

Labour Law & Industrial Relation - 1

Answers to Important Question

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Subject: Labour Law & Industrial Relation - 1

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❖ Module -1: Trade's Union Act, 1926

1. **What is a Trade Union / Meaning of Trade Union / Define Trade Union?** (2m)
 - Indian Trade Unions Act, 1926 defines trade unions as:
 - i. "Any combination,
 - ii. whether temporary or permanent,
 - iii. formed primarily for the purpose of:
 - regulating the relations
 - between workmen and employers
 - between workmen and workmen
 - between employers and employers
 - for imposing restrictive conduct of any trade or business, and includes any federation of two or more trade unions"
2. Discuss Nature / Nature and Purpose of Trade Union. (2m)
 - Nature and Purpose of Trade Union:
 - i. Trade union is a voluntary organization of workers pertaining to a particular trade industry or a company, and
 - ii. formed to promote and protect their interests and welfare by collective action.
 - iii. They are primary institutions of industrial democracy, and
 - iv. Raise the voice of workers against exploitation of the capitalists
3. **What are the objectives of Trade Union?** (6m)
 - Objectives of a trade union can be classified into 2 broad categories
 - i. Economic objectives:
 - To secure for workers fair wages
 - To secure better and more fringe benefits
 - Safeguard security of job of employees
 - To secure better working conditions
 - To improve productivity
 - To secure opportunities for growth and development of employees
 - To seek opportunities for promotion and growth, and so on
 - ii. Non-economic objective:
 - To instil in its member a sense of social responsibility
 - To influence the social economic policies of the community through civic participation in their formulation at various levels
 - To contribute towards community development
 - To strengthen political power of the workers
 - To render social service
 - To promote national integration, and so on

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4. **Registration of Trade Unions.** (6m)
- A registered trade union will be entitled to various benefits, protection and immunities provided under this act.
 - Hence, the sponsor members of a trade union even though not compelled, are tempted to register the same under the act.
 - The registration entitled the union to represent the workers who are its members.
 - Trade Union Act does not make it compulsory that every union must be registered under the act.
 - An unregistered trade union would not be considered illegal, It is because fundamental right under Article 19(1)(C) allows to form union.
 - If registered it will get immunities, privileges and other rights under the act.
 - The National Commission on labour recommends for compulsory registration of trade unions as it will bring in all the unions under uniform regulation, and would result in qualitative improvement in their organization and functioning.
 - **Procedure for registration of a trade union:**
 - i. Under Section 3, the registrar is appointed for the process of registration of the trade union.
 - ii. Also, the appropriate government is authorised to appoint additional and deputy registrars for a particular state, where the registrar of a trade union is unable to discharge the powers and functions. Within a local limit, he may exercise the power and functions as Registrar as prescribed for this purpose
 - iii. Section 4(1) of the Act, talks about the registration of trade unions. Which says that for the purpose of registration of the trade union, there should be a minimum of **seven members**. The reason behind the fixation of a minimum of seven members is to encourage the formation of more and more trade unions.
 - iv. Where an application has been made under sub-section (1) of Sec 4 for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.
 - **Application of Registration:**
 - i. According to the Section-5, the application shall be made to the registrar for the registration of trade union and it should be followed with the copy of the rules of the trade union and the following particulars:
 - The name, occupation and address of the members who all are making the application;
 - The name of the trade union and the address of its head office; and
 - The titles, names, ages, addresses and occupations of the office-bearers of the trade union.
 - ii. If a trade union already exists for more than a year, then a copy of the assets and liabilities of the trade union should be submitted along with the application for registration.

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5. Recognition of Trade Unions:

- **Need for Recognition of Trade Unions:**

- i. Collective bargaining is an important aspect of employer employee relation. The right of collective bargaining is not provided for all trade unions that exists but is provided for those trade unions which are recognised. Registration of trade union is one thing and the recognition of trade union as a sole bargaining agent for the purpose of collective bargaining is another thing. Number of industrial strikes broke out on the question of recognition of union.
- ii. In practice, management allows the recognized Trade Union only for negotiations and collective bargaining. As such, recognition of trade union serves as backbone of collective bargaining. It has been debated time and again whether a trade union should be recognized or not. This is because there is so far no enforced central legislation on this subject, i.e., recognition of trade union.

- **Rights of Union Recognition:**

- i. The key distinction between registration of trade union and recognition of trade union is the registration of trade union is done with the registrar while recognition of trade union is done by the management as collective bargaining agent (in case of one union) and collective bargaining council in case of many council). Both are not mandatory under the Trade Unions Act. Trade unions once recognized are conferred certain rights but the trade union as such has no inherent right by itself to be recognised, it is the discretion of the management to recognise any such trade union.
- ii. Although no specific right is granted to any trade union with respect to the right to be recognized, it has become crucial in India to develop a mechanism wherein a trade union is recognized formally by the employer. Recognition is the process through which the employer accepts a particular trade union as having a representative character and hence, will be willing to engage in discussions with the union with respect to the interests of the workers. This process is important so as to ensure smooth collective bargaining and stability of industrial relations. On the other hand, registration of a trade union carries certain inherent benefits with it.
- iii. A registered trade union is deemed to be a body corporate, giving it the status of a legal entity that may, inter alia, acquire and hold property, enter into contracts, and sue others. A registered trade union is also immune from certain contractual, criminal and civil proceedings. However, registration is optional and not mandatory. Generally, registration of trade unions under the TU Act does not automatically imply that a particular trade union has gained recognition status granted by the employer. Unless different Indian states have specific legal provisions pertaining to recognition of trade unions, it is generally a matter of agreement between the employer and trade union. Ideally, a trade union must obtain legitimacy through registration under the TU Act and then seek recognition as a sole bargaining agent either under the appropriate law or an employer-employee agreement.

6. Registration and Recognition of Trade Unions

(13m)

- Combine Answers of Q.4/5.

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7. Civil And Criminal Immunities of Registered Trade Unions (6m)
- Immunities (from civil and criminal liability) is an important and basic right without which no trade union activities in proper sense its possible
 - To realise the main object of a trade union (better working conditions of its members), Office bearers are authorised to represent the workers in any dispute with their employees [Sec.36]
 - Before enactment of Trade Union Act, 1926, such interferences by the unions were held to be illegal conspiracies and employees were awarded damages.
 - This act granted to trade unions, office bearers and the members, certain privileges and immunities, for the act done in furtherance of a dispute including breach of contract of employment.
 - i. **Immunities from Criminal Liability:**
 - Under section 17 of the act, no office bearers / members shall be liable to punishment under sub section 2 of Sec.120 B of IPC, unless the agreement is an agreement to commit an offence. [Sec.120 B (IPC): punishment to criminal conspiracy]
 - Therefore, a concerted movement by workmen by gathering either inside / outside the establishment during the working hours is permissible, when it is peaceful and does not violate the law.
 - But when such gatherings commits' an offence, the exemption is lost.
 - Thus, where it resorts to unlawful confinement of the persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to a person / property / molestation / intimidation, exemption cannot be claimed.
 - ii. **Immunities from Civil Liability:**
 - Under Sec.18, No suit or other legal action will be viable in any Civil Court against any enrolled Trade Union or any office-conveyor or part thereof in regard of any demonstration done in examination or promotion of an exchange debate to which an individual from the Trade Union is a party on the ground just that such demonstration incites another individual to break an agreement of work, or that it is in impedance with the exchange, business or work of another individual or with the right of another individual to discard his capital or of his work as he wills.
 - A enlisted Trade Union will not be at risk in any suit or other judicial procedure in any Civil Court in regard of any convoluted demonstration done in examination or promotion of an exchange debate by a specialist of the Trade Union in case it is demonstrated that such individual acted without the information on, or in spite of express guidelines given by, the chief of the Trade Union
8. *** Evolution and Growth of Trade Unions (13m)
- Evolutions and Growth of Trade Unions can be explained as follows:
 - i. **Emergence of Industrialisation**
 - The industrial revolution came very late in India
 - Near about 1850 when different industries were already established in India
 - a) 1851: First textile mill, Mumbai
 - b) 1853: Railways
 - c) 1854: Jute Mill, Kolkata
 - ii. **Origin:**

