Limited Liability Partnership
 - c. Conversion into Limited Liability Partnership
 - d. Winding – up of Limited Liability Partnership

THE FACTORIES ACT, 1948

Unit Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Definitions
- 4.3 Approval, Licensing and Registration of Factories
- 4.4 Chapter III
- 4.5 Chapter IV
- 4.6 Chapter V
- 4.7 Chapter VI
- 4.8 Chapter VII
- 4.9 Chapter VIII
- 4.10 Questions

4.0 OBJECTIVES

After studying this chapter, the Learners shall be able:

- To understand the definitions related to formation and registration of the Factory.
- To analyze and adapt to the various Health, safety and Welfare Provisions provided under the Factories Act, 1948
- To understand the provisions regarding overtime, holidays and breaks in the factory.
- To study the provisions relating to employment of Women and Young Children in the Factories.

4.1 INTRODUCTION

Any organization always has two important units i.e. Corporate Office and the Factory. While the decisions are taken in the corporate office, the factory is a place where the implementation of all the decisions take place. The workers in the factory play a very important role there. Hence, it is important to take care of them and protect their interest from time to time.

The most important objectives of the Factories Act is to make necessary provisions for the health of the workers, take care of the provisions relating to the safety of the workers and make necessary arrangements or provisions to ensure the welfare of the workers. All the three elements are equally important as they play a very crucial role for the organization to keep its workers safe and also keep any accidents away.

The most important judgment regarding the provisions for Health, Safety and Welfare, was given by the Court in the case of *M/s. Bhikusa Yamasa Kshatriya (P) Ltd. V Union of India* (1963 AIR 1591), wherein, it was held that the primary goal of the law's passage was to safeguard factory workers from both personal and occupational hazards. For that reason, it aims to impose certain obligations on the owner or occupier, including the protection of the workers and the provision of employment for them in settings that are favorable to their health and safety.

Therefore we can see that the Factories Act is a social legislation, the object of which is to protect from any kind of exploitation against the conditions of work in the factory premises act applies to all factories including factories belonging to the central or the state government unless they are specifically excluded there in.

4.2 DEFINITIONS

- (a) “adult” means a person who has completed his eighteenth year of age;
- (b) “adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

[(bb) “calendar year” means the period of twelve months beginning with the first day of January in any year;]

- (c) “child” means a person who has not completed his fifteenth year of age;

[(ca) “competent person”, in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to—

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognised as a competent person in relation to a factory;

(cb) “hazardous process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution or the general environment:

Provided that the State Government may, by notification in the Official Gazette, amend the First

Schedule by way of addition, omission or variation of any industry specified in the said Schedule;]

- (d) “young person” means a person who is either a child or an adolescent;
- (f) “day” means a period of twenty-four hours beginning at midnight;
- (g) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;
- (h) “power” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;
- (i) “prime mover” means any engine, motor or other appliance which generates or otherwise provides power;
- (j) “transmission machinery” means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;
- (k) “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;
- (l) “manufacturing process” means any process for—
 - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
 - [(ii) pumping oil, water, sewage or any other substance; or]
 - (iii) generating, transforming or transmitting power; or
 - [(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; [or]]
 - (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]
 - [(vi) preserving or storing any article in cold storage;]
- (m) “worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or

premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union];

- (n) “factory” means any premises including the precincts thereof—
- (i) whereon ten 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, or
 - (ii) 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 without the aid of power, or is ordinarily so carried on,— but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)], or [a mobile mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place].

[Explanation I]: For computing the number of workers for the purposes of this clause all the workers in [different groups and relays] in a day shall be taken into account;]

[Explanation II: For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;]

- (o) “occupier” of a factory means the person who has ultimate control over the affairs of the factory

[Provided that—

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:]

[Provided further that] in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,—

- (1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under—
 - (a) section 6, section 7, [section 7A, section 7B,] section 11 or section 12;
 - (b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;
 - (c) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;
- (2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI,

Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to—

- (a) the workers employed directly by him, or by or through any agency; and
- (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;
- (p) “prescribed” means prescribed by rules made by the State Government under this Act;
- (r) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a [“group” or “relay”] and each of such periods is called a “shift”.

4.3 APPROVAL, LICENSING AND REGISTRATION OF FACTORIES

(1) The State Government may make rules:

- [(a) requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;]
- [(aa)]requiring, the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

- (b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;
 - (c) prescribing the nature of such plans and specifications and by whom they shall be certified;
 - (d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;
 - (e) requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.
- (2) If on an application for permission referred to in [clause (aa)] of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.
- (3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

Explanation:

A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery [if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health].

