
UNIT 1 INTELLECTUAL PROPERTY RIGHTS

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1.0 INTRODUCTION

Intellectual property (IP) is a term which refers to those creations of individual's mind which are distinct and different and for such creativity the individuals' property rights are recognised. This unit will discuss the term and other related topics in detail. In order to respect and regard the human resource, it is legal and compulsory that the individuals are provided property rights for the originality of their creations, inventions and discoveries as well as innovations. The unit will also discuss the various issues and agenda of the intellectual property rights. The unit starts with intellectual property and intellectual property rights and their definition and description. We then delineate the concept of intellectual property rights. We put for the form for intellectual property and discuss the nature of intellectual property. This is followed by the nature and objective of intellectual property rights and then we analyse the various issues emerging out of the intellectual property rights.

1.1 OBJECTIVES

After completing this unit, you will be able to:

- Define intellectual property rights;
- Delineate the concept of intellectual property and property rights
- Explain the concept and significance of intellectual property rights;
- Discuss the different types of intellectual property rights;
- Describe the issues and agenda of the intellectual property rights; and
- Explain the nature and objectives of the intellectual property rights.

1.2 CONCEPT OF INTELLECTUAL PROPERTY

Intellectual property (IP) refers to creations of the mind which are original in nature and have not been duplicated from any one or any where. Some of the examples of intellectual property can be for example inventions, literary and artistic works, symbols, names, images and designs used in commerce. The term intellectual property has been used since centuries. In one of the court cases in 1845 Justice Charles L. Woodbury wrote that “only in this way can we protect intellectual property, the labours of the mind, productions and interests are as much a man’s own...as the wheat he cultivates, or the flocks he rears.” (1 *Woodb. & M.* 53, 3 *West.L.J.* 151, 7 *F.Cas.* 197, No. 3662, 2 *Robb.Pat.Cas.* 303, *Merw.Pat.Inv.* 414). The statement that “discoveries are...property” goes back to an earlier period. Subsequently, the World Intellectual Property Organisation (WIPO) was established in 1967.

The concept of intellectual property can be broadly categorised in to two major categories, viz., (i) Individual property and (ii) Copyright.

Individual property: The properties which are original and intangible in nature and are related to commercial as well as industry related products which includes inventions (patents), trademarks, industrial designs, and geographic indications of source comes under the category of individual property.

Copyright: The creations which are original and intangible in nature, such as the literary and artistic works such as novels, poems and plays, films, musical works, articles as well as artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Like any other tangible property, an individual has the right to own and protect the original creation of its mind. Such a right is called intellectual property. An intellectual property right provides an ownership and others need to take permission from the concerned owners before using it. If such creations are used without taking prior permissions, legal action can be taken against such persons.

1.3 CONCEPT OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights is on of the most spoken word in scientific circles and the importance of protecting scientific discoveries, with commercial potential, is one of the most crucial aspects. In this era, when the humans are being treated as valuable resources to the organisations, their knowledge is equally worth which can lead the organisations’ progress to immense heights.

Box-A

Form for Intellectual Property Rights (Source: www.recordingmedia.org)

Intellectual Property Rights (IPR) Form

To be submitted with every order.

Rev. 3-14-01

International Recording Media Association

www.recordingmedia.org

APCP-12

- Letters of Indemnity are not adequate.
- LICENSED content requires proof of licensing for replication.
- OWNED content indicates the individual/organisation completing this form is the IPR owner.
- Must be completed by the organisation soliciting replication and not a broker or intermediary.

Album/Project

Title _____

Distribution Within an organisation___ Retail___ Free to public___ Other___

Countries Where Distributed _____

Are you the IPR owner for the entire disc contents? ___ YES ___ NO*

Complete the section(s) below describing the content that is applicable to the media you have ordered.

MP3 or Enhanced Disc content requires completion of both ROM and Audio sections.

1) CD-ROM / DVD-ROM Content

*If Not IPR owner, list all included non-owned software, freeware, and shareware products.

Attach necessary distribution licensing documentation from the IPR owner. Some shareware and freeware products require distribution licensing. Consult the software vendor for what is necessary.

2) CD / DVD Audio Content Check Here if COMPILATION _____

Artist(s) _____ Content/
Music Type _____

An attached list of track title, artist, and IPR owner is REQUIRED. Sampling/mixing of additional recordings not owned (regardless of type, quantity, and length) requires licensing of those original recordings.

*If Not IPR owner, proof of replication licensing from IPR owner for licensed tracks is REQUIRED.

3) CD / DVD Video Content (if Audio is separately licensed, complete Audio section and provide necessary Audio/Video Synchronisation licensing)

*If Not IPR owner, proof of replication licensing from IPR owner is REQUIRED.

I affirm that all information provided herein is true and that all disc contents indicated as being "licensed" are properly licensed for replication under the terms of the original rights holder(s) with proof of such licensing and/or trademark authorisation attached. I affirm that I am the intellectual property rights owner for all contents indicated as being "owned" and approve of replication. I agree to abide by the current version of the Anti-Piracy Compliance Program procedures and standards of the International

Recording Media Association (available at www.recordingmedia.org). The replicator reserves the right to refuse the processing of any order not complying with the Anti-Piracy Compliance Program guidelines.

Print Organisation Name & Telephone # of Party Soliciting Order _____

Signature of Representative from Party Soliciting Order _____

Print Name, Title, & Date _____

Knowledge is considered to be the product of individual creativity, based on western scientific thought and systems of knowledge creation. In this paradigm the intellectual property rights can be referred as property rights to the products of mind, which are a result of an individuals' knowledge and creativity. Intellectual property rights there by gives legal rights over creations of the mind, including both artistic and commercial creations. Intellectual property law provides owners with certain exclusive rights to a variety of intangible assets, as well the financial incentive of monopoly profits.

1.4 A SAMPLE OF INTELLECTUAL PROPERTY FORM

In order to protect and recognise one's originality and creations, the individual needs to claim the ownership of right over the intellectual property. The individual or the related concerns can claim for such ownership by filling a standard form and submitting it to the concerned person or authority (for example, government of India is the concerned authority who protects such rights in India). One of the sample of such standardised format of the intellectual property rights form is as follows:

The box-A in the previous page gives a sample of intellectual property right form.

Self Assessment Questions

Fill in the blanks

- i) Knowledge is considered to be the product of _____
- ii) Intellectual property (IP) refers to _____
- iii) The World Intellectual Property Organisation (WIPO) was established in 1967.

1.5 NATURE OF INTELLECTUAL PROPERTY RIGHTS

IPR are largely territorial or geographical based rights (that is it may differ from nation to nation) except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights meaning there by that no one can use these rights without the consent of the right holder. Except the copy rights and trade secrets, all the other intellectual property rights needs to be regularly renewed. IPR can be assigned, gifted, sold and licensed like any other property. It would however, be possible to utilise geographical indications for protecting some agriculture and traditional products.

1.6 OBJECTIVE OF INTELLECTUAL PROPERTY RIGHTS

The following are the objectives of intellectual property rights:

- 1) It helps in protecting the ownership and originality of the individuals' creation.
- 2) It provides recognition to the concerned person or authority.
- 3) It allows owners of intellectual property to have financial benefits from the property they have created.
- 4) They are provided financial incentive for the creation of and also to incur the cost of investment in intellectual property.
- 5) Such rights motivate individuals' creativity and thus also contributes to economic growth.
- 6) It can also offer some economic aid to the holder of the right, through the monopoly of their creations.
- 7) It improves the financial status of the individual as well as of the economy of the country.

Intellectual property rights in India

INTELLECTUAL PROPERTY RIGHTS

General

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organisation (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices.

The Agreement provides for norms and standards in respect of following areas of intellectual property:

- Copyrights and related rights
- Trade Marks
- Geographical Indications
- Industrial Designs
- Lay out Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Patents
- Plant varieties

Transition Period

India, as a developing country, had a transition period of five years (with effect from 01 January, 1995), i.e., till January 01, 2000 to apply the provisions of the Agreement. An additional transition period of five years, i.e., till January 01, 2005, is also available for extending product patent protection to areas of technology not protected so far. This would be mainly in the areas of pharmaceuticals and agricultural chemicals.

Copyrights

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of rights of Producers of Phonograms and to the Universal Copyright Convention. India is also an active member of the World Intellectual Property Organisation (WIPO), Geneva and UNESCO.

The copyright law has been amended periodically to keep pace with changing requirements. The recent amendment to the copyright law, which came into force in May 1995, has ushered in comprehensive changes and brought the copyright law in line with the developments in satellite broadcasting, computer software and digital technology. The amended law has made provisions for the first time, to protect performer's rights as envisaged in the Rome Convention.

COPYRIGHTS

- The Indian copyrights law, laid down in the Indian Copyright Act, 1957, fully reflects the Berne Convention on Copyrights, to which India is a party. India is also an active member of the World Intellectual Property Organisation, Geneva.
- The Act protects literary, artistic works and performance rights by making it unlawful to reproduce such works without the owner's permission.
- The author of the work is the first owner of the copyright in the work.
- Registration of the copyright is not compulsory either for acquiring copyright or for enforcing by way of suit against the infringement of the copyright.
- The Copyrights Act protects the following classes of work:
 - Original literary, dramatic, musical and artistic works
 - Cinematography films
 - Sound recording

Infringement of copyright

Illegal use or Violation by way of exploitation within authorisation of the author of the copyright amounts to infringement. The governing principles for deciding the infringement of copyright are as under:

- There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

Where the same idea is being developed in a different manner it manifests that the source being common, similarities are bound to occur. In such cases, the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyright work. If the defendant's work is nothing but a literal limitation of the copyright variations of the copyrights. In other words, in order to be actionable, the copy must be a substantial and material one, which at once leads to the conclusion that the defendant is guilty of an act of piracy.

- One of the surest and safest tests to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
- Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
- Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original and the co-incidences appearing in the two works are clearly incidental, no infringement of the copyright comes into existence.
- Piracy must be proved by clear and cogent evidence after applying the various tests laid down.

Fair dealing with any work has been kept out of the mischief of the Copyright Act.

Court may take the assistance of an expert in complicated and technical aspects of the violation of copyright(s).

- The test to detect piracy is to see whether mistakes and deviations occurring in the original have also been reproduced.
- Law restraining human enterprise should be liberally construed and therefore Copyright Act should not be interpreted so as to shut out research and scholarship.
- The burden lies on the plaintiff to satisfy the court that the defendant has infringed his copyright.
- Innocence is no defence to a charge of infringement.
- An infringement is in the nature of an invasion of a right of property and therefore intention of the infringer is immaterial provided there is infringement.
- For determination of the question of infringement, the result and not the intention is relevant.
- The owner of the literary work could bring action for infringement of copyright even though the literary work was not registered. Non-registration of work does not prevent an action for infringement.

Exceptions to infringement of copyright

The following acts, amongst others, do not constitute infringement:

- Fair dealing with a literary, dramatic, musical or artistic work not being computer programmes for the purposes of private use including research, criticism or review, making copies of computer programmes for certain purposes, reporting current events in newspaper magazines or by broadcasting or in a cinematography film or by means of photographs.
- Reproduction of judicial proceedings and reports thereof, reproduction exclusively for the use of Members of Legislature, reproduction (artistic work excluded) in a certified copy supplied in accordance with law.
- Reading or recitation in public of extracts of literary or dramatic work.
- Publication in a collection for the use in educational institutions in certain circumstances.
- Reproduction by teacher or pupil in the course of instruction or in question papers or answers.
- Performance in the course of the activities of educational institutions in certain circumstances.
- The causing of a sound recording to be heard in public utilising it in an enclosed room or in clubs in certain circumstances.
- Performance in an amateur club given to a non-paying audience or for religious institutions.
- Reproduction in newspapers and magazine of an article or current, economic, political, social or religious topics in certain circumstances.
- The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign the copyright to any person either wholly or partially, generally or subject to any limitation and for the whole term of the copyright or any part thereof.
- The owner of the copyright in any existing work or the prospective owner in any future work may grant any interest in the right by license in writing signed by him or by his duly authorised agent.

Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programs for enforcement officers and setting up special policy cells to deal with cases relating to infringement of copyrights.

Trade Marks

Trade marks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter under the provisions of the TRIPS Agreement. The Agreement provides that initial registration and each renewal of registration shall be for a term of not less than 7 years and the registration shall be renewable indefinitely. Compulsory licensing of trade marks is not permitted.

Keeping in view the changes in trade and commercial practices, globalisation of trade, need for simplification and harmonisation of trade marks registration systems etc., a comprehensive review of the Trade and Merchandise Marks Act,

1958 was made and a Bill to repeal and replace the 1958 Act has since been passed by Parliament and notified in the Gazette on 30.12.1999. This Act not only makes Trade Marks Law, TRIPS compatible but also harmonises it with international systems and practices. Work is underway to bring the law into force.

The Trade and Merchandise Marks Act, 1958

An Act to provide for the registration and better protection of Trade Marks and for the prevention of the use of fraudulent marks on merchandise.

1.7 TYPES OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property refers to the right over the intellectual work and not the work itself. Intellectual property rights can be categorised into various types as per the nature of work. The most common types of intellectual property are copyrights, trademarks, patents, industrial design rights and trade secrets which can be explained as follows:

- 1) **Copyright:** It is a right that is provided to the owner of a literary or artistic work. It is an exclusive right to control the publication, distribution and adaptation of creative works. Copyright laws deal with the intellectual property of creative works like articles, books, music, software, painting, etc.

The right lies with the owner cum copyright holder for a certain period of time. As time lapses, the work can be republished or reproduced by others. Usually, the timespan of a copyright extends through the entire life of the owner and lasts up to a period of about 50 to 100 years after death.

In case of anonymous works, the right lasts for 95 years after publication or 120 years after the creation.

- 2) **Trademarks:** Companies, political parties, governmental bodies and several running institutions can be identified or recognised on basis of certain symbols assigned by them. These symbols are nothing but the trademark, which is generally used to identify a particular product, which indicates its source. A trademark can be a combination of words, phrases, symbols, logos, designs, images or devices, used by an individual, legal entity or business organisation to distinguish their products from that of others. For example, one can identify the products of Reebok/LG/Whirlpool/Godrej through their logo, which is embossed on their products. Another example can be the logo of NGO's like WHO, UNICEF and so on which differentiates these institutions with each other.

The organisations get their trademarks registered and these trademarks are protected legally. If these trademarks are ever misused, then the owners can claim legal actions against those persons who use their trademarks. The right of trade marks defend the products and services of the company or institutions which helps in developing their brand, including pharmaceuticals.

They can be registered nationally or internationally, enabling the use of the symbol ®. An unregistered trade mark is followed by the letters ™. This can also be enforced in court if a competitor or any one else uses the same or similar name to trade in the same or a similar field.

- 3) **Patents:** Patents are rights related to new discoveries. Patents are used to protect new product, process, apparatus. The right to patent says that the invention is not obvious in light of what has been done before or has not been duplicated and has not been disclosed anywhere in the world at the time of the application. But of course the patent can only be given to those inventions which have a practical purpose. This right is conferred on persons who invent any new machine, process, article of manufacture or composition of matter, biological discoveries, etc.

There are certain set criteria of patent which may differ from country to country and ones' invention should meet the set criteria in order to get their rights protected. In general, the invention must be new, inventive and should be useful or can be applied in industries.

The person needs to get registered in order to receive the patent for his/her invention. Once the individual has been granted the patent for the invention then he or she has an exclusive right to control others from making, using, selling, or distributing the patented invention without permission. Generally, the time limit of a patent is 20 years from the date of filing the application (for the patent).

- 4) **Industrial design rights:** These rights also come under intellectual property and protect the visual design of objects. These rights are assigned to the products distinguished by their novel shape or pattern. The design may be in form of a shape, colour, pattern or a combination of all these things. It can be an industrial commodity or a handicraft. The design can be either two-dimensional (based on pattern, colours and lines) or three-dimensional (as per shape and surface).

The right is assigned on basis of several factors like, novelty, originality and visual appeal. The person who has an industrial design right has the exclusive right to make or sell any objects in which the design is applicable. The right is conferred for a period of 10 to 25 years. The design is required to be registered either nationally or under an EU (European)-wide single right.

- 5) **Trade secrets:** Trade secrets are the rights assigned to the designs, practice, formulas, instrument, processes, recipes, patterns or ideas being used or owned by a company to gain economic advantage over its competitors.

The owner of a trade secret does not possess any right over anyone who gains access to that secret independently, but he can prevent the use of trade secret by anyone who has learned it through the owner. For example, an employer can protect trade secrets through contracts with his employees. It differs from other types of intellectual property, because it is the responsibility of the owner to keep the secret and it is not protected through government policies. Once the trade secret is disclosed, it can be applied as well as exploited by any other person.

Self Assessment Questions

State whether the following are true or false-

- i) The owner of a trade secret does not possess any right over anyone who gains access to that secret independently ()
- ii) Copyrights are assigned to the products distinguished by their novel shape or pattern. ()
- iii) Intellectual property rights helps in protecting the ownership and originality of the individuals' creation. ()
- iv) Trademark is a right that is provided to the owner of a literary or artistic work. ()

1.8 EMERGING ISSUES OF INTELLECTUAL PROPERTY RIGHTS

Having a copy right over one's intellectual contribution, no doubt is a significant matter not only for the individual or the organisation, it is a significant contribution as well as a matter of repute to the concerned nation. Yet there are certain unresolved issues or agenda which question the process as well as concept of intellectual property rights. Some of them can be pointed out as follows:

- 1) **Issue of resource piracy:** In order to build up global economies, the countries adopt as well as take up the biological as well as natural resources of other countries. These resources which may have an origin some where else might be recognised as well as patented somewhere else, just because of negligence or ignorance of the home country. For example, the transfer of basmati varieties of rice from India to build up the rice economy of the US; the free flow of neem seeds from the farms, fields and commons to corporations like W. R. Grace for export. There exist no laws or legal actions against such piracies/ ignorance.
- 2) **Intellectual and cultural piracy:** With an objective to compete and gain recognition as well as better financial conditions, the unique activities, cultural and intellectual heritage of communities and the country is freely taken. Many a times the nations and communities claim for such intellectual property rights which does not originally belong to them and neither have been taken with prior recognition or permission from the actual place. For instance, the use by US corporations of the trade name 'basmati' for their aromatic rice, or Pepsi's use of the trade name 'Bikaneri Bhujia'. Such activities are debatable and questionable.
- 3) **Economic piracy:** At several circumstances the domestic and international markets are seized or taken over by using the trade names, thereby demolishing the local economies and national economies where the original innovation took place. This also adversely affects the livelihoods and economic survival of millions. For example, US rice traders usurping European markets; Grace usurping the US market from small scale Indian producers of neem based biopesticides.

- 4) **Internet piracy:** In this digital world, it is really difficult for nations and organisations to maintain their originalities and trade secrets. Internet and intranet are two basic ways which may lead to leakage of confidential and original information.
- 5) **Infringement of copyrights:** Many a times, there are severe violations of laws, where the competitors without taking prior permission to the concerned person, uses the domestic and literary work.

1.9 SIGNIFICANCE OF INTELLECTUAL PROPERTY RIGHTS

An intellectual property right is an important right and values the creativity and originality which is a result of an individual's mind and intelligence. Therefore, it has several significance and importance. Some of them include the following:

- Intellectual property rights provides incentives as well as recognition to the concerned persons/ authorities/ nations/institutions/ or organisations.
- Intellectual property rights encourages innovations and ensures a better quality of life. Industrial designs are what make a product attractive and appealing; hence, they add to the commercial value of a product and increase its marketability
- Just like the elements of a good product or service, the elements of a good advertisement are likely to be imitated or copied by others. So, it is hardly surprising that one or more types of IP rights come into play in creating content for an advertisement, or while deploying an advertising campaign.

1.10 THE INDIAN PATENT ACT

The first Indian patent laws were first promulgated in 1856. These were modified from time to time. New patent laws were made after Independence in the form of the Indian Patent Act 1970.

During the process of such amendments, India became a member of the Paris Convention, Patent Cooperation Treaty and Budapest Treaty.

The salient and important features of the amended Act are that an invention may satisfy the conditions of novelty, inventiveness and usefulness, but if you claim a compound without spelling out its utility, you may be denied a patent.

Self Assessment Questions

Fill in the blanks.

- i) Intellectual property rights provides incentives as well as _____ to the concerned persons/ authorities/ nations/ institutions/ or organisations.
- ii) In this digital world, it is really _____ for nations and organisations to maintain their originalities and trade secrets.
- iii) The first Indian patent laws were first promulgated in _____

1.11 LET US SUM UP

It can thus be concluded that there exists an immense significance of originality and creativity of human beings. The intellectual property rights is one of the way by which the worth of human resource is being valued. It also says that no one can duplicate the intellectual property without prior permission from the concerned persons. Such misuses or violations will be considered as a criminal activity and may lead to penalties or imprisonment.

1.12 UNIT END QUESTIONS

- 1) Define the concept, meaning and significance of intellectual property and intellectual property rights.
- 2) Discuss the different types of intellectual property rights.
- 3) Describe the issues and agenda of the intellectual property rights.
- 4) Explain the nature and objectives of the intellectual property rights.

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UNIT 2 LABOUR LAWS (INDIAN AND INTERNATIONAL)

Structure

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2.0 INTRODUCTION

Constitutions of all nations formulate, amend and propagate different acts and laws, in order to have a proper, systematic and well disciplined functioning of all

systems. As a unit of human resource in organisational behaviour, this unit will discuss about the various laws which have been constituted for welfare and protection of labour in organisations. The unit will depict how the government of India as well as other nations tries to prevent the exploitation of labour with the help of certain acts and amendments.

2.1 OBJECTIVES

On completing this unit, you will be able to:

- Define labour laws;
- Elucidate the concept of labour laws;
- Explain the various labour laws of India;
- Delineate the distinctive feature of Indian labour laws;
- Describe the emergence of international labour laws; and
- Delineate the convention of International Labour Organisation.

2.2 CONCEPT OF LABOUR LAW

Law can be defined as a complete system of rules that every individual of a country/ institution/organisation/community/workplace must obey. Violation of laws may lead to a criminal offence. In order to protect the interest and rights of labour work force, the government formulates and keeps on amending the labour laws. Basically, labour law consists of a collection of laws, administrative rules and precedents which reflect or explains the legal rights as well as legal restrictions on the work force and their organisations. It differentiates as well as creates links between the employers, employees as well as trade unions.

In several countries like, Canada, the laws of employment at unionised workplaces are differentiated (that is, they are different) from those related to particular individuals. Whereas, in several countries, no such distinction is made. The labour laws can be broadly classified in to the following two major categories.

2.2.1 Collective Labour Law

The collective labour law contains the laws related to the tripartite relationship between employee, employer and the trade union. It shows all the rules and restrictions which should be followed to resolve any issues or problems which exists, or appears to exist between the three major bodies (employee, employer and the trade union) of the organisation.

2.2.2 Individual Labour Law

The individual labour law is more concerned about the rights of an individual employes at his or her workplace. It also shows the standard conditions for the contract or agreement that will be agreed upon by the employee and the employer.

