

Scanner Appendix

CS Executive Programme Group - I (Solutions of June - 2024)

Paper - 3 : Setting Up of Business, Industrial and Labour Laws

Chapter - 1 : Selection of Business Organisation

2024 - June [3] (a)

The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization.

- (a) **In sole proprietorship and OPC:** ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.
- (b) **In partnership:** management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.
- (c) **In a company,** however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board of Directors who are generally the elected representatives of shareholders. Consequently, a person wishing to have complete and direct control of business prefers proprietary organization rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day to day affairs and there is need for corporate structure and management, he will prefer the company form of organization.

So, while deciding to commence a business in any form 'X' should just not only consider risk, return, sharing, and control over decision making but should also consider the nature of business and the funding requirement over the period of time.

Chapter - 2 : Corporate Entities - Companies

2024 - June [2] (a)

- The Companies registered under the Section 8 of Companies Act, 2013 can avail the following benefits.
- **Minimal share capital:** Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company, unlike OPC or private or public limited company.
- **Access to Tax benefits:** Since Section 8 companies are charitable institutions, they get various exemptions available under section 80G the Income Tax Act.
- **Improved Credibility:** Section 8 companies gauge a better credibility than other types of NGOs such as Society and trust
- **No Stamp Duty:** Section 8 Companies are not liable to pay stamp duty on MOA and AOA.
- **Separate legal entity:** Section 8 company has perpetual legal existence.
- Robinhood against Hunger is required to obtain FSSAI license for the manufacturing various types of food items which is not linked to Section 8 Company privileges and is mandatory for all organizations to get.

2024 - June [2] (b)

- According to section 4(7) of the Companies Act, 2013, any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.
- Any provision contained in the MOA, AOA, agreement or resolution if in contravention to the Act will be treated as void.

- Therefore, the provision in AOA of PNC Ltd, to give any person a right to participate in the divisible profits of the Company otherwise than as member is not valid.

Chapter - 3 : Limited Liability Partnership

2024 - June [1]

(a) The given benefits of LLP can be considered by A and B while deciding the legal structure for their business:

- LLPs are eminently suited to the IT professionals like A & B . They will get the benefit of limited liability and insulate them from third party claims against professional negligence or deficiency.
- A cross section of the professionals may come together under the banner of LLP to carry on the professional work in their respective field of specialisation, with the respective statutes according sanction for such a dispensation.
- Such an arrangement will bring the professionals closer and this will benefit the corporate and other clients, as they may be able to get solutions to their problems under one roof.
- Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management
- LLP is relatively a cheaper approach to incorporate as compared to a Private Limited Company and requires fewer compliances.

(b) Following documents are required for getting registration of “Technical Solutions LLP be attached along with the prescribed e-form FiLLip”:

- Identity Proof of Partners
- Residential proof of Partners
- Passport Size photograph of Partners
- Proof of Address of Registered office of LLP
- Digital Signature Certificate
- Latest Utility bill of registered office (not later than 2 months)
- Subscription sheet signed by the promoters
- NOC of owner of registered office, if taken on rent / lease

- Notice of Consent & Appointment of Designated Partners and their personal details
 - Detail of LLP(s) / company(s) in which partner is a partner or director.
- (c) The key considerations for “Technical Solution LLP” when seeking investments from angel investors to finance its operations are as follows: Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake. As regulation 19F of SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:
- (1) Angel funds shall invest in startups which:
 - (c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 crore; and
 - (d) are not companies with family connection with any of the angel investors who are investing in the company.
 - (2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.
 - (3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.
 - (4) Angel funds shall not invest in associates.
 - (5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.
 - (6) An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.
- (d) **Mr A & B will be required to upload the following documents:**
- PAN Card / Aadhar Card of all Partners
 - Photos of all Partners
 - PAN of LLP
 - COI (Certificate of Incorporation) of LLP

- LLP Agreement
 - Consent / Resolution by designated partners for obtaining GST Registration
 - Declaration / Authorization to Authorized Signatory
 - Bank Account Details
 - Scanned copy of a cancelled cheque
- (e) **For conversion of LLP into Pvt Limited Company , following conditions be required to be fulfilled:**
- All the partners to approve the LLP conversion to Pvt Company.
 - LLP must have minimum 2 partners who are required for incorporation of a Pvt Ltd Company.
 - LLP to ensure all the required returns and compliances have been adhered to.
 - There should be no open charges for or against the company.
 - Such conversion is published in at least two newspapers, one in English Language and another in any vernacular language of the place of registered office.