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- After industrial revolution the treatment with workers was so harsh that
 - a) They were forced with long working hours
 - b) Hopelessly low wages
 - c) Job in security
 - d) Women and children were treated very badly in the factories
- In 1875, first labour movement by Sorabjee Shapoorji Bengali was started
- iii. **Phases of Trade Unions: (SEL-SIL)**
 - **Social Welfare Period (1875 – 1918)**
 - a) The development of industries led to large scale production on the one hand
 - b) and social evils like employment and exploitation of women and child labour and the deplorable working conditions,
 - c) the government's attitude of complete indifference in respect of protection of labour from such evils on the other.
 - **Early trade union period (1918 - 1924)**
 - a) The year 1918 was important for the Indian trade union movement.
 - b) First clearly registered trade union is considered to be the **Madras Labour Union** founded by **B.P. Wadia** in 1918.
 - c) **All India Trade Union Congress (AITUC)** on 30th October 1920, was established as a central organization of trade unions.
 - d) Industrial unrest grew up as a result of grave economic difficulties created due to war.
 - e) The rising cost of living prompted the labours to demand reasonable wages for the purpose of which they united to take resort to collective action.
 - **Left-wing Unionism Period (1924-1934)**
 - a) In 1924, a violent and long-drawn-out strike by unions led to arrest, prosecution conviction, and imprisonment of many communist leaders.
 - b) By 1929, AITUC was the only central trade union.
 - c) In 1930, there was a split in the AITUC on account of ideological differences which promoted the creation of a new organization in the name of All India Trade Union Federation (AITUF) under the leadership of Shri NM Joshi.
 - d) The AITUF was renamed as National Trade Union Federation (NTUF) in 1933.
 - **Second World War Period (1939 – 1947)**
 - a) The Second World War which broke out in September 1939, created a new strains in the United trade union movement.
 - b) Hence, again a rift took place in 1941 and radicals left the AITUC with nearly 200 Unions with a membership of 3,00,000 and formed a new central federation known as the Indian Federation of Labour.
 - **Independence to Liberalisation (1947 – 1991)**
 - a) The subsequent decade saw significant expansion in trade union membership with the number of active unions reaching its peak in the mid-1970s and mid-1980s.
 - b) While the 1970s in India was a period characterised by political instability, the 1980s was characterised by the beginnings of a distinct turn towards the market-friendly policies support for industrialist and an implicit opposition to workers.
 - c) Two key events during this period were the 1974 **Railway Strike** in India and the **Great Bombay Textile Strike** in 1982.
 - **Liberalisation to present (1991 – Present)**

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- a) A gradual shift in focus about the importance of the informal sector and informal employment in the formal sector from the late 1990s onward meant that the trade unions also began to focus on these workers.
 - b) This led to greater enrolment of these workers and subsequently lead to increase in union membership.
 - c) The Central Trade Union Organization (CTUOs) increased their combined membership from 13.21 million in 1989 to 24.85 million in 2002. Almost all the CTUOs now have at least 20% of their official members coming from their informal sector.
- iv. **Conclusion:**
- A vibrant and responsible trade union environment is the requisite for inclusive growth to any economy. It checks growing inequality and falling living conditions of the working class.
 - Recent years has seen an erosion of powers of most labour unions. Though labour reforms are the need of the hour, every reform should strike a perfect balance between labour welfare and investment-led development.
9. International Labour Organization and its impact on Indian Labour Legislations: (13m)
- The International Labour Organization (ILO) was established in 1919, following World War I, as a social engineering project to protect workers' rights and ensure that freedom, equity, and dignity in working conditions are universally observed. It is the UN's first and oldest specialised agency, having been established as part of the League of Nations. The ILO currently has 187 of the United Nations' 193 member states as members.
 - The emphasis on tripartism, which aims to ensure that any dialogue on labor-related issues involves the three main stakeholders, namely employers, workers, and states, is a fundamental aspect of the ILO's functioning.
 - The International Labour Organization (ILO) achieves its goals through three main bodies made up of the aforementioned stakeholders, which are as follows:
 - i. **The International Labour Conference:**
 - ii. **Governing Body:**
 - iii. **International Labour Office**
 - The Declaration categorises fundamental principles and rights into four categories:
 - i. freedom of association and effective recognition of the right to collective bargaining,
 - ii. the abolition of forced or compulsory labour,
 - iii. the abolition of child labour,
 - iv. and the abolition of employment and occupation discrimination.
 - The ILO's core conventions can be classified into these categories, which are considered universal rights that apply to all individuals in all countries.
 - While the international labour standards are periodically revised with new Conventions, Protocols or Recommendations being formulated, the ILO Governing Body has listed eight conventions it considers fundamental in terms of the subjects that they deal with, these are as follows:
 - i. ***Freedom of Association and Protection of the right to Organise Convention (1948):***
The most fundamental labour rights, such as the right of workers to form and join organisations of their choice without the approval of their employer, the right of workers' and employers' organisations to draught their own constitutions and rules, and the right of workers' and employers' organisations to form and join federations, were crystallised.

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- ii. **Right to organise and collective bargaining convention (1949):** This document seeks to protect workers and workers' organisations from anti-union discrimination in the workplace.
- iii. **Forced Labour Convention (1930) and its Protocol (2014):** This document is one of the primary international instruments responsible for the worldwide reduction in forced/compulsory labour.
- iv. **Abolition of Forced Labour Convention (1957):** This Convention expands on the general prohibition in the preceding document by prohibiting the use of forced labour for political coercion, education, punishment, mobilising labour for economic development, labour discipline, as punishment for strike participation, and as a means of racial, social, national, or religious discrimination.
- v. **Minimum Age convention (1973):** This document requires ratifying countries to implement a national policy aimed at effectively eliminating child labour. To that end, ratifying states must submit a declaration stating the minimum age for employment, which cannot be less than 15 years in any case. States whose economies are insufficiently developed to specify a minimum age of 14 years are exempted.
- vi. **Worst forms of child labour convention (1999):** The term "child" refers to all persons under the age of 18 for the purposes of this Convention. Each member who ratifies this convention is obligated to take immediate steps to eliminate the most heinous forms of child labour.
- vii. **Equal remuneration convention (1951):** The ratifying states are required by this convention to promote the application of the equal remuneration principle for work of equal value. This means that pay rates for comparable work are established without regard to gender.
- viii. **Discrimination (employment and occupation) convention (1958):** This convention addresses discrimination based on race, colour, gender, sexual orientation, religion, political opinion, national origin, or social origin.
(Above points can be remembered as **FR/FAMWED**) – Friends and Family Wedding)
- India has ratified only four of the eight core conventions, which are as follows:
 - i. Forced Labour Convention, 1930, No 29
 - ii. Equal Remuneration Convention, 1951, No 100
 - iii. Discrimination (Employment and Occupation) Convention, 1958, No 111
 - iv. Abolition of Forced Labour Convention, 1957, No 105
- As a result, from an international perspective, India is effectively implementing only two of the four rights enshrined in the DFPR, namely Freedom from Discrimination and Protection from Forced Labour. There are numerous judgments that demonstrate compliance with international standards and recognise these fundamental human rights, as well as statutory enactments that do the same.
- **Relevance & Impact of ILO:**
 - i. ILO policies and standards are preferences that nations can adopt through regulatory decisions, giving them a competitive advantage in global trade. This is due to the fact that international conventions provide a universal basis for policy, preventing nations from implementing measures such as deregulation in order to gain trade advantages.
 - ii. Such measures would be met with international condemnation, sanctions, and trade isolation, and thus positive morality works to make these instruments relevant.