The laws for protecting the rights of the labour has actively been the result of the labour movements that has occurred in the 19th and the 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

2.3 LABOUR LAW IN INDIA

Since long time, India has also been active in implementing and amending acts and laws for the workforce of the organisations in India. Approximately, there are over fifty national laws and many more state level laws.

Our country, India equally ensures that the rights of workers within the organisations of the country are highly protected. In one of the cases, also known as the *Uttam Nakate case*, the Bombay High Court held that dismissing an employee for repeated sleeping on the factory floor was illegal, a decision which was overturned by the Supreme Court of India.

Moreover, it took two decades to complete the legal process (Source: *Wikipedia, the free encyclopedia*).

The labour laws in India also highlight the importance of a better labour ecosystem with the help of better education and training, infrastructure, governance and the legal/regulatory structure and so on.

2.4 CATEGORIES OF INDUSTRY/ORGANISATION UNDER INDIAN LABOUR LAWS

The labour laws of India have broadly categorised the Indian organisations into the following two specific categories, viz., (i) Factory and (ii) Shops and commercial establishments. Let us take up these and discuss.

2.4.1 Factory

According to the Indian labour law, factories consist of all such industrial establishments which have employed at least 10 or more persons and carry manufacturing activities. The factories in India are regulated by the provisions of the Factories Act, 1948 (the said Act). The act deals with the required terms and conditions related to health, safety, welfare, working hours and leave of workers in factories. The Factories Act, 1948 empowers the State Governments to frame rules, so that the local conditions prevailing in the State are appropriately reflected in the enforcement. The act of 1948 emphasises mainly on the welfare, health and safety of workers. The act also provides the do's and don'ts against use and handling of hazardous substances by the labours of the factories and also lays down certain emergency standards and measures.

2.4.2 Shops and Commercial Establishments

The second broad category of Indian organisations, according to the Indian labour law is the shops and commercial establishments. It refers to those entire places where the ultimate products or goods are sold to its end users- the customers and consumers. These outlets are regulated by Shops and Commercial Establishments Act which are formulated at state level and differ from state to state. The act predominantly contains the terms and conditions related to the opening and closing timings, leave, weekly off, time and mode of payment of wages, issuance of appointment letter etc.

2.5 STATUTORY/LEGISLATIVE REGULATION OF CONDITION OF SERVICE WITHIN INDIAN ORGANISATIONS

The constitution of India provides a legal provision for regulating and codifying conditions of service of the work force within all those industrial establishment which has employed more than 100 workmen under the provisions of Industrial Employment Act, 1946. Under the provisions of this Act every employer of an Industrial Establishment employing 100 or more workmen needs to precisely define and point out the conditions of employment within the work place. Such establishments needs to get those conditions verified and certified by the certifying authorities provided under Section 3 of this Act. It is compulsory for the organisations to follow those conditions throughout the term of contract of employment.

Self Assessment Questions

Fill in the blanks

- i) The labour laws of India, has broadly categorised the Indian organisations in to _____ and _____ category.
- ii) Approximately, there are over _____ national laws and many more state-level laws.
- iii) _____ refers to those entire places where the ultimate products or goods are sold to its end users – the customers and consumers.
- iv) Factories consist of all such industrial establishments which has employed at least _____ persons and carry manufacturing activities.

2.6 DISTINCTIVE FEATURE OF INDIAN LABOUR LAWS

A unique or distinctive feature of Indian labour law and laws of employment are that they categorise the employees in to three main categories:

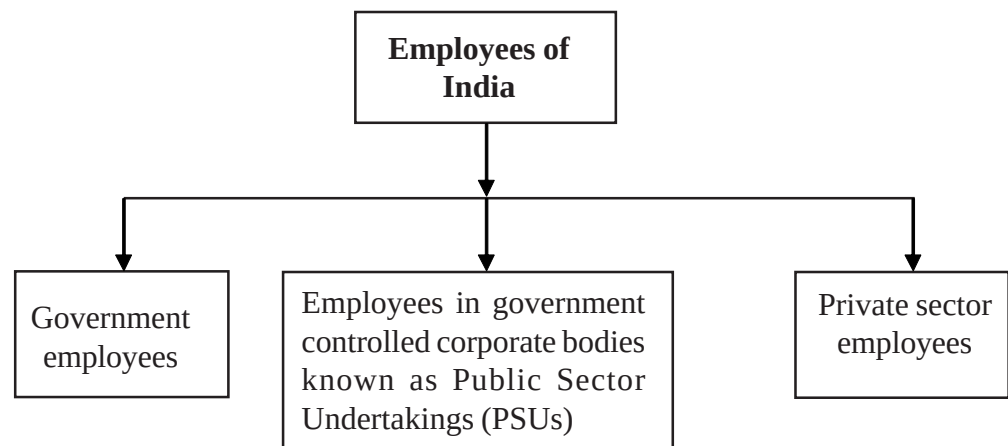


Fig. 2.1: Categories of employees of India according to the Indian labour law and laws of employment

It is the Constitution of India which governs the rules and regulations of the *government employees*. This gives an opportunity to the government employees to have job security, statutory (that is, legal) service contentions and a regular increment in the salary.

Where in, *the employees of the public sector* are governed by their own service regulations, which either has statutory force, in the case of statutory corporations, or are based on statutory orders.

Distinctively, in *the private sector*, employees can be classified into two broad categories namely management staff and workman. Managerial, administrative or supervisory employees drawing a salary of Rs.1600/- or more per month are considered management staff and there is no statutory provisions relating to their employment and accordingly in case of managerial and supervisory staff/employee the conditions of employment are governed by respective contracts of employment and their services can be discharged in terms of their contract of employment. Workmen category is covered under the provisions of the Industrial Disputes Act.

2.7 THE INDIAN LABOUR LAWS

With an aim to protect the rights of employees, to motivate them, retain them as well as maintain their limits in organisations or at their work place, there have been certain formulations of certain laws. The urgency of making labour laws came from the workers' demand for a suitable work environment, right to organise, and also from the demand of employers to delimit the powers of labour in order to have a disciplined and goal oriented work force. The origin of labour rights began from the era of the industrial revolution. These laws take care of many features of employers, employees and the unions. The labour laws in India has been divided in to two major categories.

2.7.1 List of Indian Labour Acts

Below in the table are given the labour laws related to Indian context. These include laws related to industrial relations, laws related wages, laws related to working hours and conditions of services etc., laws related to equality and empowerment of law.

Laws related to Industrial Relations	
1	The Trade Unions Act, 1926 The Trade Unions (Amendments) Act, 2001
2	The Industrial Employment (Standing Orders) Act, 1946 The Industrial Employment (Standing Orders) Rules, 1946
3	The Industrial Disputes Act, 1947

Laws related to Wages	
1	The Payment of Wages Act, 1936 The Payment of Wages Rules, 1937 The Payment of Wages (AMENDMENT) Act, 2005

2	The Minimum Wages Act, 1948 The Minimum Wages (Central) Rules, 1950
3	The Working Journalist (Fixation of Rates of Wages) Act, 1958 Working Journalist (Conditions of service) and Miscellaneous Provisions Rules, 1957
4	The Payment of Bonus Act, 1965 The Payment of Bonus Rules, 1975

Laws related to Working Hours, Conditions of Services and Employment	
1	The Factories Act, 1948
2	The Dock Workers (Regulation of Employment) Act, 1948
3	The Plantation Labour Act, 1951
4	The Mines Act, 1952
5	The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955 The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Rules, 1957
6	The Merchant Shipping Act, 1958
7	The Motor Transport Workers Act, 1961
8	The Beedi & Cigar Workers (Conditions of Employment) Act, 1966
9	The Contract Labour (Regulation & Abolition) Act, 1970 The Contract Labour Regulation Rules
10	The Sales Promotion Employees (Conditions of Service) Act, 1976 The Sales Promotion Employees (Conditions of Service) Rules, 1976
11	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
12	The Shops and Establishments Act
13	The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 The Cine Workers' Welfare Fund Act, 1981.
14	The Dock Workers (Safety, Health & Welfare) Act, 1986
15	The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
16	The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997

Laws related to Equality and Empowerment of Women	
1	The Maternity Benefit Act, 1961
2	The Equal Remuneration Act, 1976

Laws related to Deprived and Disadvantaged Sections of the Society	
1	The Bonded Labour System (Abolition) Act, 1976
2	The Child Labour (Prohibition & Regulation) Act, 1986
3	The Children (Pledging of Labour) Act, 1933

Laws related to Social Security	
1	The Workmen's Compensation Act, 1923 The Workmen's Compensation (Amendments) Act, 2000
2	The Employees' State Insurance Act, 1948
3	The Employees' Provident Fund & Miscellaneous Provisions Act, 1952 The Employees' Provident Fund & Miscellaneous Provisions (Amendment) Act, 1996
4	The Payment of Gratuity Act, 1972 The Payment of Gratuity Rules
5	The Unorganised Workers' Social Security Act, 2008 The Unorganised Workers' Social Security Rules 2008

Laws related to Labour Welfare	
1	The Mica Mines Labour Welfare Fund Act, 1946
2	The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972
3	The Beedi Workers Welfare Fund Act, 1976
4	The Beedi Workers Welfare Cess Act, 1976 The Beedi Worker's Welfare Cess Act Rules, 1977
5	The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976
6	The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976
7	The Cine Workers Welfare Fund Act, 1981
8	The Cine Workers Welfare Cess Act, 1981
9	The Employment of Manual Scavengers and Construction of Dry latrines Prohibition Act, 1993

Laws related to Employment and Training	
1	The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1959
2	The Apprentices Act, 1961

Others	
1	The Fatal Accidents Act, 1855
2	The War Injuries Ordinance Act, 1943
3	The Weekly Holiday Act, 1942
4	The National and Festival Holidays Act
5	The War Injuries (Compensation Insurance) Act, 1943
6	The Personal Injuries (Emergency) Provisions Act, 1962
7	The Personal Injuries (Compensation Insurance) Act, 1963
8	The Coal Mines (Conservation and Development) Act, 1974
9	The Labour Laws (Exemption from Furnishing Returns and Maintaining Register by Certain Establishments) Act, 1988
10	The Public Liability Insurance Act, 1991

2.7.2 Collective Labour Law

The laws which maintain the link and relationship between the employers, employees and the union are included under this category. Some of the major collective labour laws are as follows:

2.7.3 The Industrial Disputes Act (1947)

The act of industrial disputes was constituted in 1947 in order to limit/ prevent or restrict the unfair labour practices, by employers, workers or trade unions through imposition of fines and imprisonment. According to the law, workers can form or join unions of their choice. The Act says no company can fire employees or close down without having a government approval from at least 100 workers/ employees.

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurise each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

As per Section 2(k) of Industrial Disputes Act, 1947, an industrial dispute is defined as any dispute or difference between employers and employees, or between employers and workmen, or between workmen and which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. This definition includes all the aspects of a dispute. It, not only includes the disagreement between employees and employers, but also emphasises the difference of opinion between worker and worker. The disputes generally arise on account of poor wage structure or poor working conditions. This disagreement or difference could be on any matter concerning the workers individually or collectively. It must be connected with employment or non-employment or with the conditions of labour.

From the point of view of the employer, an industrial dispute resulting in stoppage of work means a stoppage of production. This results in increase in the average cost of production since fixed expenses continue to be incurred. It also leads to a fall in sales and the rate of turnover, leading to a fall in profits. The employer may also be liable to compensate his customers with whom he may have contracted for regular supply. Apart from the immediate economic effects, loss of prestige and credit, alienation of the labour force, and other non-economic, psychological and social consequences may also arise. Loss due to destruction of property, personal injury and physical intimidation or inconvenience also arises.