Chapter - 4 : Start-ups and its Registration

2024 - June [4] (c)

Startups:

1. A startup company (startup or start-up) is an entrepreneurial venture which is typically an emerging, fast- growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, process or a platform.
2. A startup is usually a company designed to effectively develop and validate a scalable business model.
3. Start-ups may have high rates of failure, but the minority of successes includes companies that have become large and influential.

Exemptions for Startups

To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing startups.

1. **Simple process:** Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested in setting up a startup can fill up a simple form on the website and upload certain documents. The entire process is completely online.

2. **Reduction in cost:** The government also provides lists of facilitators of patents and trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startup will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.
3. **Easy access to Funds:** A 10,000 crore rupees fund is set-up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.
4. **Tax holiday for 3 Years:** Startups will be exempted from income tax for 3 years provided they get a certification from Inter-Ministerial Board (IMB).
5. **Apply for tenders:** Startups can apply for government tenders. They are exempted from the “prior experience/turnover” criteria applicable for normal companies answering to government tenders.
6. **R&D facilities:** Seven new Research Parks will be set up to provide facilities to startups in the R&D sector.
7. **No time-consuming compliances:** Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.
8. **Tax saving for investors:** People investing their capital gains in the venture funds setup by government will get exemption from capital gains. This will help startups to attract more investors.
9. **Choose your investor:** The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.
10. **Easy exit:** In case of exit, a start up can close its business within 90 days from the date of application of winding up
11. **Meet other entrepreneurs:** Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

XYZ Solutions Ltd. can accordingly be advised.

2024 - June [4A] (Or) (ii)**Unicorn Startup:**

A unicorn is a term used to indicate a privately held startup company with a valuation of over \$1 billion. For a unicorn, the Journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these startup become so successful is because all of their solutions fill a specific need in a new and different way.

1. The Indian startup ecosystem has developed dynamically in recent times.
2. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators.
3. Although, in the past decade there has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.
4. The primary distinction between the startup and entrepreneurship is that an entrepreneur refers to all business ventures, new or old.
5. It includes small businesses, partnerships, firms, sole proprietorship and corporations which can be based on a new idea or on an existing idea.
6. On the other hand, a startup is a newly emerged business venture started by individual founders to meet a market gap. Startups mostly mean new businesses that are solving market's problems with unique ideas.

Chapter - 5 : Micro, Small and Medium Enterprises**2024 - June [4] (b)**

- Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

Particulars	Investment in Plant and Machinery or Equipment
1. Micro Enterprise	Not more than ₹1 crore and Annual Turnover; not more than ₹ 5 crore.
2. Small Enterprise	Not more than ₹10 crore and Annual Turnover ; not more than ₹ 50 crore.

3. Medium Enterprise	Not more than ₹50 crore and Annual Turnover ; not more than ₹ 250 crore.
----------------------	--------------------------------------------------------------------------

XYZ Pvt. Ltd. Can be categorised as a Small Enterprise as its investment is up to ₹ 10 crore and turnover is less than ₹ 50 crore.

Even if it is a service provider the Category will not change.

- AB Handicrafts Pvt. Ltd. can accordingly be advised.

2024 - June [4A] (Or) (iii)

- ESDP (Entrepreneurship And Skill Development Programme) aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.
- It is applicable to all the aspiring and existing entrepreneurs.
- It facilitates entrepreneurship & self-employment awareness and motivation to different sections of the society
- The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Documentation
- Thus, ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.