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- iii. The other approach sees ILO conventions as norm-setting documents that allow states to compare their policies to those of their peers. This means that states can compare their policies to both internationally accepted standards and policies adopted by states in similar socioeconomic situations. As a result, they can assess the need for reform and amendment by identifying policy preferences that fall somewhere in the middle of the two previously mentioned points of reference.

10. What is Collective Bargaining / Purpose of Collective Bargaining? (2m/6m)

- The representatives of a labour organisation and the representatives of a business organisation meet and seek to negotiate a contract or agreement that describes the nature of the employee-employer union relationship. This refers to collective bargaining.
- The term “collective bargaining” refers to the negotiation of employment terms between an employer and a group of workers. Employees are normally represented by a labor union during collective bargaining.
- The terms negotiated during collective bargaining can include working conditions, salaries and compensation, working hours, and benefits. The goal is to come up with a collective bargaining agreement through a written contract.
- According to the International Labour Organization, collective bargaining is a fundamental right for all employees.

11. Process of Collective Bargain? (6m)

- The collective bargaining process involves four steps which are described below:
 - i. **Make a List of Must-Haves:** The union produces a list of the most important issues raised by its members into an official document, which is subsequently sent to the appropriate political parties. “Key demands” is another term for this group. As a starting point for negotiations, it may contain issues that are considered “red lines.” In most cases, this would be in the form of payment or other important perks. Negotiations will fail if these conditions are not satisfied.
 - ii. **Start the negotiation:** Deals are addressed in various ways, such as in-person meetings, by email or by a phone call in the process of collective bargaining. Certain provisions of the agreement may be omitted at the option of either party, while the employer may seek their inclusion at the request of the employee. For both sides, gathering information on the best course of action may be part of the process. A ten per cent increase in an employee’s salary, for example, will cost the business money. Because of this, the negotiators would have to evaluate whether this is financially feasible. Negotiations will continue in a circle until one side or the other accepts a compromise or until all sides withdraw.
 - iii. **Arrive at an agreement:** After a general agreement is established, the finer details of the agreement are worked out. Legal language and a binding contract ensure that all parties are held accountable. The last step is to sign any relevant paperwork. In brief, this step of the collective bargaining process is when the agreement is established, and the final details are established.
 - iv. **Administration of the Contract:** Unions will try to hold the employer to account and guarantee the agreement’s implementation at this point. If a contract is slated to expire before another round of discussions can be had, this might mean that a new round of negotiations must be held. Consequently, the collective bargaining system may be seen as an ongoing process.

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12. **What are the types of Collective Bargaining?** (For 2m, write any 2) (6m)
- There are five types of collective bargaining, which are discussed below.
 - i. **Distributive Bargaining:** Negotiations in which one side receives an advantage at the cost of the other are known as distributive bargaining. Redistributing money via greater salaries, bonuses, or financial perks is sometimes called “income redistribution.” Everything has to do with money transfer.
 - ii. **Integrative Bargaining:** ‘Win-win’ negotiation is the goal of integrative bargaining, in which both parties want to profit. Both sides can come up with a list of requests and then come to an agreement that benefits both parties. As a result of this type of collective bargaining, i.e., integrative bargaining, both parties consider each other’s requirements, desires, anxieties and worries while deciding on a deal.
 - iii. **Productive Bargaining:** One of the five types of collective bargaining is Productive bargaining. Negotiations on wages and productivity are central to productivity bargaining. On the other hand, unions may argue that greater wages would lead to increased production. In any case, no one in the company knows this. As a result, it’s possible that new strategies for process improvement, such as incentives tied to specific goals, would be proposed.
 - iv. **Composite Bargaining:** If you’re looking for a discussion that doesn’t revolve around salary, you’re looking for composite negotiating. Employer well-being and job security are two of their most common concerns. The goal is to build a long-term connection between the company and employees. Employees’ long-term futures are highlighted by outlining challenges they may face.
 - v. **Concessionary Bargaining:** To achieve concessionary bargaining, unions give up benefits that they previously received from their employer. The primary goal of concessionary negotiation is to secure the company’s long-term viability and its workforce. Consequently, the enterprises’ long-term viability and the unions’ members must pay back former rewards.
13. **Collective Bargaining – Definition Purpose and its types.** (13m)
- Combine Answers of Q.11/13
14. **Advantages and Disadvantages of Collective Bargaining.** (6m)
- **Advantages:**
 - i. As the name implies, workers have a larger voice through collective bargaining. Being in a group with the same goal(s) gives employees more power to negotiate demands with their employers. Companies may be able to shut out the voices of one or two employees but can’t necessarily do the same with a larger group of unified individuals.
 - ii. Workplace conditions under collective bargaining can see significant improvements and guarantee all workers the same protections. This includes the implementation of health and safety checks as well as suitable salaries, overtime pay, and vacation time.
 - iii. Employers and employees are fully aware of their rights and responsibilities under a collective bargaining agreement. Once employment terms are negotiated, a contract is drawn up. Both parties agree to the terms, which are clearly defined.
 - **Disadvantages:**
 - i. As mentioned above, collective bargaining is often a long, drawn-out process that can take weeks or even months. Employers and labour union leaders may have to go

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back and forth with employment terms. Union leaders are required to update employees and must put the terms to a vote. If employees vote to reject a contract, the negotiating process begins again.

- ii. Collective bargaining often comes at a high cost. Employees and employers may have to take time off from work to negotiate. This means less time on the job and, therefore, a drop in productivity. Lengthy negotiations can affect a company's bottom line.
- iii. The process is often considered biased. Because employees are able to band together under a single union, employers may be forced to negotiate and accept unfavourable terms in order to keep their businesses running without much disruption.

This table is for reference and understanding only

Advantages	Disadvantages
Employees have a larger voice.	Lengthy process
Improves workplace conditions and protects employee.	Comes at a high cost
Establishes rights and responsibilities of employers and employees	Employers may be forced to negotiate and accept unfavourable terms.