7. Notice by occupier:

- (1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing:
- (a) the name and situation of the factory;
 - (b) the name and address of the occupier;
- [(bb) the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;]
- (c) the address to which communications relating to the factory may be sent;

- (d) the nature of the manufacturing process—
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- [(e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;]
- (f) the name of the manager of the factory for the purposes of this Act;
- (g) the number of workers likely to be employed in the factory;
- (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act; (i) such other particulars as may be prescribed.
- (2) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

7A. General duties of the occupier:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include—
 - (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

- (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- (3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

8. Inspectors:

- (1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.
- (2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.
- [(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.
- (2B) Every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.]
- (3) No person shall be appointed under sub-section (1), sub-section (2) 1[, sub-section (2A)] or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.
- (4) Every District Magistrate shall be an Inspector for his district.
- (5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

- (6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.
- (7) [Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section] shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

9. Powers of Inspectors:

Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

- (a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, [or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;
- [(b) make examination of the premises, plant, machinery, article or substance;
- (c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;
- (d) require the production of any prescribed register or any other document relating to the factory;
- (e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;
- (f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);
- (g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;
- (h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to

damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

- (i) exercise such other powers as may be prescribed.]

4.4 CHAPTER III

Health:

11. Cleanliness:

- (1) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular—
 - (a) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;
 - (b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;
 - (c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;
 - (d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—
 - (i) where they are [painted otherwise than with washable water-paint] or varnished, be repainted or revarnished at least once in every period of five years;
 - [(ia) where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;]
 - (ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;
 - (iii) in any other case, be kept whitewashed, or colourwashed, and the whitewashing or colourwashing shall be carried out at least once in every period of fourteen months;
- 3[(dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;]

- (e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.
- (2) If, in view of the nature of the operations carried on [in a factory or class or description of factories or any part of a factory or class or description of factories], it is not possible for the occupier to comply with all or any of the provisions of subsection (1), the State Government may by order exempt such factory or class or description of factories [or part] from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

12. Disposal of wastes and effluents:

- [(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.]
- (2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

13. Ventilation and temperature:

- (1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—
 - (a) adequate ventilation by the circulation of fresh air, and
 - (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health; and in particular,—
 - (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;
 - (ii) where the nature of the work carried on in the factory involves, or is likely to involve the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.
- (2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that [proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.]

- [(3) If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section (2), serve on the occupier, an order in writing specifying the measures which, in his opinion, should be adopted, and requiring them to be carried out before a specified date.]

14. Dust and fume:

- (1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.
- (2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

15. Artificial humidification:

- (1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,—
 - (a) prescribing standards of humidification;
 - (b) regulating the methods used for artificially increasing the humidity of the air;
 - (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
 - (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.
- (2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.
- (3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

16. Overcrowding:

- (1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.
- (2) Without prejudice to the generality of sub-section (1) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least [9.9 cubic metres] and of a factory built after the commencement of this Act at least [14.2 cubic metres] of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than [4.2 metres] above the level of the floor of the room.
- (3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.
- (4) The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

17. Lighting:

- (1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.
- (2) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.
- (3) In every factory effective provision shall, so far as is practicable, be made for the prevention of—
 - (a) glare, either directly from a source of light or by reflection from a smooth or polished surface;
 - (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.
- (4) The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

18. Drinking water:

The Factories Act, 1948

- (1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.
- (2) All such points shall be legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within [six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.
- (3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.
- (4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

19. Latrines and urinals:

- (1) In every factory—
 - (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;
 - (b) separate enclosed accommodation shall be provided for male and female workers;
 - (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage;
 - (d) all such accommodation shall be maintained in a clean and sanitary condition at all times;
 - (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.
- (2) In every factory wherein more than two hundred and fifty workers are ordinarily employed—
 - (a) all latrine and urinal accommodation shall be of prescribed sanitary types;
 - (b) the floors and internal walls, up to a height of [ninety centimetres], of the latrines and urinals and the sanitary blocks shall be laid in

glazed tiles or otherwise finished to provide a smooth polished impervious surface;

- (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.
- (3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

20. Spittoons:

- (1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
- (2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.
- (3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.
- (4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

4.5 CHAPTER IV

Safety:

21. Fencing of machinery:

- (1) In every factory the following, namely:—
 - (i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;
 - (ii) the headrace and tailrace of every water-wheel and water turbine;
 - (iii) any part of a stock-bar which projects beyond the head stock of a lathe; and
 - (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:—

- (a) every part of an electric generator, a motor or rotary converter;
 - (b) every part of transmission machinery; and
 - (c) every dangerous part of any other machinery; shall be securely fenced by safeguards of substantial construction which [shall be constantly maintained and kept in position] while the parts of machinery the y are fencing are in motion or in use:
- (2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

22. Work on or near machinery in motion:

- (1) [Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out—
- (a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or
 - (b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,

while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of this appointment, and while he is so engaged,— (a) such worker shall not handle a belt at a moving pulley unless—

- (i) the belt is not more than fifteen centimetres in width;
- (ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible);
- (iii) the belt joint is either laced or flush with the belt;
- (iv) the belt, including the joint and the pulley rim, are in good repair;
- (v) there is reasonable clearance between the pulley and any fixed plant or structure;
- (vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and

- (vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person;]
- [(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.]
- (3) The State Government may, by notification in the Official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

23. Employment of young persons on dangerous machines:

- (1) No young person [shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—
 - (a) has received sufficient training in work at the machine, or
 - (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.
- (2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

24. Striking gear and devices for cutting off power:

- (1) In every factory—
 - (a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley;
 - (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.
- (2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.

The Factories Act, 1948

- [(3) When a device, which can inadvertently shift from “off” to “on” position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted].

25. Self-acting machines:

No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of [forty-five centimetres] from any fixed structure which is not part of the machine:

Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

26. Casing of new machinery:

- (1) In all machinery driven by power and installed in any factory after the commencement of this Act,—
- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;
- (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.
- (2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of [sub-section (1) or any rules made under sub-section (3)], shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.
- [(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.]

27. Prohibition of employment of women and children near cotton-openers:

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work:

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

28. Hoists and lifts:

- (1) In every factory—
 - (a) every hoist and lift shall be—
 - (i) of good mechanical construction, sound material and adequate strength;
 - (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;
 - (b) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;
 - (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;
 - (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;
 - (e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.
- (2) The following additional requirement shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:—
 - (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

- (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;
- (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.
- (3) The Chief Inspector may permit the continued use of a hoist of lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.
- (4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

29. Lifting machines, chains, ropes and lifting tackles:

- (1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:—
 - (a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be—
 - (i) of good construction, sound material and adequate strength and free from defects;
 - (ii) properly maintained; and
 - (iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;
 - (b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;
 - (c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within [six metres] of that place.
- (2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories—

- (a) prescribing further requirements to be complied with in addition to those set out in this section;
- (b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.
- (3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined. Explanation.—In this section.—
 - (a) “lifting machine” means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway;
 - [(b) “lifting tackle” means any chain sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.]

30. Revolving machinery:

- (1) [In every factory] in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.
- (2) The speeds indicated in notices under sub-section (1) shall not be exceeded.
- (3) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

31. Pressure plant:

- [(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.]
- (2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

- [(3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.]

32. Floors, stairs and means of access:

In every factory—

- (a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained [and shall be kept free from obstructions and substances likely to cause persons to slip], and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;
- (b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.
- [(c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.]

33. Pits, sumps openings in floors, etc.:

- (1) In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.
- (2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

34. Excessive weights:

- (1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.
- (2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying or any specified process.

35. Protection of eyes:

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or

- (b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

[36. Precautions against dangerous fumes, gases, etc.:

- (1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.
- (2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless—
 - (a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or
 - (b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.]

[36A. Precautions regarding the use of portable electric light:

In any factory—

- (a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space [unless adequate safety devices are provided]; and
- (b) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that flame-proof construction shall be permitted to be used therein.]

37. Explosive or inflammable dust, gas, etc.:

- (1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measure shall be taken to prevent any such explosion by—
 - (a) effective enclosure of the plant or machinery used in the process;

- (b) removal or prevention of the accumulation of such dust, gas, fume or vapour; (c) exclusion or effective enclosure of all possible sources of ignition.

The State Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

38. Precautions in case of fire:

- (1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain— (a) safe means of escape for all persons in the event of a fire, and (b) the necessary equipment and facilities for extinguishing fire.
- (2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.
- (3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2).

