An Insight in to the Mode and Methods of Formation of Employment Contract – With Reference to Industrial Workers

Subhashchandra D. Rathod
Research Scholar in P.G. Department of Studies in Law, Karnataka University Dharwad, India

Abstract

The employment contract is the basis for employment relationship and the rights and duties of the party. Indian law is not only silent on modes and methods of formation of law of employment contract but also it is biased towards employer. Therefore it is time to reform the law of contract of employment.

KEYWORDS: Employment Contract, Employment relationship, Conditions of employment, Regularization of employment.

I. Introduction

It is true that, no business activity can be carried on without creating contract. Like any other contract, employment contract is also an agreement, between the employer and employee. Employment contract not only creates an employer and employee relationship but it also determines the rights and obligations of each other. Therefore employment contract plays an important role and in the language of law or jurisprudence, employment contract is status and not only contract that determined their relationship.[1] Therefore, the employer employee relationship has always been a topic of legal discussion. In fact labour law in India or in Great Britain, Kahn-Freund aptly observed that,[2] the contract of employment has two essential jurisprudential features; it is based on the contractual foundation of obligation to work and of the obligation to pay wages, and at the same time permeated by a tendency to formulate and enforce an ever growing number of imperative norms for the protection of the worker, norms which the parties to the contract cannot validly set aside to the detriment of the economically weaker party. The dilemma of 'contract' or 'status' with regard to contract of employment in jurisprudence appears real and as a stumbling-block to jurisprudential thinking if we see the concept of contract of employment in the light of nineteenth century jurisprudence, in which individual was the focus point of study. The modem world has become complex with the jet speed advancement in technology and science which places numerous demands on individuals in society with the result the individual has lost much of his identity. Consequently society has become much more relevant and important than the individual. Such a phenomenon requires the basic change in the outlook of jurisprudential thinking. In this light the concept of contract of employment should also be seen with its utility it performs in society[3] and the answer to the dilemma of 'contract' or 'status' question with regard to the contract of employment in jurisprudence is in the complex solution

[1]S.R. Samant,"Industrial Jurisprudence", N.M. Tripathi Private Ltd. Bombay, 1961, p.7.
[2]D. H. Parry, the Sanctity of Contracts in English Law, Hamlyn Lectures, (1959), p.17. as quoted by Dr. Harish Chander in Contract of Employment and Management Prerogatives Vijaya Publications India p.16.
[3]*Ibid* p. 17.

i.e., the contract of employment is partly 'contract' and partially 'status' to be balanced in the interest of society. This article intends to bring into light the various aspects relating to modes and methods of formation of employment contracts relating to industrial workers who are covered under the Industrial Disputes Act, 1947 (hereinafter referred as the I.D. Act, 1947).

II. Conceptual Clarity:

Before going to study the modes and methods of formation of employment contract it is necessary to know the term what is employment contract mean. Generally the term contract denotes an agreement between two parties which creates a legal obligation for both of them to perform specific acts. Each party of contract is legally bound to perform the specified duties as agreed by them in the contract. Under the Indian contract Act the term 'contract' has been defined as an agreement enforceable by law.[4] Therefore employment contract means it is a bilateral agreement for the exchange of service and remuneration over a period of time.[5] Generally, the contract of employment or contract of employment denotes a relationship of economic dependence and social subordination.[6] In other words employment contract means a form of contract which provides for personal service which the courts recognize as expressing the social relationship of employer and employee, as opposed to the other relationships.[7]

Section 2(j) of the I.D. Act, 1947 defines the term Industry means any business, trade, undertaking, manufacturer or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

Section 2(e) of the I.D. Act of 1947 defines the term "Employer" means;

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

Section 2(s) of the I.D. Act, 1947 defines the term workmen means, any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other

[4] Section 2(h) of I. C. Act, 1872

[5] Employment contract available at http://www.netlawman.co.in/dl/employemtn-contracts visited on 26-08-2018 at 6:30 p.m.

