

UNIT-V

Q1. Employment of young persons

'Young person' means a person, who is either a child or an adolescent [Section 2(d)]. 'Child' means a person, who has not completed his fifteenth year of age [Section 2(c)]. 'Adolescent' means a person, who has completed his fifteenth year of age, but has not completed his eighteenth year [Section

The following are the provisions of the Factories Act, 1948 relating to the employment of young persons:

1) Prohibition of employment of young children (Sec. 67)

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

It is the duty of the employer to ascertain the age of the children whom he allows to work in any factory. He cannot depend on the statement of the applicant. Where a child labourer was found guilty and convicted in contravention of Section 67 of the Factories Act, he shall be liable to minimum penalty as prescribed under Section 14(1) of the Child Labour (Prohibition and Regulation) Act, 1986.

2) Non-adult workers to carry tokens (Sec. 68)

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.

A child who has completed his fourteenth year or an adolescent can be required or allowed to work in any factory if a certificate of fitness granted with reference to him under Section 69 is in custody of the manager of the factory, and such child or adolescent carries while he is at work a token giving a reference to such certificate. The obligation rests on the occupier as well.

3) Certificates of fitness (Sec. 69)

(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 of 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.

(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 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.

4) Effect of certificate of fitness granted to adolescent (Sec. 70)

(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under Clause (b) of sub-section (2) of Section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter VI and VIII.

(1-A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. & 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,—

(1) vary the limits laid down in this sub-section so however, that no such section shall authorise the employment of any female adolescent between 10 p.m. and 5 a.m.;

(ii) grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved".

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid Clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

5) Working hours for children (Section 71)

(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.

(5) No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

6) Notice of periods of work for children (Sec. 72)

(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 before hand in accordance with the method laid down for adult workers inSection 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.

7) Register of child workers (Sec. 73)

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 which 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.

(1-A) 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.

8) Hours of work to correspond with notice under Section 72 and register under Section 73 (Sec. 74)

No Child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made before hand against his name in the register of child workers of the factory.

9) Power to require medical examination (Sec. 75)

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 to fitness or a fresh certificate of fitness, as the case may be under Section 69, has been certified by the certifying surgeon examining him not to be a young person.

10) Power to make rules (Sec. 76)

(1) 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.

11) Certain other provisions of law not barred (Sec. 77)

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

the Madras Agriculturists' Debt Relief Act⁴⁹, held that "the surety is liable only for the reduced amount".⁵⁰ This view of the Madras High Court has now been supported by the Kerala High Court in *Aypunni Mani v. Devassy Kochousepti-*

Explaining the purpose of the debt relieving statutes, GOPALAN NAMBIYARE: observed as follows:

It appears to us, that to hold otherwise, would be to altogether deny the benefit of the ameliorative provisions of the Act to the agriculturist debtor. On any other view it would be open to the creditor to recover the debt scaled down from the agriculturist-debtor, and the balance from the surety and the latter in his turn could seek reimbursement from the principal debt (vide Section 144 of the Contract Act).⁵² Such a construction would completely nullify the benefits of the ameliorative legislation to indebted agriculturists.

This is indeed the most desirable interpretation of Section 128 which makes the liability of the surety co-extensive with that of the principal debtor. In view of this decision the effect of the section is "that a statutory reduction or extinguishment of the principal debtor's liability will operate as a pro tanto reduction or extinguishment of surety's debt". The mere suspension of a debt for a short period and that too with a clause that the period of limitation will run during the period of suspension, will not affect the liability of the guarantor.

Application of Insolvency Laws.—The Supreme Court has laid down that though under Section 134 the surety is discharged by release or discharge of the principal debtor, a discharge which the principal debtor may secure by reason of winding up or insolvency does not absolve the surety of his liability. A bank guarantee for a sum of Rs. 50,000 was submitted by a supplier of the Electric Board. The bank was liable under the guarantee to pay the amount within 24 hours of demand

by the Board. The Board demanded payment. The bank made it. The bank was now trying to realise the amount out of the securities deposit! by the supplier for securing the guarantee. The supplier company went into liquidation. The liquidator sought to restrain the bank from realizing the securities. But the court allowed the bank to go ahead. The bank was a secure creditor and was entitled to the benefit of securities. The bank had nothing to do with the state of the relations between the company and the Electricity Board.

Q2. SEXUAL HARASSMENT OF WOMEN AT WORK PLACE

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative Act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013. The government has threatened to take stern action against employers who fail to comply with this law.

The introductory text of the Act is:

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

According to the Press Information Bureau of the Government of India:

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997). Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee

on Human Resources Development. The committee's report was published on 30 November 2011. In May 2012, the Union Cabinet approved an amendment to include domestic workers. The amended Bill was finally passed by the Lok Sabha on 3 September 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.

Major Features

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.

- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business
- Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.

Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.