39. Power to require specifications of defective parts or tests of stability:

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on [the occupier or manager or both] of the factory an order in writing requiring him before a specified date—

- (a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or
- (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

40. Safety of buildings and machinery:

- (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on [the occupier or manager or both] of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

- (2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on 1[the occupier or manager or both] of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

[40A. Maintenance of buildings:

If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.] 40B. Safety Officers:

- (1) In every factory—
 - (i) wherein one thousand or more workers are ordinarily employed, or
 - (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so, required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.
- (2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.]

41. Power to make rules to supplement this Chapter:

The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further [devices and measures] for securing the safety of persons employed therein as it may deem necessary.

41B. Compulsory disclosure of information by the occupier:

- (1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufactures, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity.
- (2) The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such

policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

The Factories Act, 1948

- (3) The information furnished under sub-section (1) shall include accurate information as to the quantity, specification and other characteristics of wastes and the manner of their disposal.
- (4) Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

41C. Specific responsibility of the occupier in relation to hazardous processes:

Every occupier of a factory involving any hazardous process shall—

- (a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;
- (b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed:

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

- (c) provide for medical examination of every worker—
 - (a) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and
 - (b) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

4.6 CHAPTER V

Welfare:

42. Washing facilities:

- (1) In every factory—

- (a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein;
 - (b) separate and adequately screened facilities shall be provided for the use of male and female workers;
 - (c) such facilities shall be conveniently accessible and shall be kept clean.
- (2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

43. Facilities for storing and drying clothing:

The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

44. Facilities for sitting:

- (1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.
- (2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.
- (3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

45. First-aid appliances:

- (1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed [at any one time] in the factory.
- [(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.
- (3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person [who holds a certificate in first-aid

treatment recognised by the State Government] and who shall always be readily available during the working hours of the factory.]

- [(4)] In every factory wherein more than five hundred workers are [ordinarily employed] there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed [and those facilities shall always be made readily available during the working hours of the factory].

46. Canteens:

- (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.]
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for—
 - (a) the date by which such canteen shall be provided;
 - (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
 - (c) the foodstuffs to be served therein and the charges which may be made therefor;
 - (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;
- [(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

47. Shelters, rest rooms and lunch rooms:

- (1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exists no worker shall eat any food in the work room.

- (2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.
- (3) The State Government may—
 - (a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section;
 - (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

48. Creches:

- (1) In every factory wherein more than [thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.
- (2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.
- (3) The State Government may make rules—
 - (a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;
 - (b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;
 - (c) requiring the provision in any factory of free milk or refreshment or both for such children;
 - (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

49. Welfare officers:

- (1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.
- (2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

50. Power to make rules to supplement this Chapter:

The State Government may make rules—

- (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any

factory or class or description of factories from compliance with any of the provisions of this Chapter;

The Factories Act, 1948

- (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

4.7 CHAPTER VI

Working Hours of Adults:

51. Weekly hours:

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

52. Weekly holidays:

- (1) No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless—
 - (a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and
 - (b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier,—
 - (i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and
 - (ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

- (2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.
- (3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

53. Compensatory holidays:

- (1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers

therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

- (2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

54. Daily hours:

Subject to the provisions of section 51, not adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

[Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.]

55. Intervals for rest:

- [(1)] The periods of work] of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

55. Prohibition of overlapping shifts:

- (1) Work shall not be carried on in any factory by means of system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

56. Extra wages for overtime:

- (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

60. Restriction on double employment:

Except under certain circumstances that may be stipulated, no adult worker must be forced or permitted to work in any factory on any day on which he has already worked in any other factory.

62. Register of adult workers:

- (1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing—
 - (a) the name of each adult worker in the factory;

- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted; (e) such other particulars as may be prescribed:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as the register of adult workers in that factory.

[(1A) No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.]

66. Further restrictions on employment of women:

- (1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:—
 - (a) no exemption from the provisions of section 54 may be granted in respect of any woman;
 - (b) no woman shall be [required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.:

Provided that the State Government may, by notification in the Official Gazette, in respect of [any factory or group or class or description of factories,] vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M.:

- [(c) there shall be no change of shifts except after a weekly holiday or any other holiday.]
- (2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.
- (3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

4.8 CHAPTER VII

Employment of Young Persons:

67. Prohibition of employment of young children:

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

68. Non-adult workers to carry tokens:

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless—

- (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and
- (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

69. Certificates of fitness:

- (1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.
- (2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew—
 - (a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;
 - (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for a full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

- (3) A certificate of fitness granted or renewed under sub-section (2)—
 - (a) shall be valid only for a period of twelve months from the date thereof;
 - (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-

examination of the young person before the expiry of the period of twelve months.