Chapter - 6 : Conversion of Business Entities

2024 - June [3] (d)

Conversion of Private Company into OPC :

In order to convert Private Company into (One Person Company) OPC after calling the Board Meeting, Meeting of Shareholders/Members and passing of the necessary resolution, following forms are required to be filed: -

1. Filing of e-form MGT-14: In case of conversion of Company into One Person Company (OPC) Special resolution is compulsory to be passed under section 14 of the Companies Act, 2013.

Accordingly, as per section 117(3) (a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting.

- Following documents are need to be attached with e-form MGT-14:
- a. Notice of general meeting along with copy of explanatory statement under section 102;
 - b. Certified true copy of special resolution;
 - c. Altered memorandum of association;
 - d. Altered articles of association;
 - e. Certified true copy of board resolution may be attached as an optional attachment.
2. Filing of e-form INC-6: The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely: -
1. altered e-MOA and e-AOQA;
 2. copy of NOC of every creditor with the application for conversion;
 3. affidavit of directors confirming that all the members of the company have given their consent for conversion.
 4. Affidavit
 5. Certified true copy of minutes, list of creditors and list of members.
 6. Copy of NOC of every creditor
 7. Consent of the nominee in Form No. INC-3 along with all enclosures
 8. Copy of PAN card of the nominee and member.
 9. Proof of identity of the nominee and member.
 10. Residential proof of the nominee and member.
- Any other information can be provided as an optional attachment(s).
3. Issuance of New Certificate of Incorporation: On approval of Form MGT-14 and Form INC 6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

Chapter - 7 : Non-Corporate Entities

2024 - June [3] (b)

- The residents of the housing complex can form a 'Apartment Owners Association' or 'Resident Welfare Association'.
- These entities are designed to ensure proper maintenance and administration of the society.

The basic requirements for the formation of an RWA or AOA are as follows:

- All the residents of the society can become members of the association.
- A management committee needs to be formed which includes positions like President, Secretary, and Treasurer.
- The association needs to be registered under the Societies Registration Act or Housing Cooperative Society.
- There should be regular meetings of the members and the management committee
- The association should have its own bye-laws which govern the functioning of the association.

2024 - June [4] (e)

Partnership Agreement	Trust Deed
1. Patners, as mentioned in the agreement runs the partnership firm. The procedure to admit a partner in the firm mentioned in the deed.	1. Trustees are generally appointed or elected. Procedure to elect/appoint the trustees is set out in the Trust Deed
2. A partnership deed can be between two or more persons. Maximum number of partners in a partnership firm can be 50 partners.	2. Three parties must be involved with any deed of trust: Trustor: This party is the borrower. A trustor is sometimes called an obligor. Trustee: As a third party to a deed of trust, the trustee holds the property's legal title. Beneficiary: This party is the lender.
3. The deed may mention a fixed term of partnership or for a specific undertaking, or may mention the condition of	3. Trust deed can provide for trust to be wound up within certain number of years.

dissolution by notice of intention to dissolve, if mutually agreed by the partners.	
-------------------------------------------------------------------------------------	--

Chapter - 8 : Financial Services Organisation

2024 - June [4] (a)

- Payments banks is a new model of banks conceptualised by RBI
- These banks can accept a restricted deposit, which is currently limited to ₹ 1 lakh per customer and may be increased further. They can pay interest on these deposits just like savings bank account.
- Both current account and savings accounts can be operated by such banks.
- Payments banks can issue services like ATM cards, debit cards, net-banking, third party transfers and mobile-banking and offer remittance services, These banks cannot grant loans or issue credit cards.
- The other terms and conditions for running the business of payment bank are as follows:
- To be registered as a public limited company under the Companies Act, 2013.
- Payment Banks cannot form subsidiaries.
- One fourth of its branches should be in unbanked rural areas.
- For the first five years, the promoters stake to remain at 40% at minimum.
- Foreign shareholding will be allowed in these banks as per extant FDI norms.
- The voting rights will be regulated as per provisions of The Banking Regulation Act 1949.