For the employee, an industrial dispute entails loss of income. The regular income by way of wages and allowance ceases, and great hardship may be caused to the worker and his family. Employees also suffer from personal injury if they indulge in strikes, picketing etc. The psychological and physical consequences of forced idleness, the threat of loss of employment in case of failure to settle the dispute advantageously, or the threat of reprisal action by employers also exists. Prolonged stoppages of work have also an adverse effect on the national productivity, national income. They cause wastage of national resources. Hatred may be generated resulting in political unrest and disrupting amicable social/industrial relations or community attitudes.

2.7.4 Trade Union Act (1926)

The act provides an opportunity to the workers to form their own unions and get their unions registered. Further, a registered Trade Union of workmen shall at all times continue to have not less than ten per cent or one hundred of the workmen.

2. Definitions - In this act the appropriate Government means in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions State Government, and unless there is anything repugnant in the subject or context,

- a) “Executive” means the body, by whatever name called to which the management of the affairs of a Trade Union is entrusted;
- b) In the case of a Trade Union, the trade union members include any member of the executive thereof, but does not include an auditor;

“Registered Trade Union” means a Trade Union registered under this Act; Trade dispute means any dispute between employers and workmen or between workmen and workmen, or between employers and employees which is connected with the employment, or non-employment, or the terms of employment or the

conditions of labour, of any person, and “workmen” means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and

“Trade Union” means combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more Trade Unions;

2.7.5 Provisions of the Factories Act, (1948)

According to this act, the in order to maintain the interest and efficiency of the employees/ workers, the employers will provide several provisions like – training facility, occupational health center, promotional opportunities, etc., to them within the factories/ industries.

There are three major legislations relating to occupational health and safety in India. They are related to the health and safety of persons employed in factories, mines and Ports.

The Factories Act 1948

For health

Ventilation and temperature	Disposal of wastes
Cleanliness	Dust and fumes
Artificial humidification	Overcrowding
Lightening	Drinking water
Latrines and urinals	Spittoons

For Safety

Fencing of machinery	Work on machines in motion
Cashing of new machines	Protection of eyes
Hoists and lifts	Self acting machinery
Excessive weights	Pressure plant
Precaution against dangerous fumes	Floors, stairs, means of access
Precaution in case of fire	Explosives of inflammable gas
Safety of building and machinery	Maintenance of buildings

For Welfare

Washing facilities	Facilities for sitting
First Aid Appliances	Canteens
Rest rooms and shelters	Creches
Facilities for storing and drying clothing	

2.7.6 Mines Act (1952)

Persons employed in the coal and oil mines.

It provides the following provisions for health and safety of mine workers

Drinking water	Conservancy
Medical appliances	Working hours
Notice about accidents	Notice of certain diseases

Dock workers (Safety, Health and Welfare) Act, 1986. The following provisions are made

Surfaces	Fencing of dangerous places
Passage to be kept clear	Railings and fences
Staging construction and maintenance	Work on staging
Life saving appliances	Illumination
Fire protection	Excessive noise
Access between deck and hold	Stairs
Floor loading	Construction
Access between deck and vessel	Access between shore and ship

Individual labour law

All India Organisation of Employers points out that there are more than 55 central labour laws and over 100 state labour laws. Some of these laws are as in given below.

2.7.7 Workmen's Compensation Act (1923)

Other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business shall be compensated with salary, bonus, leaves and holidays according to the norms of the organisation. Workmen's Compensation (Amendment) Bill, 2009 has been passed by both the Houses of the Parliament. It is to take form of an Act after getting the President's assent.

The main recommendations of the Bill were –

- Renaming the Workmen's Compensation Act, 1923 as the Employee's Compensation Act to make it gender sensitive.
- Raising the compensation paid to the workers and their family members in case of death to Rs. 1.2 lakh from current Rs. 80,000.
- Raising the compensation for permanent disability to Rs. 1.4 lakh from present Rs. 90,000. Also the funeral expenses were proposed to be raised to Rs. 5,000 from Rs. 2,500.

The Bill also proposed to empower the Central Government to specify monthly wages for the purpose of compensation and timely enhancement of the minimum rates of compensation.

Besides this the Bill even contained a provision for actual reimbursement of medical expenses incurred on account of injury caused during course of employment. There were provisions for disposal of compensation cases by Commission within a time period of 3 months.

2.7.8 Weekly Holidays Act (1942)

An Act which was formulated for the grant of weekly holidays to persons employed in shops, restaurants and theatres. The employees will compulsory be given holiday within every week.

2.7.9 Minimum Wages Act (1948)

The act says that the employees should be given a minimum wage with which they can meet the daily needs of their life.

The Minimum Wages Act, 1948 was enacted to safeguard the interests of workers, mostly in the unorganised sector by providing for the fixation of minimum wages in certain specified employments. It binds the employers to pay their workers the minimum wages fixed under the Act from time to time.

Under the Act, both the Central Government and the State Governments are the appropriate Governments to fix, revise, review and enforce the payment of minimum wages to workers in respect of 'scheduled employments' under their respective jurisdictions. There are 45 scheduled employments in the Central sphere and as many as 1530 in State sphere.

In the Central sphere, the Act is enforced through the Central Industrial Relations Machinery (CIRM). CIRM is an attached office of the Ministry of Labour and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. The CIRM is headed by the Chief Labour Commissioner (Central). While, the State Industrial Relations Machinery ensures the enforcement of the Act at the State level.

The appropriate Government is required to appoint an Advisory Board for advising it, generally in the matter of fixing and revising minimum rates of wages. The Central Government appoints a Central Advisory Board for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages as well as for co-ordinating the work of Advisory Boards.

Minimum wage and an allowance linked to the cost of living index and is to be paid in cash, though payment of wages fully in kind or partly in kind may be allowed in certain cases. The minimum rate of wages consists of a basic wage and a special allowance, known as 'Variable Dearness Allowance (VDA)' linked to the Consumer Price Index Number. The allowance is revised twice a year, once in April and then in October.

Under the Minimum Wages Act, there are two methods for fixation/revision of minimum wages, namely:

- **Committee method:** Under this method, committees and sub-committees are set up by the appropriate Governments to hold enquiries and make recommendations with regard to fixation and revision of minimum wages, as the case may be.

- Notification method: Under this method, Government proposals are published in the Official Gazette for information of the persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

2.7.10 The Payment of Bonus Act (1965)

According to this Act, the workers in any industry for any skilled or unskilled labour, including manual, supervisory, managerial, administrative, technical or clerical should receive yearly bonus.

2.7.11 The Contract Labour Act (1970)

The act prohibits companies from hiring temporary workers. Women are not permitted to work night shifts.

2.7.12 Child Labour Act (1979)

The child labour laws got an existence since 1979. The laws made it illegal for a child to work in hazardous industries, like factories with heavy and dangerous machinery.

Self Assessment Questions

State whether the statements are true or false:

- The act of industrial disputes was constituted in 1947 in order to delimit the unfair labour practices. ()
- The minimum wages act says that the employees should be given a minimum wage. ()
- The employees of the public sector are governed by their own service regulations, which has a statutory force. ()
- The Contract Labour Act, 1970 encourages companies from hiring temporary workers. ()

2.8 EMERGENCE OF THE INTERNATIONAL LABOUR LAWS

In the late 19th century it was realised all over the world that there should be ways to promote international regulation of labour matters. In 1897, an International Association for the Legal Protection of Workers was set up in Basle.

The activity of this private organisation led several governments to bring out changes and protect the rights of workers at international level. This section of the treaties provided for the establishment of an International Labour Organisation in 'Peace conference.

The international labour organisation was proposed to hold meetings and conferences from time to time and would be attended by its member countries. Since then, the International Labour Conference has met regularly in general once a year, except during the Second World War.

The most important entity which takes care of such protection of rights and laws of labour at an international level is – the 'International Labour Organisation' (ILO).

2.9 OBJECTIVES OF THE INTERNATIONAL LABOUR ORGANISATION (ILO)

In order to maintain the values and principles, the ILO has formulated the following objectives:

- It aims at providing full employment and raising of the standards of living of the employees.
- With the help of formulating the laws, the ILO facilitates training policies in regard to wages, hours of work and other conditions of work the effective recognition of the right of collective bargaining.
- It aims at enhancing the cooperation of management and labour in the continuous improvement of productive efficiency, and
- With the help of the collaboration between the workers and employer in the preparation and application of social and economic measures, it aims to provide basic income to all.
- It tries to prevent international competition from taking place to the disadvantage of workers.
- It purports to provide social justice to all labours.

2.10 GLOBAL INSTRUMENTS OF INTERNATIONAL LABOUR LAW

ILO has constituted several objectives, numerous conventions and recommendations in order to maintain the efficiency of workers. While the Constitution of the ILO mainly contains provisions relating to the functioning of the organisation, it also lays down a number of general principles which have come to be regarded in certain respects as a direct source of law.

Such principles are contained in the Preamble of the Constitution and in the Declaration concerning the Aims and Purposes of the Organisation, adopted by the Conference in Philadelphia in 1944 and incorporated in the ILO Constitution in 1946.

2.10.1 ILO Conventions

Conventions are instruments designed to create international obligations for the states. In addition to its Conventions, the ILO has adopted a number of Recommendations, which are different from the point of view of their legal character. Recommendations do not create obligations, but rather provide guidelines for action.

Conventions have a number of specific features

Conventions are adopted within an institutional framework.

The conventions of ILO are such that they do not require type of diplomatic negotiation which is usual in the case of treaties. They are rather prepared in discussions in an assembly that has many points in common with parliamentary assemblies.

The International Labour Conference, which adopts Conventions, is constituted by *representatives of governments, employers and workers*, each delegate being entitled to vote individually.

A *two-thirds majority* is sufficient for the adoption of a Convention, and governments of the member nations should submit the Convention to their competent authorities for further approval, i.e. as a rule to their parliaments. Also, the governments have the obligation, when requested, to supply reports on various issues related to Conventions.

Usually the Conventions have *flexible clauses*, because they are generally directed towards countries with very different economic, social and political conditions, as well as different constitutional and legal systems.

2.10.2 Core Conventions

Some of core Conventions of the International Labour Organisation are as given below:

1) **Freedom of Association and Protection of the Right to Organise Convention, 1948**

The Convention provides a right to all workers and employers to form and join organisations of their own choosing without prior authorisation, and lays down a series of guarantees for the free functioning of organisations without interference by the public authorities. In December 1997, 121 countries had ratified this convention.

2) **Right to Organise and Collective Bargaining Convention, 1949**

The Convention protects the workers and employers against acts of interference by each other, and for measures to promote collective bargaining. In December 1997, 137 countries had ratified this convention.

3) **Abolition of Forced Labour Convention, 1957**

The convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilisation, labour discipline, punishment for participation in strikes, or discrimination. In December 1997, 130 countries had ratified this convention.

4) **Discrimination (Employment and Occupation) Convention, 1958**

This convention calls for a policy which will try to eliminate any kind of discrimination in employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment. In December 1997, 129 countries had ratified this convention.

5) **Equal Remuneration Convention, 1951**

The convention says that there will be an equal pay for men and women performing the same or similar work. In December 1997, 135 countries had ratified this convention.

6) **Minimum Age Convention, 1973**

This convention aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling, and in any case not less than 15 years (14 for developing countries). In December 1997, 59 countries had ratified this convention.

2.11 EXAMPLES OF GLOBAL INSTRUMENTS

The members of the ILO accept the Conventions constituted by the International labour organisation, keeping their economic and several other conditions in view. Following are some of the regional examples which have accepted the Conventions of the ILO accordingly.

