



**SHEKHAWATI INSTITUTE OF TECHNOLOGY**  
**DEPARTMENT OF MANAGEMENT STUDIES**  
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**1<sup>st</sup> Mid – Term Examination 2017-18 (MBA 4<sup>th</sup> Sem.)**  
**Subject Code & Name – M-430: EMPLOYMENT LAW**

**Max. Marks – 30**  
**Time – 01.30 hrs**

**Model Question – Answer Paper**

**Section A**

**1. What is the labour Law and history of labour management in india.**

**Answer :-** Labor law primarily concerns the rights and responsibilities of unionized employees. Some groups of employees find unions beneficial, since employees have a lot more power when they negotiate as a group rather than individually. Unions can negotiate for better pay, more convenient hours, and increased workplace safety. However, unions do not have limitless power. Leaders must treat all union members fairly and refrain from restricting union members' rights to speech, assembly, and voting powers.

The maintenance of industrial peace designed to advance economic growth ought to be the objective of labour legislation. Even though the industrial revolution resulted in the maximization of production and the national income and so on the per capita income went to high pitch, paradoxically the fate of the vast multitude, namely the wage earning class did not improve. Rather their condition became more deplorable both outside and inside the factory. Labour laws emerged when the employers tried to restrict the powers of workers' organizations and keep labour costs low. The workers began demanding better conditions and the right to organize so as to improve their standard of living. Employer's costs increased due to workers demand to win higher wages and better working conditions. This led to a chaotic situation which required the intervention of government. In order to put an end to the disputes between the everwarring employer and employee, the government enacted many labour laws.

**FIRST STAGE** - Human society has passed through two huge and lasting changes which deserve the name revolution. The first 'the Neolithic Revolution' the change comes a mere 10,000 years ago, when people first discovered how to cultivate crops and to domesticate animals. This is the most significant single development in human history. It happens within the Stone Age, for tools are still flint rather than metal, but it is the dividing line which separates the old Stone Age (palaeolithic) from the new Stone Age (neolithic). It has been aptly called the Neolithic Revolution.

**SECOND STAGE** – The Industrial Revolution was a period from 1750 to 1850 where changes in agriculture, manufacturing, mining, transportation, and technology had a profound effect on the social, economic and cultural conditions of the times. It began in the United Kingdom, then subsequently spread throughout Western Europe, North America, Japan, and eventually the rest of the world. The Industrial Revolution marks a major turning point in history; almost every aspect of daily life was influenced in some way. Starting in the later part of the 18th century, there began a transition in parts of Great Britain's previously manual labour. The Industrial Revolution witnessed the triumph of a middle class of industrialists and businessmen over a landed class of nobility and gentry. Ordinary working people found increased opportunities for employment in the new mills and factories, but these were often under strict working conditions with long hours of labour dominated by a pace set by machines. As late as the year 1900, most

industrial workers in the United States still worked 10-hours a day (12 hours in the steel industry), yet earned from 20 to 40 percent less than the minimum deemed necessary for a decent life. However, harsh working conditions were prevalent long before the Industrial Revolution took place. Pre-industrial society was very static and often cruel child labour, dirty living conditions, and long working hours were just as prevalent before the Industrial Revolution

## 2. What is the international labor organization & its role.

**Answer :-** The International Labour Organization (ILO) is a United Nations agency dealing with labour problems, particularly international labour standards, social protection, and work opportunities for all.<sup>[1]</sup> The ILO has 187 member states: 186 of the 193 UN member states plus the Cook Islands are members of the ILO.

The role that international organizations can play depends on the interests of their member States. States establish and develop international organizations to achieve objectives that they cannot achieve on their own. By the same token, States will not permit international organizations to do things that constitute, in the eyes of these States, interference in their internal affairs.

This is particularly true in the very sensitive field of international migration. The entry, economic activities, residence rights, etc., of foreigners are viewed, to this day, as falling under the sovereignty and reserved domain of States. In the field of international migration, no State likes to be told what it can or cannot do - neither by another State nor by an international organization.