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❖ Module -2: Industrial Disputes Act, 1947

1. **What is an Industry? / Define Industry / Explain Industry** (2m)
 - The term “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947 is as follows : “Industry” means any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman”.
 - An industry exists only when there is relationship between employers and employees, the former is engaged in business, trade, undertaking, manufacture or calling of employers and the latter is engaged in the calling, service, employment, handicraft or industrial occupation and avocation.
2. **Scope and Object of Industrial Disputes Act, 1947** (6m)
 - Industrial Disputes Act, 1947 is the Act that regulates the labour laws as it concerns all the workmen or all the people employed on the Indian mainland. It came into force on 1 April 1947. The capitalists or the employer and the workers always had a difference of opinion and thus, it leads to lots of conflicts among and within both of these groups.
 - So, these issues were brought to the attention of the government and so they decided to pass this Act. This Act was formed with the main objective of bringing peace and harmony to industrial disputes between parties and solving their issues in a peaceful manner.
 - This is an Act made for the examination and settlement of industrial disputes, and for different purposes too. This Act centers around any industry carried on by or under the authority of the Central Government, or by a railway organization or concerning any such controlled industry as might be indicated for this benefit by the Central Government.
 - This Act furnishes us with specific guidelines and guidelines in regards to the works committee for both the businesses and all the workmen to advance measures for good working relations and comprehension among the workmen and the businesses later on, and to end that, it additionally vows to resolve any material difference in views of opinion in regard to such issues.
3. **Who is Workman? [Section 2(s)]** (2m)
 - “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:
 - i. who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
 - ii. who is employed in the police service or as an officer or other employee of a prison; or
 - iii. who is employed mainly in a managerial or administrative capacity; or
 - iv. who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

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4. **Lay-off: [Section 2(kkk)]** (2m)
 - The term 'lay-off' has been defined as the failure, refusal or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.
 - Essentially, a lay-off is a condition where the employers are constrained to deny work to their workforce owing to conditions that bring forth a temporary inability to keep their business going. The said case scenario can happen only in a continuing establishment.
5. **Essentials of Lay-off:** (2m)
 - There has to be a failure, refusal or inability of an employer
 - This failure, refusal or inability should be an offshoot of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason
 - The names of the laid-off workers should necessarily feature on the muster rolls of the establishment
 - The said workers should not have been retrenched
6. **Explain Lay-off or Essential of Lay-off** (6m)
 - Combine Answers of Q5/6
7. **What is Industrial Dispute?** (2m)
 - Industrial dispute means any dispute of difference between employees and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment of the terms of employment or the conditions of work of any person (The Industrial Disputes Act 1947, Section 2K).
 - Every human being (say a labour) has certain requirements/needs e.g., economic needs, social needs, security requirements. When these requirements do not get satisfied, there arises a conflict between the worker and the capitalist/employer.
 - The industrial disputes are of two types i.e., individual disputes and collective disputes. The individual disputes may be disputes such as reinstatement, compensation for wrong termination etc. Disputes relating to wages, bonus, profit sharing hours of work etc. are collective disputes.
8. **What is a Strike? [Section 2(q)]** (2m)
 - According to Section 2(q) of Industrial Disputes Act 1947, a strike is "a cessation of work by a body of persons employed in an industry acting in combination; or a concerted refusal of any number of persons who are or have been so employed to continue to work or to accept employment; or a refusal under a common understanding of any number of such persons to continue to work or to accept employment".
 - This definition throws light on a few aspects of a strike. Firstly, a strike is referred to as stoppage of work by a group of workers employed in a particular industry. Secondly, it also includes the refusal of a number of employees to continue work under their employer.
 - In a strike, a group of workers agree to stop working to protest against something they think is unfair where they work. Labourers withhold their services in order to pressurize their employment or government to meet their demands. Demands made by strikers can range from asking for higher wages or better benefits to seeking changes in the workplace

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environment. Strikes sometimes occur so that employers listen more carefully to the workers and address their problems.

9. **Types of Strikes** (For 2m, write any 2) (6m)
- According to Industrial Disputes Act 1947, Strike [Sec. 2 (q)]: Strike means "a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.
 - Following are different types of strikes:
 - i. **Economic Strike:** Under this type of strike, labours stop their work to enforce their economic demands such as wages and bonus. In these kinds of strikes, workers ask for increase in wages, allowances like traveling allowance, house rent allowance, dearness allowance, bonus and other facilities such as increase in privilege leave and casual leave.
 - ii. **Sympathetic Strike:** When workers of one unit or industry go on strike in sympathy with workers of another unit or industry who are already on strike, it is called a sympathetic strike. The members of other unions involve themselves in a strike to support or express their sympathy with the members of unions who are on strike in other undertakings. The workers of sugar industry may go on strike in sympathy with their fellow workers of the textile industry who may already be on strike.
 - iii. **General Strike:** It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. These strikes are usually intended to create political pressure on the ruling government, rather than on any one employer. It may also be an extension of the sympathetic strike to express generalized protest by the workers.
 - iv. **Sit down Strike:** In this case, workers do not absent themselves from their place of work when they are on strike. They keep control over production facilities. But do not work. Such a strike is also known as 'pen down' or 'tool down' strike. Workers show up to their place of employment, but they refuse to work. They also refuse to leave, which makes it very difficult for employer to defy the union and take the workers' places. In June 1998, all the Municipal Corporation employees in Punjab observed a pen down strike to protest against the non-acceptance of their demands by the state government.
 - v. **Slow Down Strike:** Go-slow is yet another form of industrial protest in which workmen do not stop the work but deliberately slow-down the process of production in order to cause loss of production to the employer.
 - vi. **Hunger strike:** in this form of industrial protest, workmen resort to fasting near the workplace in order to demand the employer to redress their grievances.
 - vii. **Wild cat strikes:** These strikes are conducted by workers or employees without the authority and consent of unions.
 - viii. **All-out strike:** A strike that embraces all workers involved in a dispute and that will continue for 'as long as it takes' to secure a settlement. All-out strikes can be contrasted with selective strikes that involve only a proportion of the workforce and protest strikes that may last for only a day or two.

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10. What is a Strike / Explain types of Strikes: (13m)
- Combine Answers of Q9/10
11. Notice of Change? (Section 9A) (2m/6m)
- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change
 - a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be affected; or
 - b) within twenty-one days of giving such notice:
 - provided that no notice shall be required for effecting any such change:
 - i. Where the change is effected in pursuance of any [settlement or award]; or
 - ii. Where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.
12. Difference between Strikes and Lockout (2m/6m)
- A strike is a form of industrial action taken by workers to protest against their working conditions or pay. Workers refuse to work until their demands are met.
 - On the other hand, lockouts are industrial actions taken by employers to prevent workers from entering the workplace. Usually, this is done following a strike, or as a negotiating tactic to force workers to accept demands from the employer. In summary, a strike is a worker action, whereas a lockout is an employer action.

Strike	Lockout
Action taken by employees	Action taken by employer
Employees refuse to work	Employer prevents employees from working
Employees demand better wages, benefits, or working conditions	Employer enforces changes to wages, benefits, or working conditions
Employees may picket or protest	Employer may hire replacement workers
Legal in most countries	Legal in most countries

13. What are the Objectives of the Industrial Disputes Act, 1947? (6m)
- The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanism and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.
 - This Act was passed with a key objective of "Maintenance of Peaceful work culture in the Industry in India" which are mentioned under the Statement of Objects & Reasons of the statute.
 - The Act also lays down:
 - i. The provision for payment of compensation to the workman on account of closure or lay off or retrenchment.