The Factories Act, 1948

- (4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.
- (5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.
- (6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.
- (7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

10. Certifying surgeons:

- (1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.
- (2) A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.
- (3) No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

[Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.]

- (4) The certifying surgeon shall carry out such duties as may be prescribed in connection with— (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—
 - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - (ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Explanation:

In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or in the Schedules to the Indian Medical Council Act, 1933 (27 of 1933) .

71. Working hours for children:

- (1) No child shall be employed or permitted to work, in any factory—
 - (a) for more than four and a half hours in any day;
 - [(b) during the night.

Explanation:

For the purpose of this sub-section “night” shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.]

- (2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.
- (3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

- (4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

The Factories Act, 1948

- [(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.]

72. Notice of periods of work for children:

- (1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.
- (2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.
- (3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

73. Register of child workers:

- (1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—
- (a) the name of each child worker in the factory,
 - (b) the nature of his work,
 - (c) the group, if any, in which he is included,
 - (d) where his group works on shifts, the relay to which he is allotted, and (e) the number of his certificate of fitness granted under section 69.

- [(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.]

- (2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

74. Power to require medical examination:

Where an Inspector is of opinion—

- (a) that any person working in a factory without a certificate of fitness is a young person, or

- (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein,

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

75. Power to make rules:

The State Government may make rules—

- (a) prescribing the forms of certificates of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;
- (b) prescribing the physical standards to be attained by children and adolescents working in factories;
- (c) regulating the procedure of certifying surgeons under this Chapter;
- (d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

76. Certain other provisions of law not barred:

The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (26 of 1938).

4.9 CHAPTER VIII

Annual Leave with Wages:

77. Application of Chapter:

- (1) The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, [agreement (including settlement)] or contract of service:

[Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or

contract of service or matters which are provided for less favourably therein, the provisions of sections 79 to 82, so far as may be, shall apply.]

The Factories Act, 1948

- (2) The provisions of this Chapter shall not apply to workers [in any factory] of any railway administered by the Government, who are governed by leave rules approved by the Central Government.

79. Annual leave with wages:

- (1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—
- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1:

For the purpose of this sub-section—

- (a) any days of lay off, by agreement or contract or as permissible under the standing orders;
- (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed, shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

Explanation 2:

The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

- (2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

80. Wages during leave period:

- (1) For the leave allowed to him under [section 78 or section 79, as the case may be,] a worker [shall be entitled to wages] at a rate equal to the daily average of his total full time earnings for the days on which [he actually worked] during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles:

[Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.]

- (2) The cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food grains and other articles admissible to a standard family.

Explanation 1:

“Standard family” means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2:

“Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

- (3) The State Government may make rules prescribing—
- (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and
 - (b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

4.10 QUESTIONS

1. One of the Objective of the Factories Act is to _____ regulate working condition in the factory

a. formulate, b. calculate, c. regulate, d. delegate

(Answer: c)

2. The Factories Act 1948 envisages to regulate the _____ for the workers.

a. travelling modes, b. travelling time, c. gossip time, d. working hours

(Answer: d)

3. The Factories Act 1948 is applicable to the establishment where _____ or more workers are employed on any single day of the preceding month and manufacturing process is carried out with the aid of power

a. 40, b. 30, c. 10, d. 5

(Answer: c)

4. The Factories Act 1948 is applicable to the establishment where _____ or more workers are employed on any single day of the preceding month and manufacturing process is carried out without the aid of power

a. 30, b. 20, c. 10, d. 5

(Answer: b)

5. The _____ government has power to make rules under the Factories Act, 1948

a. State, b. Central, c. Municipal Corporations, d. Panchayat

(Answer: a)

6. The term Factory is defined u/s. _____ of Factories Act, 1948.

a. 2(b), b. 2(m), c. 2(x), d. 2(d)

(Answer: b)

7. The approval for factory is deemed to be granted if no order is communicated within _____ months from the date of application

a. 6, b. 5, c. 4, d. 3

(Answer: d)

8. The Occupier is required to give Notice of Occupation to the Chief Inspector of the Factory at least _____ days before he begins to occupy the factory.

a. 15, b. 30, c. 45, d. 60

(Answer: a)