What are the principal functions accorded to international organizations? They may be summarized under four headings:

- i. *studies or the collection and dissemination of information;*
- ii. *setting internationally acceptable norms;*
- iii. *fostering cooperation through meetings;*
- iv. *engaging in technical cooperation activities.*

States have few hesitations in giving international organizations a mandate *to collect and disseminate information, especially statistical material, and to carry out studies, notably comparative studies*, that enable the analysis of contemporary trends and the drawing of lessons.

Some intergovernmental organizations, the ILO among them, also enjoy the privilege of giving birth to and nurturing *international minimum standards*. This is due to the inability of any government, except in a hegemonic system that it controls, of setting standards to be adhered to by other governments. Where there is an identified need for establishing international norms in a non-hegemonic system, a large number of States have to agree on procedures and substance for such norms to become a reality. Where levels of treatment are specified, these norms cannot be more than minimum standards.

It is not enough that governments - and, in the ILO's case, employers' and workers' organizations as well - agree on a level of treatment to be embodied in an international Convention. It would constitute no more than a declaration of moral value if the rules agreed upon would not enter into force at the national level and if their application at that level could not be supervised internationally. This being a very sensitive issue, only a few international organizations have been endowed with supervisory mechanisms. The UN only has a very weak supervisory system and practically no sanctions to call on. The ILO has a somewhat stronger system. The European Union has a very strong machinery that includes both the Commission and an independent Court of Justice.

### **3. Describe the Labour commission & their recommendations.**

**Answer :-** The interest on work depends upon proper inspiration from management how management can impose upon the workers work, ethics and culture. It has been seen; many entities in Indian Work scenario employ a worker for 12 to 15 hours in a day at this era of LPG. But in terms of wages they have not adequately been compensated.

Moreover, companies should behave in a more transparent manner and follow the principles of corporate government Mantra. Mrs. Narayana Murthy said properly “I feel that corporate leaders should not use resources of the company for their personal use. Never before have business leaders lost trust like this.”

Some Recommendations of Second Labour Commission are:

1. Commission uses the work “worker” instead of “workman.”
2. Commission prescribes separate law for protection of highly paid jobs or other than worker.
3. Commission feels to give certain level of protection to the managerial employees.
4. For labour Management Relations all settlement clauses should be binding on everybody.
5. All labour laws should give a well defined social security.
6. Wages to include basic D.A., other perks and even bonus should be under remuneration.
7. A contract labour cannot be engaged in production/service activities. Contract labour should be given remuneration at the regular rate of regular grade. No worker shall be kept continuously as a casual worker for more than 3 years against a permanent job.\

### **4. what os the Indian constitution & legislation labour.**

**Answer :-** The constitution of India confers innumerable rights for the protection of labour. Indian constitution through various articles protects, supports, and acts as a guideline to various labour laws for their effective implementation and functioning. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter- III (Articles 16, 19, 21, 23 & 24) and Chapter IV (Articles 39, 39-A, 41, 42, 43, 43A, 46, 47 & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy<sup>1</sup> which set an aim to which the activities of the state are to be guided. These Directive Principles provide:

- for securing the health and strength of employees, men and women; • that the tender age of children are not abused;
- that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- just and humane conditions of work and maternity relief are provided;
- That the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry. Labour is a concurrent subject in the Constitution of India. Indian Constitution mentions the subject matter for the Welfare of labour including conditions of work, provident funds, workmen's compensation, Pensions and maternity benefits implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament. Indian Constitution through various articles provides the labour rights. Though not directly but indirectly the articles protects the labour rights. Article 14 of the constitution of India provides the concept of Equality before law. The concept of equality is truly stated by Dr. Jennings with the words, “Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. In the case of Randhir Singh V. Union of India <sup>2</sup> , the Supreme Court held that though the principle of ‘equal pay for equal work’ is not expressly declared by our constitution as a fundamental right, but it is the goal of constitution by

Art.14, 16 and 39(c). So this right can be enforced in cases of unequal scales of pay based on irrational classification. In *Mewa Ram v. A.I.I. Medical Science*<sup>3</sup>, the Supreme Court held that the doctrine of 'equal pay for equal work' is not an abstract doctrine. Equality must be among equals, unequal people cannot claim equality.