2024 - June [4A] (Or) (v)

Housing Finance Companies:

Housing Finance Companies (HFCs) in India are governed by a specific set of laws and regulations which are as follows:

1. National Housing Bank Act, 1987;

2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
4. Guidelines for Asset Liability Management System in Housing Finance Companies;
5. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;
6. Housing Finance Companies - Corporate Governance NHB Directions, 2016;
7. Housing Finance Companies - Auditor's Report NHB Directions, 2016;
8. Direction on Fair Practices Code for Housing Finance Companies;
9. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
10. Information Technology Framework for HFCs - Guidelines;
11. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations 2015;
12. Master Direction - Non-Banking Financial Company - (NBFC) Housing Finance Company (Reserve Bank Directions, 2021).

Chapter - 9 : Business Collaborations

2024 - June [3] (c)

Following are the key features of equity-based joint venture:

- Existence of agreement to create a new entity or for one of the parties to join into ownership of an existing entity
- Shared Ownership by the parties involved
- Shared management of the jointly owned entity
- Shared responsibilities regarding capital investment and other financing arrangements.
- Shared profits and losses according to the Joint Venture Agreement.

Chapter - 10 : Setting up of Branch Office/Liaison Office/Wholly Owned Subsidiary by Foreign Company

2024 - June [3] (e)

- Project Office closure request to be submitted to the Designated AD Category - I bank .

- The application for winding up may be submitted along with approval by AD Category-I bank/ RBI approval for establishing the PO and auditor certificate.

Auditor certificate to include:

- manner in which the remittable amount has been received at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets.
- Confirmation that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for.
- Confirmation that no income accruing from sources outside India has remained unrepatriated to India.
- The designated AD Category - I banks have to ensure that the Project Office had filed their respective AACs.
- Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending.
- Any other document, specified by AD Category- I bank / RBI while granting approval.

Chapter - 11 : Setting up of Business Outside India and Issues Relating Thereto

2024 - June [2] (d)

The requirements for Workers Compensation and disability insurance as per the laws prevailing in USA are as follows:

- As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy
- EIN (Employer Identification Number) is the company's primary identification with respect to communications and must be given to its insurance company when obtaining or maintaining its workers' compensation or disability coverage.
- Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.
- Each "covered employer" must post and maintain at the place of

business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees.

- An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer"

2024 - June [4A] (Or) (i)

- ACRA (Accounting and Corporate Regulatory Authority) is the national regulator of business, public accountants and corporate service providers in Singapore.
- Incorporation is done through Bizfile +, an electronic filing system.
- The process starts with new company name application. The application for approval with desired name and application fee is paid.
- Name application can be approved within a few minutes from payment if the name is available.
- Once a name has been approved, it will be reserved for 120 days.
- ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the company together with the registration number of the company.

Chapter - 12 : Identifying Laws applicable to Various Industries and their Initial Compliances

2024 - June [4A] (Or) (iv)

Isolation of laws applicable on the Company into the Industry specific and general is needed essential for Secretarial Audit. After considering the following factors the auditor should make the isolation of the same based on the laws being applicable on the Company

1. Key financial parameters such as turnover, paid-up share capital, net worth, borrowings, etc.
2. Geographic location of registered office, units , divisions etc.
3. Status of company such as listed or unlisted
4. Types of company such as Private, Public, Holding, Subsidiary,
5. Foreign, Nidhi, Producer, Section 8, etc.

6. Registration with various authorities such as SEZ, Sectoral Regulators, etc.
7. Segment such as manufacturing / trading / service / e-commerce and industry classification thereof.
8. Agreements governing rights, obligations of shareholder's such as Jointventure, shareholders' agreements
9. Number, class and category of employees such as women, contractual employees, etc.

Chapter - 13 : Various Initial Registrations and Licenses

2024 - June [2] (c)

Business entities which provide internet services or engaged in commercial communications ie. call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT enabled services who are categorised as 'Other Service Providers' under New Telecom Policy, 1999, must obtain a telecom license from Department of Telecommunication under Ministry of Communications, Government of India.