9. The Health Provisions are laid down in Chapter _____ of the Factories Act 1948.

a. II, b. III, c. IV, d. V

(Answer: b)

10. The Safety Provisions are laid down in Chapter ____ of the Factories Act 1948

- a. II, b. III, c. IV, d. V

(Answer: c)

11. _____ is a Welfare Provision required to be provided especially for women workers in the factory Premises

- a. first – aid, b. facility for sitting, c. Canteen, d. Creches

(Answer: d)

12. Creches facility must be provided if the number of female workers in the factory are ____ or more

- a. 30, b. 20, c. 10, d. 5

(Answer: a)

13. Any child under the age of ____ years can be kept in creches

- a. 9, b. 8, c. 7, d. 6

(Answer: d)

14. Canteen Facility is required where the number of workers are ____ or more

- a. 500, b. 350, c. 250, d. 150

(Answer: c)

15. There should be one first - aid box for atleast every _____ workers

- a. 150, b. 250, c. 100, d. 75

(Answer: a)

16. Any worker who violates the rules regarding spitting can be punished with fine not exceeding Rs. _____

- a. 5, b. 10, c. 15, d. 20

(Answer: a)

17. The floors of the factory must be cleaned by washing with disinfectant at least once every _____.

- a. forth night, b. week, c. month, d. quarter

(Answer: b)

18. The provision for fencing of machinery is laid down under section _____ of the Factories Act, 1948

The Factories Act, 1948

a. 18, b. 20, c. 21, d. 22

(Answer: c)

19. A worker _____ work in two factories on any day

a. may, b. should, c. can, d. cannot

(Answer: d)

20. An _____ is a person who has completed his eighteenth year of age or more

a. child, b. adolescent, c. adult, d. minor

(Answer: c)

21. An adolescent is a person is above _____ years but has not completed his eighteenth year

a. 15, b. 14, c. 13, d. 12

(Answer: b)

22. A worker cannot work continuously for a period of more than _____ days

a. 10, b. 14, c. 7, d. 30

(Answer: a)

23. Provisions regarding Latrines and Urinals are provided under section _____ of the Act

a. 17, b. 18, c. 19, d. 20

(Answer: c)

24. Provisions regarding disposal of wastes and effluents are provided under section _____ of the Act.

a. 11, b. 12, c. 13, d. 14

(Answer: b)

25. Facility for _____ is laid down under section 44 of the act.

a. standing, b. sleeping, c. jumping, d. sitting

(Answer: d)

26. Ambulance Room is required for factories having _____ or more workers

- a. 500, b. 250, c. 150, d. 100

(Answer: a)

27. Artificial Humidification is provided u/s. _____ of the Factories Act.

- a. 12, b. 13, c. 14, d. 15

(Answer: d)

28. Section 42 of the Factories Act lays down provisions regarding _____ facilities

- a. drying, b. storing, c. washing, d. stitching

(Answer: c)

29. The _____ of the Factory is required to have custody of the certificate of fitness

- a. owner, b. manager, c. watchman, d. housekeeper

(Answer: b)

30. Which of the following is a safety provision under Factories Act.

- a. Painting of Walls, b. Creches, c. Fencing of Machine, d. canteen

(Answer: c)

31. There should be a distance of at least _____ cms from fixed structure in case of automatic machines

- a. 45, b. 35, c. 25, d. 15

(Answer: a)

32. Women and Young person are not allowed to work near _____.

- a. Machines, b. Factory Building, c. Cotton Openers, d. automatic machine

(Answer: c)

33. The fine for not using spittons is Rs. _____.

- a. 10, b. 15, c. 25, d. 5

(Answer: d)

34. Certificate of Fitness is valid for a period of _____.

The Factories Act, 1948

a. 1 year, b. 2 years, c. 3 yearsd, 4 years

(Answer: a)

35. The certificate of fitness is valid for a period of _____ years.

a. 4, b. 3, c. 2, d. 1

(Answer: d)

Answer The Following:

1. Explain the provisions regarding Registration of the Factory.
2. State in detail the Health Provisions under the Factories Act, 1948.
3. State in detail the Safety Provisions under the Factories Act, 1948.
4. State in detail the Welfare Provisions under the Factories Act, 1948.
5. Explain the provisions regarding Employment of Young Children in the Factory Premises.

Write Short Notes:

1. Objectives of the Factories Act. 1948
2. Annual Leaves with Wages
3. Employment of Young Children
4. Powers of Inspectors under the Factories Act, 1948