2.11.1 United Nations Instruments

While the United Nations does not deal with labour matters as such, and recognises the ILO as the specialised agency responsible for taking appropriate action for the accomplishment of the purposes set out in its Constitution, some UN instrument of more general scope have also covered labour matters. In the America, the North American Free Trade Area (NAFTA) has accepted the North American Agreement on Labor Cooperation, and the Caribbean Community and Common Market (CARICOM) has an Agreement on Social Security. However, the instruments of the Organisation of American States (OAS) are still the main source of international labour law in the region.

The UN General Assembly has adopted also a number of legally binding Conventions concerning labour matters. The most important ones are:

- 1) The Convention on the elimination of all forms of racial discrimination (1969)
- 2) The Convention on the elimination of all forms of discrimination against women (1979)
- 3) The Convention on the rights of the child (1989)
- 4) The Convention on the status of the Refugees (1954)
- 5) The Convention on the status of the stateless persons (1960)

2.11.2 European Instruments

The most comprehensive instrument adopted by the Council of Europe is the- 'European Social Charter' (1961). The Charter stipulates that any State wishing to become a Party must accept at least five basic rights – namely: the right to work, the right to organise, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right to the social, legal and economic protection of the family, and the right to protection and assistance for migrant workers and their families.

The most original feature of the Charter is that it recognises the rights of workers and employers to collective action in case of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into and to some further restrictions.

2.11.3 African Instruments

The Organisation of African Unity adopted the African Charter on Human and Peoples' Rights (1981) which includes the right to work under equitable and satisfactory conditions, the right to equal pay for equal work and the right to free association. Later on it also the African Charter on the Rights and Welfare of the Child (1990) according to which each child will be equally protected from any kind of economic exploitation:

Self Assessment Questions

Fill in the blanks

- i) With the help of formulating the laws, the _____ facilitates training policies in regard to wages, hours of work and other conditions of work.
- ii) Conventions are instruments designed to create _____ obligations for the states.
- iii) In the America, the _____ has accepted the North American Agreement on Labor Cooperation.
- iv) According to the African Charter on the Rights and Welfare of the Child (1990), _____

2.12 LET US SUM UP

It can be summed up from the above discussion that, for the betterment of employers as well as employees, several acts and amendments have been formulated and constituted both at national and international level. Labour laws try to protect the interest as well as fundamental rights of the employers and employees.

2.13 UNIT END QUESTIONS

- 1) Keeping the distinctive feature of Indian labour, briefly explain the various labour laws.
- 2) What do you understand by the terms – 'individual labour law' and 'collective labour law'?
- 3) What are the basic features of International Labour Organisation?
- 4) Explain the important Core Conventions of ILO. Illustrate few examples.

2.14 SUGGESTED READINGS

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UNIT 3 LAWS RELATED TO WORK PLACE VIOLENCE AND HARASSMENT

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Definition and Meaning of Work Place Violence
- 3.3 Types of Work Place Violence
 - 3.3.1 Criminal Violence
 - 3.3.2 Service User Violence
 - 3.3.3 Worker on Worker Violence
- 3.4 Effects of Work Place Violence
 - 3.4.1 Physical Effects
 - 3.4.2 Psychological Effects
 - 3.4.3 Business Effects
- 3.5 Preventing and Stopping Work Place Violence
 - 3.5.1 Formulate Norms and Policies Regarding Work Place Behaviour
 - 3.5.2 Training Programmes
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 - 3.8.3 Sexual Harassment in Work Place
 - 3.8.4 Steps to Prevent Sexual Harrassment
- 3.9 Laws against Work Place Violence and Harassment
 - 3.9.1 Workers Compensation Act of 1951
 - 3.9.2 Indecent Representation of Women (Prohibition) Act (1987)
 - 3.9.3 Federal Law against Age Discrimination in Employment Act
 - 3.9.4 Federal Law through Equal Pay Act
- 3.10 Let Us Sum Up
- 3.11 Unit End Questions
- 3.12 Suggested Readings

3.0 INTRODUCTION

Like the previous units of this block, this unit will also be discussing about the various human resource laws. But, primarily the present unit will focus on the

different types of violence and harassment happening at work place and also the different ways to protect the human rights at work places and organisations. This unit will also discuss about the various expectations of the employers as well as the employees and the issues generated from such expectations at work places. In order to get the maximum utilisation from the potentials of employees, but at the same time, prevent the human resource from getting exploited the government has constituted several rules and laws. It is the duty of the employers as well as employees to follow these rules and understand the significance of these laws. Particularly the employers or the organisations have to understand the importance of these laws in order to safe guard the interest of its employees. The present unit will also deal with the different technical jargons or terms that come under the instances of violence and harassment in work place.

3.1 OBJECTIVES

On completing this unit, you will be able to:

- Define work place violence and harassment;
- Explain the meaning of work place violence etc.;
- Describe the various types of work place violence;
- Explain the ways of preventing as well as avoiding violence at work place;
- Analyse the different types of harassment at work place; and
- Describe the role and importance of organisation as well as constitution of India in dealing with work place violence and harassment.

3.2 DEFINITION AND MEANING OF WORK PLACE VIOLENCE

The legal definition of work place violence is as follows:

Incidents where people are abused, threatened or assaulted in circumstances relating to their work, involving an explicit or implicit challenge to their safety, well being or health.

(Source- <http://en.wikipedia.org>, accessed on 27/12/2010)

Technically speaking, work place violence refers to any kind of an act that involves aggression, physical assault, or threatening behaviour which may take place in between employees or the employer and the employees and vice versa in work place settings. These kinds of acts are of serious concern as they cause physical as well as emotional harms to self and other related persons (like the customers, co workers, boss, manager, as well as the subordinates) at the work place. Broad definitions of work place violence also often include acts of sabotage on work site property.

Work place violence has emerged as a severe alarm, as it ultimately affects the quality and service of employees as well as the out put of organisation as well as country.

Unavoidably, these acts of violence is used by individuals in order to get what they want which may include tangible (which can be touched) e.g., money as well as intangible e.g., respect, recognition (which can not be touched) benefit.

They may want faster or better service, or they may desire attention or alternatively to be left alone or scare people off.

Any how, the Indian constitution has taken several steps and amended several laws in order to avoid people from creating as well as suffering from such types of violence and protect the quality of out put of the organisations as well as the country.

3.3 TYPES OF WORK PLACE VIOLENCE

It is clear from the above sections that, work place violence is a kind of behaviour that is being done within the work environment, with an objective to create harm to the target person or group. This includes shaking fists, throwing objects, or other overt physical acts, as well as any verbal or written threats to cause harm to anyone or anything.

Occupational Health and Safety Administration (OSHA) reports that on average they estimate that 2 million employees are victimised annually while at work. People within and outside of the work place can commit violence in the work place.

Work place violence can take place in different forms and ways. Some of these types of work place violence have been explained in terms of (i) Criminal violence (ii) Service User violence (iii) worker on worker violence. Let us take up each of these and explain.

3.3.1 Criminal Violence

A criminal violence takes place within the context of organisation by a person who is in no way related to any employee or the employer. This may take place in form of snatching away cash, drugs, immortal wealth. In such an act robbery is the main motive of the person.

3.3.2 Service User Violence

Service user violence occurs when the employee is unsatisfied in any aspect with the working conditions or services of the organisation or the employer. It is generated as result of frustration or an emotional conflict being felt by the employee due to the service provided in the work place or by the victim.

3.3.3 Worker on Worker Violence

Whenever violence is generated by the employees against their own colleagues, supervisors, managers within the work place or the organisation, then such an aggressive act is known as worker-on-worker violence. This is often linked to protests against enforced redundancies, grudges against specific members of staff, or in response to disciplinary action that the individual perceives as being unjust.

Depending upon the types of harm done through brutality, violence can also be categorised as follows:

- Non physical violence (intimidation, abuse, threats etc.)
- Physical violence (punching, kicking, pushing etc.)
- Aggravated physical violence (use of weapons, e.g. guns, knives, syringes, pieces of furniture, bottles, glasses, etc.)

Self Assessment Questions

Fill in the blanks

- i) The _____ kind of violence takes place when the employee is unsatisfied in any aspect with the working conditions or services of the organisation or the employer.
- ii) Work place violence refers to any kind of an act that involves _____ between two or more than two persons within an organisation or work place.
- iii) The act of work place violence is used by individuals in order to get. _____

3.4 EFFECTS OF WORK PLACE VIOLENCE

Work place violence occurs more often than employees and employers may realise. Such violence can have serious physical and psychological effects. The levels of work place violence can encompass a wide range of severity. Types of violence can include threats, bullying, verbal abuse, physical abuse, sexual harassment and even murder.

3.4.1 Physical Effects

Serious physical trauma, even death, can result from work place violence.

The obvious and potentially most dangerous effect of work place violence is physical trauma. If the violence is of a physical nature, injuries, scarring, pain, hospitalisation and even death may result. Threats of physical violence should not be taken lightly. It is the manager's responsibility to ensure the safety of all employees by eliminating risks due to threats. Investigation, counseling, termination and security might be necessary actions taken with regard to the person making the threats.

3.4.2 Psychological Effects

Long-term psychological problems often occur in victims of work place violence.

Victims of work place violence are more likely to suffer the long-term effects of post traumatic stress disorder (PTSD). PTSD is a common psychological disorder that usually affects veterans, victims of terrorism, rape and other violent crimes. Other long-term psychological effects may include self-doubt, depression, fear, insomnia, irritability, relationship conflicts, lack of motivation and self-blame. If victims do not get the support and psychological help they need when reporting violence in the work place, it will deter them and other witnesses from ever reporting violence again. There are a number of approaches that can help victims of work place violence, including counseling, emotional support, time off, and medication.

3.4.3 Business Effects

Work place violence can permanently close a business.

The damage to the company as a result of work place violence is not nearly as important or severe as the emotional or physical harm done to the victims, but it

is still a matter of concern. Work place violence can damage company morale. Some employees might require extended time off, or may even resign. Other problems that may occur include lower productivity and damage to the company's image. There may also be a loss of funds due to legal costs, compensation, pension payments and providing better insurance premiums.

In no way, violence can yield any positive result to the work or output of the organisation. It is a kind of an act that leads to physical or non physical harm to the person, group or the organisation concerned. Work place violence is an issue of which all businesses should be aware. An average of 16 people per day died while at work during 2004. There are yet several negative outcomes or harmful effects of the work place violence-

An act of violence can lead to poor morale and a poor image for the organisation, making it difficult to recruit and keep staff.

It can also mean extra costs, to the organisation as a result of the after effects of the violence for example – absenteeism, higher insurance premiums and legal fees, fines and compensation payments.

None the less for the victims who may be the employees, violence can cause pain, distress and even disability or death. Physical attacks are obviously dangerous but serious or persistent verbal abuse or threats can also damage employees' health through anxiety or stress.

The non physical violence can also result in domestic violence. The victims may try to get rid of the frustration at the home front (they may be abusive or physically harmful to their family members and other relatives).

3.5 PREVENTING AND STOPPING WORK PLACE VIOLENCE

Experts believe that businesses can take a number of steps to dramatically reduce their likelihood of an employee carrying out an act of work place violence. Many of these are proactive in nature, designed to minimise the business's exposure to violent acts by employees:

3.5.1 Formulate Norms and Policies Regarding Work Place Behaviour

The best method to avoid work place violence is to form and adopt certain rules and norms which would be compulsory to be followed by each and every employee of the organisation. Such a policy should clearly state that threats, intimidation, destruction of company property, and violence in any form will not be tolerated and disciplinary actions may be taken against them.