[6] Labour law available at https://en.wiki/la.org/wiki/Labour_law. visited on 26-08-2018 at 6:30 p.m.

[7] An Indian perspective on employment agreements Available at http://www. netlawman.co.in/ia/an-indian-perspective-on-employment-agreements. (Visited on 31-12-2018 at 9.00 am.)

employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) Who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. In the year 2010 in clause 5, in sub clause (iv), the figure of Rs. 1600/- has been raised to Rs. 10,000/-[8] The Supreme Court in *S.K. Maini v. Carona Sahu Co. Ltd.*,[9] held that, the designation of an employee is not of much importance and what is the nature of duties being performed by the employee.

The Industrial Employment Standing Orders Act, 1946 (Hereinafter referred as I.E.S.O. Act, 1946) requires all industrial undertakings employing 100 or more persons to prepare draft standing orders, covering areas such as classification of workers, terms and conditions of employment contract, rights and liabilities of employer and employee, acts and omissions amounting to misconduct and procedure of disciplinary action, etc. Under the model standing orders the workmen are classified as,

(1) Permanent,

(2) Probationers,

(3) Badlis,

(4) Temporary,

(5) Casual,

(6) Apprentices

(b) A "permanent" workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal strike) or involuntary closure of the establishment.

(c) A "probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.

(d) A "badly" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

(e) A "temporary workman" is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

(f) A "casual" workman is a workman whose employment is of a casual nature.

[8] The Industrial Disputes (Amendment) Act, 2010.
[9] 1994 LLR 321 (SC).

(g) An "apprentice" is a learner who is paid an allowance during the period of his training.

III. Employment Contract and Types:

Employment contract usually defined to mean the same as a "contract of service".[10] A contract of service has historically been distinguished from a contract for the supply of services, the expression altered to imply the dividing line between a person who is "employed" and someone who is "self-employed". The purpose of the dividing line is to attribute rights to some kinds of people who work for others. This could be the right to a minimum wage, holiday pay, sick leave, fair dismissal, a written statement of the contract, the right to organize in a union and so on. The employment contract can be divided into two types; i.e. employment for indefinite period and term employment.

Employment contract for indefinite period: The usual form of contract is one where the parties do not specify the period of employment at the outset. The contract will continue until either party gives to the other notice to terminate the contract. The parties may agree on the length of the notice which either may give the other. The notice must be equal to or in excess of the minimum periods of notice laid down in the employment regulation laws. In employment contract for indefinite period there is a element of employment and social security.[11] In default of agreement, the minimum periods of notice will apply unless it is apparent from the circumstances of the contract that the parties intended that the contract should be terminated by notice in excess of the statutory minimum, but have not included any provision in the contract as to the length of notice.

Term employment of employment contract for a fixed period: Employment contract is for a fixed term, if it fixes the maximum duration of the period of employment, whether or not the contract contains a power for either party to bring the contract to an end by giving notice to the other party before the expiration of the period certain. But for the contract to be a fixed-term contract, it must have a defined beginning and end, so that a contract which is to come to an end upon the happening of an uncertain future event. Fixed term employee enjoys neither job security nor social security.[12] But only can claim damages if the employer terminates this contract before the expiration of the terms certain, or during its continuance, other than in accordance with the provisions of the contract, the employee will have an action for wrongful dismissal.