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- ii. The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
 - iii. The actions to be taken against unfair labour practices on part of an employer or a trade union or workers.
14. **Triple Test / Bangalore Water Supply vs. A. Rajappa:** (6m)
- In the case of “Bangalore Water Supply v. A. Rajappa,” a seven-member Judges’ Bench was constituted to determine the scope of the industry. The triple test working principle was born in the case that is used to check the validity of different establishments. The Triple Test has requisites that are as follows:
 - i. Systematic Activity
 - ii. Co-operation between the employer and employee
 - iii. Activity concerned with the production and services
 - iv. The goods and services produced are by the satisfaction of human wants.
 - Here, the industry will not embody any religious services or other work undertaken out of spiritual bliss. The thing that strikes us is to find whether the profit motive is important or not. But it stands irrelevant when it comes to any venture. Through the triple test, the focus is concentrated on the functional part emphasizing the employer-employee relations. An establishment that is engaged in philanthropic activities does not cease to become an industry because of it. Thus, if all the above-stated provisions are complied with, then the undertaking can be termed as an ‘industry’ under section 2(j) of the Industrial Disputes Act, 1947.
15. **Dominant Nature Test:** (6m)
- Criteria for determining dominant nature of undertaking:
 - The Supreme Court, in Bangalore Water Supply case laid down the following guidelines for deciding the dominant nature of an undertaking:
 - i. Where a complex of activities, some of which qualify for exemption, others do not,
 - ii. involves the employees in undertaking, some of whom are not “workmen” or some departments are not productive of goods and services if isolated,
 - iii. nature of the department will be the true test.
 - iv. The whole undertaking will be “industry” although those who are not “workmen” definition may not be benefit by the status.
16. **What is Closure in Industrial Disputes Act, 1947** (6m)
- The Industrial Disputes Act, 1947, originally does not contain the provisions relating to the closure of an industry. The provisions relating to the law of closure were inserted in the year 1957 in view of the Supreme Court judgment in case Hariprasad Shivshankar Shukla v/s. A.D. Diwelkar, AIR 1957 S.C 121
 - According to Section 2(cc) of the Industrial Disputes Act, 1947 defines “Closure” as the permanent closing down of a place of employment or part thereof. Here, the employer is constrained to close the establishment permanently. Nonetheless, the due procedure has to be complied with when it comes to rolling out a plan of closure; the said procedure, as set out by the Act, has been detailed below. These procedures, nonetheless, do not apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

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17. Retrenchment [Section 2(oo)]: (6m)

- Definition of Retrenchment is terminating an employee due to the surplus of labour or incapacity of employees to match the performance standards of the company. The Industrial Dispute Act, 1947 deals with employment-related disputes in India and Section 2(oo) of the Act states that 'retrenchment means termination of service of a workman by an employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. However, the following are not covered within the definition of retrenchment:
 - i. Voluntary retirement of a workman
 - ii. Retirement of workmen on reaching the age of superannuation if the employment agreement contains a provision regarding superannuation
 - iii. Termination of service of a workman due to the non-renewal of employment agreement
 - iv. Termination on grounds of continued ill-health

18. Explain Wages [Section 2(gg)(rr)] (6m)

- In Section 2(gg)(rr) of The Industrial Disputes Act, 1947 defines "wages" which means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes:
 - i. such allowances (including dearness allowance) as the workman is for the time being entitled to;
 - ii. the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;
 - iii. any travelling concession;
 - iv. any commission payable on the promotion of sales or business or both;] but does not include:
 - any bonus;
 - any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;\
 - any gratuity payable on the termination of his service;

19. What is an "Award"? (6m)

- According to Section 2(b) of the Industrial Disputes Act, 1947 'Award' means an interim or a final determination of any Industrial Dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.
- Ingredients of Award - To constitute Award under Section 2(b) of the Industrial Dispute Act, 1947 the following ingredients are to be satisfied:
 - a) An Award is an interim or final determination of an industrial dispute.
 - b) It is an Interim or final determination of any question relating to such dispute.
 - c) Such interim or final determination is made by any Labour Court, Industrial Tribunal or National Industrial Tribunal.
 - d) Award (Judgement) of Arbitrators under section 10A is an award.

20. What is Illegal Strike or Lockout? (Under IDA, 1947) (2m)

- A strike or a lock-out shall be illegal if:

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- (i) it is commenced or declared in contravention of section 22 or section 23; or
- (ii) it is continued in contravention of an order made under sub- section (3) of section 10 1 or sub- section (4A) of section 10A].

21. Who are parties to a Dispute? (6m)

- Disputes are always a drawback for any industry. A dispute arises for several reasons, the most common being the relation between the labourers and their wages.
- It is the conflict of interests between two parties that give rise to a dispute.
- **The parties involved in an industrial dispute are the employer and the employee.**
- Traditionally speaking, the employees have always been placed on the lower ladder of the society by the employer presenting a dominating self-being in the position of authority.
- This inequality that has been existing in the industrial domain for a long time now requires settlement on the part of both the employer and the employee having an equal opportunity to present their wants.

22. Explain Work Committee. [Section 3] (2m)

- Section 3 of the Industrial Dispute Act, 1947 provides for the constitution of Works Committees. The expression 'Works Committee' denotes "A committee comprising of representatives from both the parties (for example employer and their employees) to the Dispute. The appropriate government is empowered to prescribe that works committee should be constituted in every industrial establishment employing 100 or more workers.
- The main purpose of creating the Works committee is to develop a sense of partnership between the employee and his workmen

23. Unfair Labour Practices (Under IDA, 1947) [Section 2(ra)] (2m/6m)

- Unfair labour practices are deceitful practices by either employers or labourers to obtain profits that are prohibited by the statutes. Unfair labour practices are defined under the Fifth Schedule, Section 2(ra) of the Industrial Dispute Act, 1947, which was added after the Industrial Disputes (Amendment) Act, 1982. The Fifth Schedule of the Act listed certain practices which amount to unfair labour practices, and Sections 25-T and 25-U laid down the provisions for the same.
- Section 25-T deals with prohibited unfair labour practices. It states that an employer or worker cannot engage in such activities which are against the welfare and peace of the employers and labourers as well. This Section also includes registering and unregistering trade unions. Section 25-U provides a penalty of imprisonment, fine, or both for unfair trade practices.

24. Power and Duties of Authorities in Industrial Disputes Act: (2m/6m/13m)

- Works Committee:
 - i. To promote measures for securing and preserving amity and good relations between the employer and workmen.
 - ii. Deliberate upon the matters of the common interest of both employer and workmen
 - iii. Put in all possible efforts to compose any material difference of opinion in respect of such matters.
- Conciliation Officers:
 - i. The conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908.

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- ii. A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or for verifying the implementation of any award
 - iii. Shall hold conciliation proceedings in the prescribed manner and a report on settlement arrived or otherwise to the appropriate Government within 14 days or earlier
- Board of Conciliation:
 - i. Board shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit on matters defined under the Act. Every inquiry or investigation by a Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - ii. Investigate without delay the dispute and all matters affecting the merits and the right settlement thereof and doing everything that promotes a fair and amicable settlement. Board will also send a report to appropriate govt. on settlement of disputes or otherwise in complete details within 2 months of starting proceedings.
- Courts of Enquiry
 - i. 'Courts of Enquiry' shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit on matters defined under the Act. Every inquiry or investigation by a 'Court of Enquiry' shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - ii. (ii) A 'Court of Inquiry' shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.
- Labour Courts:
 - i. 'Labour Courts' shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit on matters defined under the Act. Every inquiry or investigation by a 'Labour Courts' shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - ii. Labour Courts under their power of special relief u/s 11A can set aside the order of discharge or dismissal and direct reinstatement of the workman or give other relief to the workman including the award of any lesser punishment.
 - iii. Where an industrial dispute has been referred to a Labour Court for adjudication, it shall hold its proceedings expeditiously and shall, submit its award to the appropriate government.
- Tribunals:
 - i. 'Tribunals' shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit on matters defined under the Act. Every inquiry or investigation by a 'Tribunals' shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - ii. Tribunals under their power of special relief u/s 11A can set aside the order of discharge or dismissal and direct reinstatement of the workman or give other relief to the workman including the award of any lesser punishment.
 - iii. Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, submit its award to the appropriate government.

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- National Tribunals:
 - i. 'National Tribunals' shall have the power of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit on matters defined under the Act. Every inquiry or investigation by a 'National Tribunals' shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).
 - ii. National Tribunals under their power of special relief u/s 11A can set aside the order of discharge or dismissal and direct reinstatement of the workman or give other relief to the workman including the award of any lesser punishment.
 - iii. Where an industrial dispute has been referred to a National Tribunals for adjudication, it shall hold its proceedings expeditiously and shall, submit its award to the appropriate government.