## 5. what is the contract labour act 1970 explain in detail.

**Answer :-** The Object of the Contract Labour Regulation and Abolition) Act, 1970 is to prevent exploitation of contract labour and also to introduce better conditions of work. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a Contractor.

Contract and right

Scope of protection

Indian labour law makes a distinction between people who work in "organised" sectors and people working in "unorganised sectors".<sup>[citation needed]</sup> The laws list the different industrial sectors to which various labour rights apply. People who do not fall within these sectors, the ordinary law of contract applies.<sup>[citation needed]</sup>

India's labour laws underwent a major update in the Industrial Disputes Act of 1947.<sup>[3]</sup> Since then, an additional 45 national laws expand or intersect with the 1948 act, and another 200 state laws control the relationships between the worker and the company. These laws mandate all aspects of employer-employee interaction, such as companies must keep 6 attendance logs, 10 different accounts for overtime wages, and file 5 types of annual returns. The scope of labour laws extend from regulating the height of urinals in workers' washrooms to how often a work space must be lime-washed.<sup>[4]</sup> Inspectors can examine working space anytime and declare fines for violation of any labour laws and regulations.

Employment contracts

Among the employment contracts that are regulated in India, the regulation involves significant government involvement which is rare in developed countries. The Industrial Employment (Standing Orders) Act 1946 requires that employers have terms including working hours, leave, productivity goals, dismissal procedures or worker classifications, approved by a government body.<sup>[5]</sup>

The Contract Labour (Regulation and Abolition) Act 1970 aims at regulating employment of contract labour so as to place it at par with labour employed directly.<sup>[6]</sup> Women are now permitted to work night shifts too (10 pm to 6 am).<sup>[6]</sup>

The Latin phrase 'dies non' is being widely used by disciplinary authorities in government and industries for denoting the 'unauthorised absence' to the delinquent employees. According to Shri R. P. Saxena, chief engineer, Indian Railways, dies-non is a period which neither counted in service nor considered as break in service.<sup>[7]</sup> A person can be marked dies-non, if

- absent without proper permission
- when on duty left without proper permission
- while in office but refused to perform duties

Wage regulation

The Payment of Wages Act 1936 requires that employees receive wages, on time, and without any unauthorised deductions. Section 6 requires that people are paid in money rather than in kind. The law also provides the tax withholdings the employer must deduct and pay to the central or state government before distributing the wages.

The Minimum Wages Act 1948 sets wages for the different economic sectors that it states it will cover. It leaves a large number of workers unregulated. Central and state governments have discretion to set wages according to kind of work and location, and they range between as much as ₹ 143 to 1120 per day for work in the so-called central sphere. State governments have their own minimum wage schedules.

The Payment of Gratuity Act 1972<sup>[12][better source needed]</sup> applies to establishments with 10 or more workers. Gratuity is payable to the employee if he or she resigns or retires. The Indian government mandates that this payment be at the rate of 15 days salary of the employee for each completed year of service subject to a maximum of ₹ 2000000.

## Section B

### 1. Can an employer require an employee to divorce, in order to keep a job?

**Answer:** - This was one of the most controversial employment decisions of 2016.

The Employment Appeal Tribunal (EAT) held that the dismissal of a teacher, who is Christian, because of her refusal to end her marriage with a convicted sex offender was religious discrimination.

The EAT surprisingly suggested that a person of faith who believes in the sanctity of marriage can be placed at a “particular disadvantage” if the employer requires him or her to end a marriage with a convicted sex offender.

This is unlikely to be the last employment case in which an employer has to weigh up whether or not to dismiss an innocent employee who works with children because of a third party’s wrongdoing (such as a relative’s conviction for sex offences).

### 2. Employers must take active steps to provide rest breaks.

**Answer :-** This working time case examined the scope of the important right for workers to take a rest break.

The case essentially asked: is a worker required to ask for rest breaks, and be refused, before he or she can bring a working time claim in the employment tribunal?

The EAT made it clear that employers have an active duty to ensure that workers are able to take a 20-minute uninterrupted rest break for every six hours worked.

According to the EAT, it does not matter if the employee has appeared to acquiesce to an arrangement that prevents him or her taking a break.

An employee in this position can still bring a working time claim.