IV. Tests For Determining Nature of Employment Contract:

The concept of employment involves three ingredients: (1) ‘employer’ (2) ‘employee’ and (3) the contract. “Employer’, in relation to an employee, means the person by whom the employee is, or, where the employment has ceased, was, employed; ‘employed’ means an individual who has entered into, or works under, a contract of employment. The contract of employment brings in the contract of service between the ‘employer’ and the ‘employer’. Under the

[10] Employment contract available at https://en.wiki/la.org/wiki/Employmentcontract#cite_note-2. visited on 26-08-2018 at 6:30 p.m.
[11] N. M. P. Verma and I C. Awasti Contractual Employment in Indian Labour Market Emergence and Expansion, Conceptual Publishing Company , Pvt. Ltd., New Delhi, p.7.
[12] *Ibid.*

'contract of service', the 'employee' agrees to serve the 'employer' subject to his control and supervision. The employer and employee relationship implies that the contract between the two is of 'contract of service' and not 'contract for service.' The distinction between 'contract of service' and 'contract for service' is that in the case of former, the employer can order or require not only what is to be done, but also how it shall be done, but in the case of latter, the person can be asked what is to be done but not how it shall be done. The control and supervision test used to be considered sufficient, especially in the case of the particular factors which may assist a Court or Tribunal in deciding the point. There is no single test for determining whether a person is an employee. The question whether the person was integrated into the business or remained apart from and independent of, it has been suggested as an appropriate test, but is likewise only one of the relevant factors for the modern approach is to balance all those factors in deciding on the overall classification of the individual. This may sometimes produce a fine balance with strong factors for and against employed status.

The factors relevant in a particular case may include, in addition to control and integration, the following, namely, "method of payment; an obligation to work only for that employer; stipulation as to hours; overtime, holidays, etc., how the contract may be terminated; whether the individual may delegate the work; who provides tools and equipments; and who ultimately bears the risk of loss and the chance of profit. In some cases, the relationship of employment is established; its duration would not be material. Even a temporary or casual hand would fall within the ambit of part of the definition of 'employee.'

V. Modes and Methods of Formation of Employment Contract:

In India in respect of industrial workers working in industrial establishment covered under I.D. Act, 1947, there is no single code on the labour and employment laws covering all aspects of labour and employment related matters. Both the Central and the State Governments have the power to legislate on the subject of employment and labour relations.[13] There is no specific rules exist which govern the recruitment, interviewing, screening and hiring procedure to be followed by companies in private sector. The employer is free to devise its own policies regarding appointment procedure. The recruitment policy so devised, however, should not violate the fundamental rights such as right to privacy, right to equality, etc.[14] of the applicants. Before employing a candidate, the employers in India generally conduct pre employment inquiries and background checks in order to ascertain the suitability of the applicant for the job. General rules governing contracts as laid in the I.C. Act, 1872, are applicable on the employment agreements as well.[15]

[13]Labour employment laws in India available at https://www.roedl.com/en-gb/de/media/.../labour-employment-law-india.pdf (Visited on 26-11-2018 at 7.54.pm.).

[14]The Supreme Court in Justice *K.S Puttaswamy (Retd.) v. Union of India and Ors.* recently held that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. The judgment has defined nine different kinds of privacy and one of the main and includes Informational Privacy. (2017) 10 SCC 1.

[15]Sec. 2(s) of I.D. Act, 1947 defines the term "workman" means- any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such

Though oral agreement is valid, for practical purposes an employment agreement should be in writing in order to maintain clarity in employment relationship and also as proof. The employer and employee are free to agree on the terms of their relationship. However, both the employer as well as employee is required to ensure that the terms of the contract do not contradict with the provisions of law.

The I. D. Act, 1947 is silent at the entry point and permits both oral and written form of employment contracts.[16] However, in some of the industries employer will issue a written appointment letter to worker as a matter of practice. The written document may contain the name and address of the employer and the employee; title of the job or nature of work to be performed by the employee; place and hours of work etc. The employer may also incorporate the information into employment contract; option of the employer to transfer an employee from one office to another branch office, affiliate, etc.; date of commencement of employment; wages or salary details overtime wages; any benefits that an employee is entitled to gratuity, provident fund and pension; type of contract whether permanent or fixed-term; period of notice required for termination of employment; leave entitlement; conditions under which the employer can terminate the contract; and non-compete, confidentiality and non-solicitation provisions, etc. further the contract will contain the provisions regarding probationary.[17]

In some cases it is very difficult to distinguish even between contract of service and contract for service, because of the vagueness of the test of control by the employer over the worker. But the test is, in case there is a breach of contract, is the employer entitled to claim merely damages in law or is he entitled to take disciplinary action against an employee. If the employer is entitled to take disciplinary action under the contract then the contract is of service and in cases he can claim only damages for breach then contract is for service.