3.5.2 Training Programmes

The organisations should periodically schedule and organise training programs which would help in generating awareness amongst the employees. They need to be aware of the different types of work place violence, how to raise voice against such violence and the after effects of work place violence.

3.5.3 Recruitment Policies

While recruiting potential candidates for a particular position, the organisation should screen out the biodata of the applicants in advance. Those having a criminal back ground, irregular employment history or violent in nature should be avoided.

3.5.4 Identify Warning Signals

The signs of violence can easily be detected in the vicinity of the organisation. If the management gets a sign of any arguments or unwanted behaviour that might be taking place within a group, between two group or in between two employees it is the responsibility of the management to identify them and give them the warning signals in advance.

3.5.5 Steps for Detecting and Avoiding Work Place Violence

No matter if you are in an office environment, or lab environment the red flags remain the same. The same goes for Principal Investigators at work.

Certain characteristics and behaviour constitute a profile that personify the likely candidates and should trigger a red flag:

- Male between 35 and 55 years old
- Mid life transition, dissatisfied with life!
- Loner without a true! support system
- Low self esteem!
- Generally works in jobs with high! turnover
- History of being disgruntled during employment!
- Tends to! project his shortcomings to others
- History of intimidating coworkers and! supervisors
- Feels persecuted and views efforts to help with suspicion!
- Watches others for violations and may keep records!
- Interested in! weapons, may be a collector or marksman
- Probably does not have a police! record

Take potential warning signs seriously. When a person displays several of these characteristics or behaviour traits, an employer must take such warning signs seriously. Management, at all levels, who lack the necessary experience and expertise to handle this type of potentially explosive situation should rely on appropriate outside resources. For example, these types of situations may call for specialised psychological counseling or extra security measures on a temporary or even permanent basis.

In the health care and research fields it has been noted that nonfatal assaults occur nearly four times more often in health care than in all private sector industries combined.

Ideally, the workplace is free of violence, in terms of threats or actions, either verbal or physical.

A comprehensive organisational violence prevention program begins with a zero tolerance for violence policy and is supported by a data collection mechanism to monitor violence, ongoing prevention initiatives, and a post-event support plan.

Work place violence monitoring tools typically capture the type, mode, and severity of the incident and, like safety monitoring tools, support the identification of trends for ongoing intervention and education.

In the event of a severely violent event, the organisational response should encompass a variety of group and individual efforts to support and stabilise the staff and work environment immediately, and in the many months to follow.

Indicators that an individual has potential work place violence:

- Attendance Problems
- Impacts on Supervisor Time
- Decreased Productivity
- Inconsistent Work Patterns
- Poor On-The-Job Relationships
- Concentration Problems
- Safety Issues
- Poor Health/Hygiene
- Continual Excuses – Blame
- Unusual Behaviour
- Fascination with Guns – Weapons
- Possible Drug Alcohol Abuse
- Stress in Personal Life
- Unshakable Depression
- Warning signs that an individual may become violent
- Verbal Threats
- Physical Actions
- Bizarre Thoughts
- Physical Actions
- Inappropriate - Repeated Boundary Crossing
- Angry Confrontations
- Restlessness and Agitation
- Bizarre thoughts:
- Self-Centered Fantasies
- Irrational Violent Associations or Thoughts
- Delusional Commands to Act Violently
- Workplace violence cycle
- Obsession

- Escalation
- Stated Intentions
- Repeated Statements Multiple Reports

If you or a co worker see any of these signs. Please take appropriate actions to report them. Work place violence is becoming a norm. Education is the Key to stopping it.

3.5.6 Counselling

The organisations should hold employee assistance programs or training programs which can be very valuable to workers who are struggling with stress at home and/or in the office.

Self Assessment Questions

State whether the statements are true or false:

- i) An act of violence can help in boosting the image of the organisation ()
- ii) The work place violence can also result in domestic violence. ()
- iii) The best method to avoid work place violence is to form and adopt certain rules and norms. ()

3.6 WORK PLACE HARASSMENT

Work place harassment refers to any kind of an action towards one employee or a group of targeted employees, which makes them uncomfortable at their work place. Such kind of unwanted actions not only hampers the work performance of employees, it also make the employees feel that they are working in a hostile environment. The harassment may be based on such factors as race, gender, culture, age, sexual orientation, or religious preference.

3.6.1 Determining Factors of Work Place Harassment

There are certain factors which act as signs of work place harassment. If these factors are present or is being felt by the employee, then the employee is said to be undergoing an unwanted and uncomfortable harassment. These factors can be pointed out as follows.

The action or conduct of the supervisor, boss or any one concerned in the organisation should be uncomfortable or offensive to the employee.

The employee feels and tries out ways to raise his voice against the unwanted behaviour or the conduct of the concerned person at the work place

The behaviour or the conduct of the concerned person might be having a significant impact on the work performance of the employee. It should be having a negative effect on the work efficiency of the employee.

3.6.2 Types of Work Place Harassment

Work place harassment can target on the age, sex, religion, belief, culture or many other areas of the employee. There can be many forms or types of work

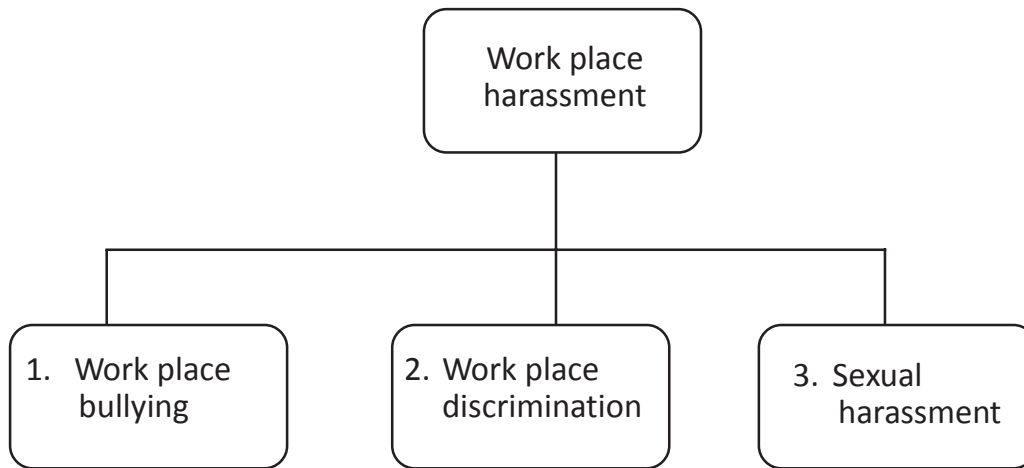


Fig. 3.1: Diagrammatic chart showing different types of work place harassment

3.7 WORK PLACE BULLYING

Work place bullying is an act which can be defined as the behaviour of the boss, supervisor or peer which is harmful for the subordinate or the colleague. Bullying behaviours may differ from humiliation to several other tactics which would in a way try to embarrass or dishonour the target employee or subordinate at the work place. According to certain learned scholars it involves repeated, health-harming mistreatment, verbal abuse, or conduct which is threatening, humiliating, intimidating, or sabotage that interferes with work or some combination of the three. Bullying is characterised by (Einarsen, 1999; Keashly & Harvey 2004; Lutgen-Sandvik, 2006):

- Repetition (occurs regularly)
- Duration (is enduring)
- Escalation (increasing aggression)
- Power disparity (the target lacks the power to successfully defend themselves).
- Attributed intent

This distinguishes bullying from isolated behaviours and other forms of job stress and allows the term workplace bullying to be applied in various contexts and to behaviours that meet these characteristics.

3.7.1 Types of Work Place Bullying

On the basis of several researches, the act of bullying at work place can be categorised as:

- 1) **Pair bullying:** This type of bullying takes place between two people, in which one person is very active and uses all verbal techniques to bully the target person and the other person is silent and just keeps on observing the targeted person.

- 2) **Sequential bullying:** This is just like the act of a serial killer, in which there is an individual who serially targets one employee after the other and keeps on attacking and destroying them one by one.
- 3) **Group bullying:** Usually formal or informal groups are formed within organisations. Many a times, these groups act as active gang in mistreating or bullying with employees.
- 4) **Pressurising or coercive bullying:** Under this type of bullying, the boss or the supervisor forces the subordinates to work, beyond the prescribed time schedule or without appropriate resources.
- 5) **Cyber bullying:** When the mode of information technology is being used with an intention to harm an individual employee or a group of employee via e mails, short notices, and junk mails and so on, then such an act of bullying is known as cyber bullying.

3.7.2 Acts or Behaviours Involved in Bullying

There are certain typical acts or behaviours which are more or less involved in each and every type of bullying. Evidences show that the following behaviours are typically involved in acts of bullying:

Threat to Professional status: Some of the types of bullying usually involve a kind of humiliation to the target person's efforts or work. It may include claims regarding lack of effort, blame of lower competency skills of the target employee.

Threat to personal standing: Certain acts of bullying try to personally harm the target employee. It may involve sarcasm, making inappropriate jokes, teasing or insulting the employee under target.

Seclusion: The persons who try to bully or harm certain employee may completely keep the target individual in an isolated environment. They may withhold necessary information; prevent access of opportunities to the target employee.

Self Assessment Questions

State whether the following statements are true or false:

- i) Under coercive type of work place bullying, the boss or the supervisor forces the subordinates to work, beyond the prescribed time schedule or without appropriate resources. ()
- ii) Group bullying is a kind of work place bullying which specifically uses the mode of information technology. ()
- iii) Work place bullying never involves humiliation to the target person's efforts or work. ()

3.8 WORK PLACE DISCRIMINATION

Discrimination at work place refers to any kind of conduct, action, behaviour or decision which is taken against an employee on basis of some prejudice or filthy beliefs. The employees may be discriminated on the basis of age, sex, race, culture. Discrimination occurs when an employee suffers unfavourable or unfair treatment

due to their race, religion, national origin, disabled or veteran status, or other legally protected characteristics. This group could also include employees who suffer reprisals for opposing work place discrimination or for reporting violations to the authorities.

3.8.1 Determining Discrimination

The employer or co-workers can be charged and sued on a number of legal theories that cover discrimination on the job. According to Nolo.com, specific acts of work place discrimination include intentional or negligent infliction of emotional distress, harassment, assault, battery, invasion of privacy, defamation, interference with an employment contract, and wrongful termination. In all such case it is the duty or responsibility of the victim employee to resolve such kind of discriminations. They may directly talk to the employer or superior or may also file a complaint against them under the grounds of right to work.

3.8.2 Effects of Discrimination in the Work Place

Work place discrimination has several adverse outcomes. Some of them are:

- 1) It has a negative effect on the transactions of the organisation and also hampers the company's reputation.
- 2) It restricts the advancement to certain groups or types of employees.
- 3) It lowers down the employee commitment and increases the rate of turnovers
- 4) It categorises and creates a strata or group of people which may turn out to be hostile in nature.

3.8.3 Sexual Harassment in Work Place

Sexual harassment is a kind of threat, pressure, coercion or bullying and is totally on basis of the sex of the victim employee or employees. It can also be in form of a promise of rewards in exchange for sexual favours. The act of sexual harassment may also be in form of an unwelcome sexual gesture or behaviour whether directly or indirectly as sexual remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. According to India's constitution, sexual harassment invades the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. Although there is no specific law against sexual harassment at workplace in India but many provisions in other legislations protect against sexual harassment at workplace, such as Section 354, Indian Penal Code (IPC) deals with "assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with "word, gesture or act intended to insult the modesty of a woman".