The telecom license entitles the entities to provide telecommunication services in India. Other service providers license shall be categorized into two types:

1. Domestic OSP - OSP providing services to clients located within national boundaries of India
2. International OSP - OSP providing services to clients outside India.

Therefore, considering the above facts, A and B require Domestic OSP as they want to setup business in Rewari, Haryana which is in India.

Process:

A company registered under the Companies Act, 2013 or under any other previous law or LLP registered under Limited Liability Act,2008 or Partnership Firm or organisations registered under Shops and establishment Act are eligible to obtain OSP license.

1. To Obtain a OSP license, the Company or LLP shall file an Application in Prescribe Form to the DoT through online on DoT portal.
2. OSP license is a location specific and can have multiple registrations for each such site.

Documents required to obtain license:

1. Certificate of Incorporation issued by ROC;
2. Memorandum and Articles of Association;
3. Copy of LLP Agreement;
4. Board resolution Power of Attorney authorizing the Authorized signatory with attested signature;
5. Resolution passed by all designated partners or Partners as per provisions of LLP Act;
6. A Note on nature of business or activities of the proposed OSP;
7. List of present directors of the Company;
8. List of present designated partners of LLP;
9. Present Shareholding pattern of the Company;
10. Present Shareholding pattern of LLP.

All the documents must be certified with seal by company secretary or one of Directors or Statutory Auditors or public notary in case of Company.

All documents must be certified with seal by either designated partner or all partners or statutory Auditors or public notary in case of LLP.

The OSP license is valid for a period of 20 years and can be extended for further period of ten years from the expiry of twenty years.

State level Approval from the respective State Industrial Department.

2024 - June [4] (d)

1. Import Export Code (IE Code) is an essential identification number which is compulsory for exporting or importing goods.
2. It is a 10-digit code which is issued by the Directorate General of Foreign Trade, Ministry of Commerce and Industry.
3. Although, for services exports, Import Export code shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.
4. IE code has lifetime validity.
5. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.
6. The IE Code must be quoted by importers while clearing customs.
7. Banks need importers IE Code while sending money abroad.

8. For exporters, IE Code must be quoted while sending shipments and banks require the exporters IE Code while receiving money from abroad.
9. The nature of the firm obtaining an IEC may be any of the follows- "Proprietorship, Partnership, LLP, Limited Company, Trust, HUF and Society." Consequent upon introduction of GST, IEC number is the same as the PAN of the firm. The IEC would be separately issued by DGFT.

Note: MN Ltd is advised accordingly.

Chapter - 14 : Constitution and Labour Laws

2024 - June [6A] (Or) (iv)

- Article 43 of the Constitution enunciates principles of Living wage, etc, for workers
- It Imposes an obligation towards ensuring the provision of a 'living wage' in all sectors as well as acceptable conditions of work.
- Minimum Wages, Payment of Bonus are means of attaining goals
- 'Living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.
- A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay.

Chapter-15 : Evaluation of Labour Legislation and Need of Labour Code

2024 - June [6A] (Or) (ii)

- Section 2(35) of The Code on Social Security, 2020 , defines gig worker as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.
- Gig worker is an individual who engages in short-term, flexible jobs, typically as a freelancer, consultant, or independent contractor.
- They are often self-employed, meaning they manage their own schedules and workload without being tied to a single employer.

- **Gig workers enjoy following benefits:**
 - ➔ **Independence:** Gig workers have more control over their work, allowing them to align their tasks with their personal interests and skills.
 - ➔ **Flexibility:** Gig workers often have the freedom to choose when and where they work, providing a level of flexibility not typically found in traditional employment.
 - ➔ **Variety:** They have the opportunity to work on a variety of projects, which can lead to a diverse portfolio and a broad range of experience.
 - ➔ **Cost-Effectiveness:** Gig workers often work remotely, which can save costs associated with commuting and maintaining a professional wardrobe.
- **Gig workers suffer following disadvantages:**
 - ➔ **Income Instability:** Gig work can be unpredictable, leading to periods of feast or famine. Isolation: Gig workers often work alone, which can lead to feelings of isolation or disconnection from a work community.
 - ➔ This lack of a stable income can make financial planning challenging.
 - ➔ **Lack of Benefits:** Unlike traditional employees, gig workers typically do not receive benefits such as health insurance, retirement plans, or paid time off.
 - ➔ **Job Security:** Gig workers may face uncertainty regarding job security as they are often hired on a project-to-project basis.