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❖ Module - 3: MRTU & PULP Act, 1971

25. **Definitions of MRTU & PULP Act, 1971** (2m)
- Some important terms under section 3 of the MRTU & PULP Act 1971
 - i. Bombay Act: A Bombay act states to Bombay industrial relates act, 1946 (section 3, Clause 1)
 - ii. Central Act: Central act mentions to industrial disputes act, 1947 (section 3, Clause 2)
 - iii. Employee: An employee refers as a workman to industry (section 3, clause 5)
 - iv. Employer: An employer states relation to industry ad employee (section 3, clause 14)
 - v. Labour Court: A labour court establishes in section 6 (section3, clause 10)
26. **Objectives of MRTU & PULP Act 1971** (2m/6m)
- Following are the objectives of MRTU & PUPL Act, 1971:
 - i. To offer rights of trade unions
 - ii. To abolish industrial disputes
 - iii. To prevention against certain ULPs
 - iv. To provide announcing of lock-outs and strikes
 - v. To provide powers to unrecognized unions
 - vi. To provide a safeguard to unions
 - vii. To consensus recognition to trade unions
 - viii. To enforce this act
27. Who is a 'member' under MRTU? (2m)
- "member" means a person who is an ordinary member of a union, and has paid a subscription to the union of not less than 50 paise per calendar month:
 - Provided that, no person shall at any time be deemed to be a member, if his subscription is in arrears for a period of more than three calendar months during the expression "membership" shall be construed, accordingly.
28. ***** Authorities within MRTU & PULP Act, 1971** (13m)
- Authorities under MRTU & PULP Act, 1971 are
 - i. Industrial Court, (Maye be asked for 6m Separate Q)
 - ii. Labour Court, and (Maye be asked for 6m Separate Q)
 - iii. Investigating Officers: (Maye be asked for 6m Separate Q)
- Industrial Court:**
- i. **Constitution of Industrial Court:**
 - Section 4 of MRTU & PULP Act, 1971 provides for the constitution of an Industrial Court. The provisions are as under:
 - a) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
 - b) The Industrial Court shall consist of not less than three members, one of whom shall be the President.
 - c) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint: Provided that, every member shall be deemed to be

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connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint or the industry.

- d) Every member of the Industrial Court shall be a person who is or has been a Judge of a High Court or is eligible for being appointed a Judge of such Court : Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

ii. **Duties of Industrial Court:**

- Section 5 of MRTU & PULP Act, 1971 defines the duties of the Industrial Court. It shall be the duty of the Industrial Court:
 - a) to decide an application by a union for grant of recognition to it;
 - b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognized under this Act;
 - c) to decide on an application from another union or an employer for withdrawal or cancellation of the recognition of a union;
 - d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV;
 - e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;
 - f) to decide references made to it on any point of law either by any civil or criminal court; and
 - g) to decide appeals under section 42.

Labour Court

iii. **Constitution of Labour Court:**

- Para 1 of Section 6 of MRTU & PULP Act, 1971 provides for the constitution of a Labour Court. The provisions are as under:
 - a) The State Government will constitute one or more Labour Courts, by Notification in the Official Gazette, having jurisdiction in such local areas, as may be specified in such notification, and will appoint persons having the prescribed qualifications to preside over such Courts.

iv. **Qualifications:**

- Para 2 of Section 6 of MRTU & PULP Act, 1971 provides for the qualification required by a person to be the judge of a Labour Court. The provisions are as under:
 - a) The person should possess qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

v. **Duties and Power of Labour Court:**

- Section 7 of MRTU & PULP Act, 1971 gives duties of a Labour Court.
- It is a duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.

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Investigating Officer

- vi. Appointment of Investigating Officer:
 - Section 8 of MRTU & PULP Act, 1971 provides provision for appointment of investigating officers.
 - The State Government may, by notification in the Official Gazette, appoint a such number of Investigating Officers for any area as it may consider necessary, to assist the Industrial Court and Labour Courts in the discharge of their duties.
- vii. Duties of Investigating Officer:
 - Section 9 of MRTU & PULP Act, 1971 gives duties of investigating officer.
 - a) The Investigating Officer is under the control of the Industrial Court, and he/she exercises powers and perform duties imposed on him by the Industrial Court.
 - b) It is the duty of an Investigating Officer to assist the Industrial Court in
 - c) matters of verification of membership of unions, and assist the Industrial and Labour Courts for investigating into complaints relating to unfair labour practices.
 - d) It is the duty of an Investigating Officer to report to the Industrial Court, or as the case may be, the Labour Court the existence of any unfair labour practices in any industry or undertaking, and the name and address of the persons said to be engaged in unfair labour practices and any other information which the Investigating Officer may deem fit to repo
- viii. Special Powers of Investigating Officers:
 - Section 37 of MRTU & PULP Act, 1971 gives special powers conferred on investigating officer.
 - a) Section 37 of MRTU & PULP Act, 1971 gives special powers conferred on investigating officer.
 - b) For the purpose of exercising such powers and performing such duties, an investigating Officer may, subject to such conditions as may be prescribed, at any time during working hours, and outside working hours after reasonable notice, enter
 - any place used for the purpose of any undertaking;
 - any place used as the office of any union;
 - any premises provided by an employer for the residence of his employees, and shall be entitled to call for and inspect all relevant documents which he may deem necessary for the due discharge of his duties and powers under this Act.
 - c) Such powers of entry and inspection can be exercised at any time during working hours. Outside working hours, such powers can be exercised only after giving reasonable notice to the affected person or persons. Moreover, these powers are to be exercised subject to such conditions may be prescribed.
 - d) All particulars contained in, or information obtained from, any document inspected or called for under sub-section (2) shall, if the person, in whose possession the document was, so requires, be treated as confidential.
 - e) An Investigating Officer may, after giving reasonable notice, convene a meeting of employees for any of the purposes of this Act, on the premises where they are employed and may require the employer to affix a written notice of the meeting at such conspicuous place in such premises as he may order, and may also himself affix or cause to be affixed such notice. The notice shall specify the

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date, time and place of the meeting, the employees or class of employees affected, and the purpose for which the meeting is convened: Provided that, during the continuance of a lock-out which is not illegal, no meeting of employees affected thereby shall be convened on such premises without the employer's consent.

- f) An Investigating Officer shall be entitled to appear in any proceeding under this Act.
- g) An Investigating Officer may call for and inspect any document which he has reasonable ground for considering to be relevant to the complaint or to be necessary for the purpose of verifying the implementation of any order of the Court or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes the Investigating Officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (V of 1908) in respect of compelling the production of documents

29. Recognition of Union and its rights with obligations (Under MRTU) (6m)

- Chapter III of the MRTU & PULP Act, 1971 deals with the recognition of a trade union. In this article, we shall study the recognition of a trade union and the importance of its registration.
 - i. On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, must display a notice on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice. It should also call upon the other union or unions, for their objections within a prescribed time, as to why recognition should not be granted to the applicant-union.
 - ii. If, after considering the objections, if any, that may be received under sub-section (1) from any other union (hereinafter referred to as "other union") or employers or employees, if any, and if after holding such inquiry in the matter as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant-union also complies with the conditions specified in section 19 of the MRTU & PULP Act 1971, the Industrial Court shall, subject to the provisions of this section, grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as may be prescribed.
 - iii. If the Industrial Court comes to the conclusion, that any of the other unions have the largest membership of employees employed in the undertaking, and the said another union has notified to the Industrial Court its claim to be registered as a recognized union for such undertaking, and if it satisfies the conditions requisite for recognition specified in section 11, and also complies with the conditions specified in section 19 of this Act, the Industrial Court shall, subject to the provisions of this section, grant such recognition to the other union, and issue a certificate of such recognition in such form as may be prescribed. For the purpose of this subsection, the other union shall be deemed to have applied for recognition in the same calendar month as the applicant-union.