3.8.4 Steps to Prevent Sexual Harassment

No doubts there are certain articles and amendments done in order to protect the act of sexual harassment at work place. But as said, 'prevention is always better than cure'. Then instead of waiting for the incidents to happen, the organisation as well as employees can take care of several factors in advance. Some of the steps which can be followed in order to avoid such unwanted actions can be as follows:

- i) The management may place notices, publish articles as well as circulate notifications against the prohibition of sexual harassment
- ii) As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- iii) The work environment as well as the work conditions should be as such that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- iv) The organisations should formulate certain policies norms as well as disciplinary actions against such misconducts.
- v) The organisation should form certain committee which can facilitate victim employees to complain and deal with such kind of harassment.

3.9 LAWS AGAINST WORK PLACE VIOLENCE AND HARASSMENT

The constitution of India has enacted several laws in order to protect the employees against exploitation, violence and harassment at work place. Some of them can be pointed out as follows.

3.9.1 Workers Compensation Act of 1951

The Workers Compensation Act of 1951 act provides reimbursement for time off work as well and medical costs associated with medical conditions arising from injuries which might have occurred due to the incident of work place violence. A claim form must be completed and lodged with the worker's employer. The employer is obligated to forward the claim to their insurer for consideration.

The sections of the IPC have declared the act of sexual harassment at work place to be a criminal offence. Though, no laws have been amended against sexual harassment at work place, yet certain sections of IPC have regulated certain rules and guidelines against it. They can be mentioned as follows:

- 1) **Section 294:** This section mentions that a person or a group of person will be punished with imprisonment of either description for a term that may extend to three months, or with fine, or with both to the annoyance of others, if the person (a) does any obscene act in any public place, or (b) sings, recites and utters any obscene songs, ballads or words, in or near any public space'.
- 2) **Section 354:** The section mentions that an individual or group of individuals shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both if they assault or use criminal force on any woman, intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty.
- 3) **Section 509:** The section holds that who ever intends to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture is seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.'

3.9.2 Indecent Representation of Women (Prohibition) Act (1987)

According to this act, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “indecent representation of women”, they are liable for a minimum sentence of 2 years. Section 7 (Offenses by Companies) further holds companies where there has been “indecent representation of women” (such as the display of pornography) on the premises, guilty of offenses under this act, with a minimum sentence of 2 years.

3.9.3 Federal Law against Age Discrimination in Employment Act

The ADEA’s broad ban against age discrimination prohibits statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ) and also prohibits the denial of benefits to older employees.

3.9.4 Federal Law through Equal Pay Act

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

Self Assessment Questions

Fill in the blanks

- i) Sexual harassment is a kind of threat, pressure, coercion or bullying and is totally on basis of _____ of the victim employee or employees.
- ii) Discrimination at work place refers to any kind of _____ which is taken against an employee on basis of some prejudice or filthy beliefs.
- iii) Work place discrimination has a _____ effect on the transactions of the organisation and also hampers the company’s reputation.

3.10 LET US SUM UP

The above explanations thereby explain that, no two individuals can have a same kind of thinking. It is because of these individual differences, there happens to be clashes, conflicts, violence and acts of harassment at work place or organisations. Keeping this in mind, the organisation has to take all required steps which can help in minimising as well as preventing such incidences to occur. The constitution of India is also readily amending acts and laws which might help in dealing with such cases.

3.11 UNIT END QUESTIONS

- 1) What do you understand by the term ‘work place violence’? Explain the different types of work place violence.

- 2) How can you stop the occurrence of work place violence?
- 3) Describe the different types of harassment at work place.
- 4) Suggest different ways through which an organisation can try to cope up with the incidences as well as outcomes of work place violence and harassment.

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UNIT 4 LAWS RELATED TO HUMAN RIGHTS VIOLATION

Structure

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4.0 INTRODUCTION

On humanitarian grounds, the government bodies have taken the responsibility of providing several rights to human beings (but not necessarily at work place) and these rights are specifically known as 'Human rights'. Each nation provides several rights to human. The present unit will deal with these human rights, its advantages and also the punishments and harms if any one violates or misuses these rights.

4.1 OBJECTIVES

On completing this unit, you will be able to:

- Describe the meaning and concept of human rights;
- Explain the significance of human rights;
- Categorise the different types of human rights in India;
- Discuss some of the types of human right violation; and
- Discuss the strategies and responses against human right violation.

4.2 CONCEPT AND MEANING OF HUMAN RIGHTS

The concept of human rights refers to the basic freedom which a nation provides to its citizen in certain specific areas, regions, spaces and categories. As a human and citizen of a particular nation, the humans are entitled to enjoy freedom in various activities as well. Such entitlements can be in form of norms that are being shared on the grounds of actual human moralities, as justified moral norms or natural rights (for example – right to eat, study, etc.) or they can also be the legal rights either at a national level or international level.

The fundamental rights that humans have by the fact of being human, and that are neither created nor can be abrogated by any government.

Supported by several international conventions and treaties (such as the United Nation's Universal Declaration of Human rights in 1948), these include cultural, economic, and political rights, such as right to life, liberty, education and equality before law, and right of association, belief, free speech, information, religion, movement, and nationality. Promulgation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions. Although they were defined first by the Scottish philosopher John Locke (1632-1704) as absolute moral claims or entitlements to life, liberty, and property, the best-known expression of human rights is in the Virginia Declaration of Rights in 1776 which proclaims that "All men are by nature equally free and independent and have certain inherent rights, of which, when they enter a state of society, they cannot, by any compact, deprive or divest their posterity." Called also fundamental rights. See also civil rights and natural rights.

The basic idea of human rights is that every person possesses dignity by the fact alone of being a person. Human rights, which are inalienable and indivisible, protect this dignity. The concept of human rights is based on a universal system of values shared by all peoples, which offers a framework for the construction of a human rights system with internationally recognised norms and standards. Human rights norms regulate the relationship between the state and the people living under its responsibility. Governments have the obligation to respect, protect and guarantee the rights and freedoms of people through appropriate legislation and measures.

For example, the state must respect the freedom of opinion or privacy of the individual. Not only is it not allowed to intervene in peaceful demonstrations, but it must also take active steps to protect demonstrators from aggression by

counter-demonstrators. Through preventive measures and the punishment of violence it also safeguards the prohibition on torture and inhuman or cruel treatment. Finally the state has the task of providing schools, hospitals, teachers and doctors so as to guarantee the right to education and health care.

The first comprehensive and universally valid human rights document was the United Nations Universal Declaration of Human Rights, which was adopted in 1948 in the aftermath of the horrors of the Second World War. The Declaration contains all the various categories and principles of the human rights system.

There are civil and political rights; economic, social and cultural rights; and solidarity rights. Certain basic human rights principles apply to all these rights. For example, no one may be discriminated against on the grounds of origins, colour, religion, sex, age, language or assets. Moreover, states must provide every person with effective legal recourse to assert guaranteed rights. Finally, all people should be in a position to determine the way in which their rights are realised. For example, the right to education includes the right of parents to decide whether their children attend a state school or a Montessori school.

The main civil and political rights are:

- right to life, liberty and security of person
- prohibition of slavery
- prohibition of torture
- right to a fair trial
- protection of privacy and family life
- freedom of movement
- freedom of opinion and religion
- freedom of assembly and association
- right to vote

The main economic, social and cultural rights are:

- right to work, reasonable pay and free choice of employment
- right to form trade unions
- right to a reasonable standard of living, right to food
- right to reasonable health care
- right to education
- right to participate in cultural and social life

The main solidarity rights are:

- right of peoples to self-determination
- right to peace
- right to a clean environment
- right to development

Civil and political rights are sometimes called first-generation human rights. They arose during the Enlightenment in the 18th century and reflect the idea of

individual freedom with respect to the state and the democratic idea of participation. Second-generation human rights are the economic, social and cultural rights that developed during the labour movements of the 19th and 20th centuries. The third generation of human rights, solidarity rights, have existed since the mid-1980s. They are contingent on international cooperation and aim at the formation of a community.

With an urge to protect the interests and dignity of human beings the United Nation General Assembly constituted the Universal Declaration of Human Rights in 1948.

4.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

The United Nations General Assembly (1948) adopted **Universal Declaration of Human Rights (UDHR)** with a resolution to fight for human rights for the citizen of the member countries. UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights as part of the “foundation of freedom, justice and peace in the world. The UDHR was framed by members of the Human Rights Commission and it was decided that the civil, political, economic, social and cultural rights of human beings will be taken care of and will be protected. UDHR currently has two basic treaties or contracts – one of them is on civil and political rights, known as, International Covenant on Civil and Political Rights (ICCPR) while the other is on social, economic, and cultural rights, Known as, the International, Covenant on Economical, Social and Cultural Rights (ICESCR)

The United Nations (UN) came into being in 1945, shortly after the end of World War II.

The stated purpose of the UN is to bring peace to all nations of the world. After World War II, a committee of persons headed by Mrs. Eleanor Roosevelt, the wife of US President Franklin D. Roosevelt, wrote a special document which “declares” the rights that everyone in the entire world should have—the Universal Declaration of Human Rights. Today there are 192 member states of the UN, all of whom have signed on in agreement with the Universal Declaration of Human Rights.

4.3.1 Where Do Universal Rights Begin?

“In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

There are in all 30 Articles in this each dealing with certain important rights of the human being.

- 1) **We Are All Born Free & Equal:** We are all born free. We all have our own thoughts and ideas. We should all be treated in the same way.
- 2) **Don't Discriminate:** These rights belong to everybody, whatever our differences.
- 3) **The Right to Life:** We all have the right to life, and to live in freedom and safety.
- 4) **No Slavery:** Nobody has any right to make us a slave. We cannot make anyone our slave.
- 5) **No Torture:** Nobody has any right to hurt us or to torture us.
- 6) **You Have Rights No Matter Where You Go:** I am a person just like you!
- 7) **We're All Equal Before the Law:** The law is the same for everyone. It must treat us all fairly.
- 8) **Your Human Rights Are Protected by Law:** We can all ask for the law to help us when we are not treated fairly.
- 9) **No Unfair Detainment:** Nobody has the right to put us in prison without good reason and keep us there, or to send us away from our country.
- 10) **The Right to Trial:** If we are put on trial this should be in public. The people who try us should not let anyone tell them what to do.
- 11) **We're Always Innocent Till Proven Guilty:** Nobody should be blamed for doing something until it is proven. When people say we did a bad thing we have the right to show it is not true.
- 12) **The Right to Privacy:** Nobody should try to harm our good name. Nobody has the right to come into our home, open our letters, or bother us or our family without a good reason.
- 13) **Freedom to Move:** We all have the right to go where we want in our own country and to travel as we wish.
- 14) **The Right to Seek a Safe Place to Live:** If we are frightened of being badly treated in our own country, we all have the right to run away to another country to be safe.
- 15) **Right to a Nationality:** We all have the right to belong to a country.
- 16) **Marriage and Family:** Every grown-up has the right to marry and have a family if they want to. Men and women have the same rights when they are married, and when they are separated.
- 17) **The Right to Your Own Things:** Everyone has the right to own things or share them. Nobody should take our things from us without a good reason.
- 18) **Freedom of Thought:** We all have the right to believe in what we want to believe, to have a religion, or to change it if we want.
- 19) **Freedom of Expression:** We all have the right to make up our own minds, to think what we like, to say what we think, and to share our ideas with other people.