Chapter - 16 : Factories Act, 1948

2024 - June [5]

- (a) Duties of the Inspector with respect to the Safety of buildings and machinery are indicated in Section 40 of Factories Act, 1948 which are as follows:
- If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve

on the occupier or manager or both of the factory an order in writing specifying the measures, which in his opinion should be adopted and requiring them to be carried out before a specified date.

- If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.
 - Appointment of Safety Officers under Section 40B of Factories Act, 1948
 - If State Government requires, by notification in Official Gazette, the occupier shall employ such number of Safety Officers as may be specified in that notification in every factory
 - (i) wherein 1000 or more workers are ordinarily employed, or
 - (ii) wherein, operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory as per Government.
- (b) Section 9 of Apprentices Act, 1961 deals with practical and basic training of apprentices. Following are the duties of XYZ Manufacturing Pvt Ltd with regards to providing basic and practical training to apprentices:
- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
 - The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme.
 - Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette,

specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.

- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
 - In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
 - Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne:
 - (i) If such employer 250 workers or more, by the employer
 - (ii) If such employer employs less than 250 workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- (c) • **According to Minimum Wages Act, 1948, method for fixing the minimum wages can be as follows:**
- Committee method:**
- Under the committee method the appropriate government appoint committees & sub - committees. After considering the advise of the committee the appropriate Government shall fix or revise the minimum wages by official notification in the official Gazette. It is important to note that the government is not bound to accept the recommendations given by the committee.

Notification Method:

- Under the notification method, the appropriate Government shall, by notification, in the official gazette publish the proposals for minimum rates of wages & give a date not less than 2 months from the date of notification, on which the persons so affected by the rates of wages may give their representation. After considering the representation from the various groups, government will prescribe the minimum rates of wages.
- (d) • Contract Labour (Regulation and Abolition) Act, 1970 covers provision regarding registration of establishment employing contract labour, license of contractor, welfare and health of Contract Labour and penalty & procedure, etc.
- According to section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.
 - Offences by Companies - Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
 - It is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
 - However, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such

director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Chapter - 18 : Child and Adolescent Labour (Prohibition and Regulation) Act, 1956

2024 - June [2] (e)

Benefits of incorporating a Nidhi Company under Nidhi Rules, 2014 are as follows:

1. **Mobilization of Small Savings:** A Nidhi mobilizes small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy. This is especially useful in case the borrower is in urgent needs of funds.
2. **Minimal risk of Loan Repayment:** The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.
3. **Higher return on investment:** Nidhis offer a higher rate of interest on deposits. This makes it an attractive investment opportunity for people, especially the senior citizens.
4. **Professional Management:** The Board of Directors (BOD) of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles.
ABC Financial services is advised accordingly

Chapter - 19 : Industrial Disputes Act, 1947

2024 - June [6] (d)

As per the provisions of the Industrial Disputes Act, 1947 even in the case of an economic recession, the company must follow due process for layoffs as per the Act.

- If Mr. Y believes that the company did not follow the proper procedure or that his termination was discriminatory, he can challenge it.
- The government plays a crucial role in such disputes. If the dispute cannot be resolved at the company level, it can be referred to the

appropriate government authority. The government can then refer the dispute to a conciliation officer, Board, Labour Court, or Tribunal as per the Act. The Government also ensures that the rights of the workers are protected during this process.