30. What is Illegal Strike? (Under MRTU) (6m)

- "Illegal strike" means a strike which is commenced or continued:

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- i. without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;
- ii. where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given;
- iii. during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike;
- iv. where submission in respect of any of the matters covered by the notice of strike is registered under section 66 of the Bombay Act, before such submission, is lawfully revoked;
- v. where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;
- vi. during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;
- vii. in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under sections 72, 73 or 73-A of the Bombay Act during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;
- viii. in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike

31. What is Illegal Lockout? (Under MRTU)

(6m)

- "Illegal lock-out" means a lock-out which is commenced or continued:
 - i. Without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice;
 - ii. during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;
 - iii. during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;
 - iv. where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under sub-section (6) of section 58 or section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

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- v. during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;
- vi. in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceeding or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or
- vii. in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by the notice of lockout

32. What is illegal strike and lockout? (Under MRTU) (13m)

- Combined Answers from Q5/6

33. Powers of Courts (13m)

- Under S. 30 of the Act, when an Industrial Court or a Labour Court is of the view that any person named in a complaint has engaged, or is engaging, in any unfair labour practice, it may, in its order,
 - (a). declare that an unfair labour practice has been engaged, or is being engaged, by that person and may specify the names of other persons who are also engaging in such a practice;
 - (b) direct all such persons to cease and desist from such unfair labour practice and also take such affirmative action as may be necessary to effectuate the provisions of the Act; Such affirmative action may include payment of reasonable compensation to employees affected by such an unfair labour practice and/or reinstatement of the affected employees, with or without back wages.
 - (c) where a recognised union has engaged in unfair labour practices, the Court may order that its recognition be cancelled or that any of its rights under S. 20(1) or S. 23 of the Act be suspended.
- In a fit case, the Court may also pass an interim injunction as it may deem just and proper, pending its final decision in the matter. This provision is made in the Act, so that the Court may give temporary relief in the matter to the affected persons by directing temporary withdrawal of the labour practice complained of. Any such interim injunction may also be reviewed by the Court from time to time, on an application made to it in this regard.
- For the purpose of holding an inquiry or proceeding under the Act, the Industrial Court or the Labour Court is conferred the same powers as are vested in courts in respect of:
 - a) proof of facts by affidavits;
 - b) summoning and enforcing the attendance of any person and examining him on oath;
 - c) compelling the production of documents; and d) issuing commissions for examination of witnesses.

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- The Court also has the power to call upon any party to the proceedings to furnish in writing, any information which is considered relevant for such proceedings. [S. 30(4)]
- The Court is also empowered under the Act to decide all connected matters, namely, all matters arising out of an application or complaint referred to it under any of the provisions of the Act. [S. 32]
- The Industrial Court may also sit in Benches consisting of one or more of its members. However, no Bench can consist of only one member who has not been, and at the time of his appointment, was not eligible for appointment as a Judge of the High Court. [S. 33]
- Provision is also made for constituting a Full Bench of the Industrial Court, consisting of three or more members. The order of a Full Bench on any question of law is declared to be binding and must be followed in all proceedings under the Act. [S. 35]

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❖ Module - 4: Factories Act, 1948 & Apprentices Act, 1961

1. **Define Factory:** (2m)
 - The definition of a factory is specified in Section 2(m) of the Factories Act 1948. A factory is any premises, where it has certain limits and boundaries:
 - i. If a manufacturing process is regularly carried out in any portion of the premises with the use of power and with ten or more workers now engaged in such activity or were engaged in such work on any day during the previous twelve months; or
 - ii. If any element of a manufacturing process is performed inside the premises without the use of power and is regularly performed with twenty or more employees working or having worked there on any given day within the previous twelve months.
2. **Who is an Occupier?** (6m)
 - According to section 2(n) "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.
3. **What is Hazardous process?** (2m)
 - Hazardous process is defined in Section 2(cb) of the Act. A hazardous process is defined as any process or activity related to the industry that requires special care of raw materials that are used in it, intermediate or finished products, by-products, wastes, or effluents that would cause material impairment to the health of those engaged in or connected with it or that result in polluting the environment.
4. **Define Apprentices.** (2m)
 - Under sec 8, As per basic scheme of the Apprentices Act, every employer is required to provide training to apprentice.
 - Apprentice under the act means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
 - Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
5. **Define Manufacturing Process** (2m)
 - According to section 2(k) "manufacturing process" means any process for-
 - i. making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting 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

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- 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;

6. Provisions relating to Health: (6m)

- Sections 11-20 of Chapter III of the Act deal with the Health of the Factories Act, 1948.

- i. Cleanliness (Section 11)
 - Every factory needs to be kept clean and clear of any effluvia from drains, latrines, or other annoyances. In particular:
 - a) Dirt must be cleaned daily from floors, benches, staircases, and passages by sweeping or by another method, and it must be properly disposed of.
 - b) The floor should be disinfectant-washed at least once a week.
 - c) During the manufacturing process, the floor becomes moist; this must be drained via drainage.
- ii. Disposal of wastes and effluents (Section 12)
 - Every factory has to have a method in place for treating wastes and effluents produced by the manufacturing process they use.
- iii. Ventilation and temperature (Section 13)
 - In order to ensure worker comfort and prevent health problems, sufficient ventilation must be created for the circulation of air in a factory, which should be maintained at a specific temperature.
 - Walls and roofing should be made of a material that is intended for a particular temperature that shouldn't go over as much as possible.
 - Certain precautions must be taken to protect the employees in facilities where the manufacturing process requires extremely high or low temperatures.
- iv. Dust and fume (Section 14)
 - Every factory has to have efficient measures to remove or prevent any dust, fumes, or other impurities that might harm or offend the employees employed and cause inhalation and build-up in any workroom.
 - No factory may operate an internal combustion engine unless the exhaust is directed outside, and no other internal combustion engine may be used. Additionally, precautions must be made to avoid the build-up of fumes that might endanger the health of any employees inside the room.
- v. Overcrowding (Section 16)
 - There should be no overcrowding in factories that might harm the health of the workers.
 - All employees must have ample space in a room to work in the building.
- vi. Lighting (Section 17)
 - Every area of a factory where employees are employed must have adequate natural, artificial, or both types of lighting installed and maintained.
 - All glass windows and skylights that provide lighting for the workroom in factories must be kept clean on the inside and outside.
- vii. Drinking (Section 18)
 - All factories must have the appropriate installations in place, and maintain convenient locations with an adequate supply of clean drinking water.