- 20) **The Right to Public Assembly:** We all have the right to meet our friends and to work together in peace to defend our rights. Nobody can make us join a group if we don't want to.
- 21) **The Right to Democracy:** We all have the right to take part in the government of our country. Every grown-up should be allowed to choose their own leaders.
- 22) **Social Security:** We all have the right to affordable housing, medicine, education, and childcare, enough money to live on and medical help if we are ill or old.
- 23) **Workers' Rights:** Every grown-up has the right to do a job, to a fair wage for their work, and to join a trade union.
- 24) **The Right to Play:** We all have the right to rest from work and to relax.
- 25) **Food and Shelter for All:** We all have the right to a good life. Mothers and children, people who are old, unemployed or disabled, and all people have the right to be cared for.
- 26) **The Right to Education:** Education is a right. Primary school should be free. We should learn about the United Nations and how to get on with others. Our parents can choose what we learn.
- 27) **Copyright:** Copyright is a special law that protects one's own artistic creations and writings; others cannot make copies without permission. We all have the right to our own way of life and to enjoy the good things that art, science and learning bring.
- 28) **A Fair and Free World:** There must be proper order so we can all enjoy rights and freedoms in our own country and all over the world.
- 29) **Responsibility:** We have a duty to other people, and we should protect their rights and freedoms.
- 30) **No One Can Take Away Your Human Rights.**

Self Assessment Questions

Fill in the blanks-

- i) The United Nations General Assembly adopted Universal Declaration of Human Rights (UDHR) in _____
- ii) The UDHR was framed by _____
- iii) The two basic treaties of UDHR are _____

4.4 LAWS RELATED TO HUMAN RIGHTS IN INDIA

In India the Human Right Act, 1993 is the Act which provides for the constitution of 'National Human Rights Commission, the State Human Rights Commission in States and Human Rights Courts' for better protection of Human Rights and for matters connected therewith or incidental thereto. This Act is called the Protection of Human Rights Act, 1993. It extends to the whole of India. and is

deemed to have come into force on the 28th day of September, 1993 where by “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The Human Rights Commission in India consists of:

- 1) Chairperson who has been a Chief Justice of the Supreme Court.
- 2) One Member who is or has been, a Judge of the Supreme Court.
- 3) One Member who is, or has been, the Chief Justice of a High Court.
- 4) Two Members appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women are deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

Chief Executive Officer of the Commission is a Secretary General and is empowered by law to exercise such powers and discharge such functions of the Commission as it may delegate to him. The headquarters of the Commission are at Delhi and the Commission can, with the previous approval of the Central Government, establish offices at other places in India. It is important for all citizens to know that ‘No statement made by a person in the course of giving evidence before the Commission’ shall be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement but one must not forget that this is only applicable if the statement made is in reply to the question, which he is required by the Commission for him to answer, or is relevant to the subject matter of the inquiry. A State Government may constitute a Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to by the respective State Commission. The State Commission consists of a Chairperson who has been a Chief Justice of a High Court, A Member who is, or has been, a Judge of a High Court, A Member who is, or has been, a district judge in that State along with two Members appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission, as it may delegate to him. The headquarters of the State Commission shall be at a place deemed fit for the purpose by the State Government. A State Commission may inquire into violation of human rights only in respect of matters related to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution, provided that such matter is not already being inquired into by the Commission or by any other Commission duly constituted under any law. In addition to this the Government may, with the concurrence of the Chief Justice of the High Court, by notification, also specify for each district a Court of Session to be a Human Rights Court to try the said offences.

The picture of human rights in India is a multifaceted one, due to its large size, diversity, secularism, sovereignty, democratic and republic nature. The

constitution of India has provided six basic fundamental rights to the citizens of India. They can be described as follows:

4.4.1 Right to Equality

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties.

Article 14 declares irrespective of the caste, creed, colour, sex, religion, all citizens shall be treated equally protected by the laws of the country.

Article 15 declares that no person shall be discriminated on the basis of caste, colour, language etc. in social or public places. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children.

Article 16 states that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled by applicants who are domiciled in the area. However, according to the *Citizenship (Amendment) Bill, 2003*, this right shall not be conferred to the citizens residing outside the country.

Article 17 eliminates the practice of untouchability and treats it as an offence.

Article 18 of the constitution prohibits the country from conferring any titles. The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India — these titles were also abolished.

4.4.2 Right to Freedom

The articles 19, 20, 21 and 22 of the constitution of India provide a *freedom of speech and expression* in order to enable an individual to participate in public activities. Further it also provides *freedom of press*. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality. Further, the citizens of India have been provided a *freedom to assemble peacefully* without arms, freedom to form associations or unions, *freedom to move freely throughout the territory of India*, *freedom to reside and settle in any part of the territory of India*, *freedom to practice any profession or to carry on any occupation, trade or business* on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.

4.4.3 Right against Exploitation

The rights against exploitation are mentioned in articles 23 and 24. The articles provide an elimination or abolition of trading of human beings as well as forcing them to work. It also abolishes employment of children (that is, child labour) below the age of 14 years in dangerous jobs like factories and mines.

4.4.4 Right to Freedom of Religion

The article 25, 26, 27 and 28 declares that any citizens of India are free to adopt, practice and follow any religion. The constitution believes that all religions are equal before the State and no religion shall be given preference over the other.

4.4.5 Right to Constitutional Remedies

Right to constitutional remedies is a step taken to preserve and safeguard the fundamental rights of its citizens in court and in front of law. It authorises the citizens to move a file a case and fight for justice if in case the fundamental rights of the individual is being denied. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed.

4.4.6 Right to Property

The articles 19 and 31 of the constitution facilitates the citizens of India to acquire, hold and dispose off property. Article 31 provided that “no person shall be deprived of his property save by authority of law.” It also provided that compensation would be paid to a person whose property has been taken for public purposes. However, in 1978, the right to property was removed from the list of fundamental rights, due to certain circumstances. Therefore, the right to property is no longer a fundamental right, though it is still a constitutional right.

4.4.7 Right to Education

The right to education came in to action since 2010. The right declares that every child of 6-14yrs age group has a right to get the basic or elementary education. It is the duty of the Central and the local governments to ensure that the children of the mentioned age group including the school drop outs (who have left schooling) as well as the deprived children gets the elementary education.

Self Assessment Questions

State whether the statements are true or false:

- 1) The right to property says that “the persons can be deprived of his property save by authority of law.” ()
- 2) Right to constitutional remedies is a step taken to preserve and safeguard the fundamental rights of its citizens in court and in front of law. ()
- 3) Any citizens of India are free to adopt, practice and follow any religion. ()
- 4) Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. ()
- 5) Freedom of speech is one of the human rights of India, which can be misused at times. ()

4.5 HUMAN RIGHTS VIOLATION

The state, constitution and governments have declared several rights for humans in order to provide them a secured life. It acts a facilitator as well as privilege for every human or citizen in leading a comfortable life. But what if people start misusing or abusing such fundamental human rights? No doubt there have been instances where such rights have been misused or violated for the purpose of self benefit. Following are some of such instances of human right violations:

4.5.1 Misuse of the Internet

No doubt the freedom of expression is one of the fundamental rights of human being due to which internet has become a unique mode of communication. It is one of the sources that provide an opportunity to the individuals to express their ideas and opinion directly to the world. Internet also provides the advantage of exchanging information between people. But, it has also given a way to cyber crime, terrorist attacks, conflicts and unwanted wars as well. Such misuse of internet has lead to a serious violation of freedom of expression.

4.5.2 Human Trade

The constitution has amended acts which prohibits the action of exploitation of people be it in the form of child labours, female workers and so on. Yet, for the sake of earning profits and several other benefits, the trend of trading (buying and selling) of human beings has remained equally active at several parts of our country.

4.5.3 Custodial Violence

Another example of violation of human rights can be mapped out at the custodies and jails. The major concerns are the custody death, torture in custody and custodial rape. These acts and mishaps question out the laws formulated for the civil rights and safe living of human beings.

4.5.4 Land Alienation

The right to property has been questioned at several places where the tribes and communities are losing their lands for the sake of several developmental projects like housing schemes, upcoming schools.

4.5.5 Sexual Harassment at Work Place

The right to work has been misused constantly. The complaints of physical and mental harassment have duly increased at the working places. This issue requires a necessary attention as well as action to be taken for the security and democracy of the women power.

4.5.6 Concern of Forest Dwellers

For the sake of conservation of forests, the tribes and people residing in forest have been constantly been forced to leave the forest places. This has ultimately raised questions against the right to own resources.

4.5.7 Homicide

The controversies of the dowry deaths, missing women, abortion of girl child and torture of married women are also the areas which shows how brutally the human rights are being violated at home environment.

4.6 STRATEGIES, LAWS AND RESPONSES AGAINST HUMAN RIGHTS VIOLATION

The state, nation as well as several activists have actively tried to lessen or control these violation of human rights. Some of the strategies are as follows:

4.6.1 Human Rights Act, 1993

With an aim to keep a control or check on violation of human rights, a body called as human rights commission was set up under human rights act, 1993. The Central Government constituted a body known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act. The commission meets at regular times and intervals to discuss any petition submitted by a victim of human right violation as well as intervene the process of any allegation of human right violation which might be pending at courts.

4.6.2 Promoting the Right to Information

Several authors have written articles and novels using the examples of the events of the societies. These literary works have used the past examples as icons and are creating awareness amongst human beings so that they do not fall prey to these violations. The government even has telecasted several promos, advertisements and documentaries in order to catch hold of these activities.

4.6.3 Peace Committees

Several NGO's have formed human right groups which keep on sending some members as peace committee to the areas which have been affected or are about to get affected due to political violation of conflicts. These groups have actively been involved in several areas like West Bengal, Tamil Nadu, and Kashmir.

4.6.4 Legislation

The legislation body is also actively trying to amend the acts and laws according to the current requirement and changing human needs. The acts are amended in order to keep a check over the rights which can prevent the human violation.

4.6.5 Campaigns

Camping and short training programs often accompany other interventional programs, which can create public awareness of the do's and don'ts of human rights. These campaigns also suggest steps that are required to be taken in order to avoid as well as prevent human right violation as well as exploitation.

4.6.6 Help Lines

Government has also provided several help line numbers in order to protect female molestations, farmer suicides and child exploitation. The victims can call and seek help as per their requirement at the help line numbers.

4.6.7 Human Right Courts

Setting up of human right courts have also been proposed under human right act, (1993) at district levels. These courts will deal with the cases of the human right violation and keep a check over such activities.

4.6.8 Compensation

Government has decided to pay some amount as a compensation (also known as ex gratia payments) to the victims or the sufferers. Such payments are made to those sufferers who has fallen victim of some conflict, terrorist activity or other related mishaps.

4.6.9 National Commission for Women

In order to protect the women section from deprivations, tortures and harassments a body of national commission for women was set up by a statute in 1990. It was opened in order to safeguard the interest and protect the women section from any kind of mishaps.

Self Assessment Questions

State whether the statements are true or false:

- i) The legislation body is also actively trying to amend the acts and laws according to the current requirement and changing human needs()
- ii) The right to work has never been misused. ()
- iii) Several NGO's have formed human right groups which keep on sending some members as peace committee. ()
- iv) National commission for women was set up by a statute in 2011.()

4.7 LET US SUM UP

No doubt the government at its level is trying hard to make all individuals at an equal level or at par at every circumstance. It is our duty to maintain the dignity of the laws and acts formulated for us. Human rights are so far good until it is being utilised for the betterment of the society. It can thus be concluded from the above section, that human rights violation is totally unethical and the state tries its best to fight against these violations. It keeps on amending acts, formulating bodies and takes several measures in order to control these unwanted activities. Yet, one should be aware at their own part also regarding their rights and also avoid themselves from being a part of human rights violation.

4.8 UNIT END QUESTIONS

- 1) Describe the meaning and concept and significance of human rights.
- 2) Categorise the different types of human rights in India.
- 3) Discuss some of the types of human right violation.
- 4) Discuss the measures taken to prevent the human rights violation.

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