- The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10 of Industrial Disputes Act, 1947.
- If Y's claim is upheld, the remedies available to him can include reinstatement to his previous position or compensation. The exact remedy would depend on the specifics of the case and the decision of the Labour court or tribunal.
- The decision of the Labour court or Tribunal is binding on both Mr. Y and the company.

2024 - June [6A] (Or) (iii)

- Arbitration is a procedure in which the parties to a contract opt for a private dispute resolution procedure instead of going to court.
- Arbitration is an alternative for court.
- In case of arbitration the dispute is referred to independent party known as arbitrator
- It is fast & less costly method
- Section 10 A of Industrial Disputes Act, 1947 provides for settlement by voluntary reference of dispute to arbitration.
- **To achieve this purpose, Section 10A makes the following provisions:**
 - ➔ Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator .
 - ➔ The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator.
 - ➔ Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall

provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

- ⇒ An arbitration agreement shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- ⇒ A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.
- ⇒ The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.
- ⇒ Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute.

Chapter - 23 : Payment of Bonus Act, 1965

2024 - June [6] (c)

- Section 9 of Payment of Bonus Act, 1965 deals with Disqualification for Bonus
- An employee shall be disqualified from receiving bonus if he is dismissed from service for:
 - ⇒ Fraud
 - ⇒ Riotous or Violent behaviour while on the premises or the establishment.
 - ⇒ Theft, misappropriation or sabotage of any property of the establishment.
 - ⇒ Employees of ABC Limited, who are guilty of theft will not be entitled to payment of bonus.

Chapter - 25 : Employees' State Insurance Act, 1948
2024 - June [6A] (Or) (i)

- Employees' State Insurance Act, 1948 provides that the State Government shall constitute an Employees' Insurance Court by notification in the Official Gazette.
- The Court shall consist of such number of judges as the State Government may think fit.
- Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of such Court.
- **Matters to be decided by E.I. Court:**
 - ⇒ If any question or dispute arises as to-
 - ⇒ whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
 - ⇒ the rate of wages or average daily wages of an employee for the purposes of this Act, or
 - ⇒ the rate of contribution payable by a principal employer in respect of any employee, or
 - ⇒ the person who is or was the principal employer in respect of any employee, or
 - ⇒ the right of any person to any benefit and as to the amount and duration thereof, or
 - ⇒ any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer in respect of any contribution or benefit or other dues payable or recoverable under this Act or any other matter.
- **Following claims shall be decided by the Employees' Insurance Court, namely:**
 - ⇒ claim for the recovery of contributions from the principal employer;
 - ⇒ claim by a principal employer to recover contributions from any immediate employer;
 - ⇒ claim against a principal employer under section 68;

- claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and any claim for the recovery of any benefit admissible under ESI Act.

Chapter - 27 : Maternity Benefit Act, 1961

2024 - June [6] (b)

- Maternity Benefit Act, 1961 has been amended as Maternity Benefit (Amendment Act) 2017.
- It was amended to increase the ambit to provide that every woman shall be entitled to the payment of Maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the 26 weeks immediately following that day (as against the earlier twelve weeks)
- Out of the maternity benefit period, maximum period for which any woman shall be entitled to take preceding the date of her expected delivery of 8 weeks (instead of 6 weeks).
- No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.
- No pregnant women shall do during the specified period any work which is of hazardous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health
- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months.
- Every establishment having 50 or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow 4 visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

**Chapter - 31 : The Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act, 2013**

2024 - June [6] (a)

Answer:

According to section 2(o) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "workplace" includes:

- any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- hospitals or nursing homes;
- any sports institute. stadium. sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- a dwelling place or a house;

Under Section 2(o), Workplace has been defined as private sector organisation/private venture/undertaking/enterprise/institution/establishment / society / trust / non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation or during a lunch meeting at a restaurant, the same will be covered under the Act.

In the case of Saurabh Kumar Mallick v. Comptroller & Auditor General of India, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

Shuchita Prakashan (P) Ltd.

B-45/141, Street No. 5

Guru Nanak Pura Laxmi Nagar

Delhi - 110092

Visit us : www.scanneradda.com