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- The distance between any drinking water and any washing area, urinal, latrine, spittoon, open drain carrying sullage or effluent, or another source of contamination in the factory must be 6 metres unless the chief inspector approves a shorter distance in writing. The labelling must be legible and in a language that workers could understand.
- viii. Latrines and urinals (Section 19)
 - All factories should have enough restrooms, and urinal accommodations of the required types must be offered in a location that is convenient and always accessible to workers.
 - Male and female employees must have separate enclosed rooms.
 - These locations must be thoroughly cleaned, kept in a hygienic state, and have sufficient lighting and ventilation.
 - Sweepers must be used to maintain latrines, urinals, and washing facilities clean.
- ix. Spittoons (Section 20)
 - All factories must have spittoons in easily accessible locations, and they must be kept clean and hygienic.
 - The state government specifies the number of spittoons that must be given, their placement in any factory, as well as their maintenance in a clean and hygienic manner.
 - Except for spittoons designed, for this reason, no one should spit within the premises of a factory. A notice must be posted if any violations occur, with a fine of five rupees.
- 7. Provisions relating to Safety: (6m)
 - Employment of young persons on dangerous machines (Section 23):
 - i. No young person is permitted to operate dangerous machines unless he has been adequately taught the hazards associated with the machine and the measures to be taken, and has received suitable training in working at the machine or adequate supervision by a person who has complete knowledge and experience of the equipment.
 - Prohibition of employment of women and children near cotton openers (Section 27):
 - i. Women and children are not permitted to work in any area of a cotton pressing facility while a cotton opener is in operation. Women and children may be employed on the side of the partition where the feed-end is located if the inspector so specifies.
 - Hoists and lifts (Section 28):
 - i. Every hoist and lift must be of strong mechanical structure, enough strength, and sound material. They also need to be regularly maintained, completely checked by a qualified person at least once every six months, and a register kept for the mandatory exams.
 - ii. A cage that is properly designed and installed must enclose all hoist and lift ways to prevent people from being trapped between any of the equipment.
 - iii. No larger load should be carried; the maximum safe operating load must be marked on the hoist or lift.
 - iv. Every hoist or lift gate must have interlocking or another effective system installed to prevent the gate from opening except during landing.
 - Protection of eyes (Section 35):

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- i. The state government may require effective screens or appropriate goggles to be provided for the protection of persons employed or in the vicinity of the process during any manufacturing process carried out in any factory that involves risk to the eyes due to exposure to excessive light or injury to the eyes from particles or fragments thrown off during the process.
 - Precautions against dangerous fumes, gases etc (Section 36):
 - i. No person shall be required or permitted to enter any chamber, tank, vat, pit, pipe, flue, or other confined space in any factory where any gas, fume, vapour, or dust is present to such a degree as to involve risk to persons being overcome, unless such chamber, tank, vat, pit, pipe, flue, or other confined space is provided with an adequate manhole or other effective means of egress.
 - Explosive or inflammable dust, gas etc (Section 37):
 - i. Any factory involved in manufacturing processes that produce dust, gas, fume, or vapour of a nature that could explode on ignition must take all reasonably practicable precautions to prevent any explosion through
 - ii. The effective enclosure of the plant or machinery.
 - iii. The removal or prevention of the accumulation of such dust, gas, fume, or vapour, etc., or
 - iv. Otherwise by the exclusion or effective enclosure of all potential ignition sources.
 - Precautions in case of fire (Section 38):
 - i. In order to protect and maintain safety to allow people to escape in the case of fire, all factories should have precautionary measures in place to avoid the breakout and spread of fire, both internally and externally. The required tools and facilities for extinguishing the fire must also be made accessible.
 - ii. All factory employees who are familiar with fire escape routes and have received sufficient training on the procedure to be followed in such circumstances must have access to appropriate measures.
8. Provisions relating to Welfare of workers: (6m)
- The three main components of welfare measures are occupational health care, appropriate working hours, and appropriate remuneration. It speaks of a person's complete health, including their physical, mental, moral, and emotional states. The goal of welfare measures is to integrate the socio-psychological demands of the workforce, the particular technological requirements, the organisational structure and procedures, and the current socio-cultural environment. It fosters a culture of work dedication in enterprises and society at large, ensuring increased employee happiness and productivity.
 - i. Washing facilities (Section 42)
 - All factories should supply and maintain enough appropriate washing facilities for the use of the employees.
 - For male and female employees, separate, well-screened facilities must be provided; these facilities also need to be easily accessible and maintained clean.
 - The standards for appropriate and suitable facilities for washing must be set by the state government.
 - ii. Facilities for storing and drying clothing (Section 43)
 - The state government has a specific authority. It specifies that the state government has the authority to give instructions to the manufacturers regarding where to store the worker's clothing.

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- They can also provide them with instructions on how to dry the workers' clothes. It refers to the circumstance in which workers are not dressed for work.
- iii. Facilities for sitting (Section 44)
 - All factories should provide and maintain seating arrangements in appropriate areas for all workers who are required to work in a standing position in order to take advantage of any chances for rest that may arise throughout the course of the job.
 - According to the chief inspector, workers in any factory involved in a certain manufacturing process or working in a specific room are able to perform their work effectively while seated.
- iv. First aid appliance (Section 45)
 - All factories must have first aid kits, appliances, or cupboards stocked with the required supplies during all working hours, and they must be easily accessible for all manufacturing employees to access. Accordingly, there must be more first aid boxes or cupboards than the usual ratio of one for every 150 industrial employees, which must be fewer than that.
 - The first aid box or cupboard should only include the recommended supplies.
 - Throughout the factory's operating hours, each first aid box or cupboard should be kept under the supervision of a specific person who is accountable for it on a separate basis and must be readily available at all times during the working hours of the factory.
- v. Canteen (Section 46)
 - A canteen must be provided and kept up by the occupier for the benefit of the workers in any specified factory where more than 250 people are usually employed, according to rules that the state government may set.
 - Food must be served, and prices must be established for it.
- vi. Shelters, restrooms and lunch rooms (Section 47)
 - Every factory with more than 150 employees must have appropriate and suitable restrooms or shelters and a lunchroom with drinking water where employees can eat food, they have brought with them and that is kept for their use. If a lunchroom is available, employees should stop eating in the work area.
 - The shelters or restrooms need to be well-lighted, ventilated, kept clean, cool, and in good condition.
 - The state government sets the standards.
- vii. Creches (Section 48)
 - Every factory with more than 30 female employees must have a suitable room for the use of children under the age of six of such women.
 - Such rooms must be well furnished, well-lighted, and ventilated, and they must be kept clean and hygienic. They must also be under the care of women who have received training in child and infant care.
 - In addition, facilities for washing and changing clothes can be made available for the care of the children of female workers.
 - Any factory may be forced to provide free milk, refreshments, or both to such children.
 - Small children can be fed by their mothers in any industry at necessary intervals.

9. Provision relating to health, safety and welfare of workers.
(13m)

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- Combined answers from Q6/7/8 (Write 4-6 points each)

10. Objectives of Apprentices Act, 1961 (2m)

- The main objective of the Apprentices Act, 1961 was to meet the rising need for a proficient craftsman.
- To provide experimental training to the people whose specialized in their crafts is the main objective of the act.
- As per the announcement of the central government, any industry or any area these provisions are applicable.
- The act clarifies the connection between the various employers and apprentices. The apprentices are not dealt in the same way as employees.
- The act aims to make provisions for health, protection welfare, and many others for apprentices.
- It also includes the dispute management arising out of the agreement between the employers and the apprentices.

11. Duties of Apprentice: (Any 2 for 2 marks) (2m/6m)

- An apprentice must master the selected trade with utmost attentiveness and awareness. He ought to strive exceptionally to qualify himself as a skilled person in the related trade for the period of apprenticeship.
- He has to attend all the practical and instructional sessions given by the employer or someone particular on his behalf on a normal basis.
- An apprentice must obey all lawful orders of the employer and other superiors in the organization.
- An apprentice should work for duration as specified by the employer which might be subject matter to the prescribed period of the training period.
- He should carry out all of the responsibilities which are mentioned in the apprenticeship agreement.
- The apprentice's behaviour and the knowledge or skills will be assessed with the help of the person who set the guidelines and regulations that practice to corresponding employees in an establishment.