On the other hand, to claim security of tenure in employment as provided by the present law, the workman has to prove the contract of employment between himself and the employer. Therefore the basic question to start with is, whether someone works is under a contract of employment or not. If there is a written contract the question of whether or not, it is a contract for service or for the provision of services is also one of law.[18] Where the contract is not in written form whether or not an employment contract exists is a question of fact, not law.[19] The premise for the determination of the nature of a contract of employment could be determined by establishing the particular type of employment contract entered into by the parties. Like every other type of

person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

[16] Sec. 2(s) of I.D. Act, 1947 defines the term "workman" means- any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

[17] https://paycheck.in/labour-law-india/employment-security (Visited on 25-11-2018 at 12:21 pm.).

[18] Neil Fagan Contracts of Employment Eastern Law House Private Ltd. Calcutta, 1990 p.3.

[19] Ibid. p. 22.

contract, employment contract has its peculiar ways by which such a relationship could be established.

VI. Employment Contract and Contract Law:

The formation of contract of employment is governed by the general principles of law of contract which are contemplated in the I.C. Act, 1872[20] the law of contract provides some mode of formation of contract and the said mode is fallowed in case of formation contract of employment as well. In *Orient Bank V/s Bilante International Ltd.*[21] it was held that there are five ingredients that must be present in a valid contract of employment and they are as follows;

(1) Offer
(2) Acceptances
(3) Consideration
(4) Intention to create legal relationship and
(5) Capacity to contract.

Generally the following modes and methods are followed for formation of employment contract. Those are capacity to make a contract in law, Offer, Acceptance, intention to make contract and Consideration.

A) Capacity: A contract can be formed or entered into only by those parties who have the capacity to make a contract in law.[22] As per section 3 of the Indian Majority Act, 1857 only a person who have attained the age of eighteen years at the time of the formation of the contract is have the capacity to contract. There is a distinction between Indian law and the English law on the question of Minor's contracts. In India it is considered that minor's contracts are void ab-initio[23] whereas in England the minor's contracts are voidable at the instance of the minor.

In India employment contract of child is prohibited only in some of the hazards employment and regulated by many statutes i.e. The Child labour (Prohibition and Regulation) Act, 1986,[24] the Factories Act, 1948[25], the mines Act, the plantations Act, and the Indian Constitution[26] etc. Law prohibits engagement of child labour that who is below 14 years age only in certain scheduled employments. But the employment of minor is permitted and regulated by many statutes. Therefore in India we follow English law as an exception to section 11 of I.C. Act.1872. At common law, minors' contract is in general, voidable at the instance of the minor and is binding on the other party. [27] The exception to the rule is contracts of necessity and certain other contracts such as contracts of service and apprenticeship if for the benefit of the minor.[28] So the

[20]See Sections 3 to 36 The I.C. Act, 1872.
[21](1997) 8 NWLR 515.
[22]Section 11 of the I. C. Act, 1872.
[23]*Mohori Bibee v. Dharmodas Ghose* (1903) I.A. 114.
[24]As per the Child Labour (Prohibition and Regulation) Act, 1986, amended in 2016 ("CLPR Act"), a "Child" is defined as any person below the age of 14, and the Act prohibits employment of a Child in any employment including as a domestic help.
[25]Sec. 67 says, no child who has not completed his fourteenth year shall be required or allowed to work in any factory.
[26]Article 24 of constitution of India says, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
[27]*Supra note* 2, p.23.
[28]Halsbury's Laws of England, Vol.XVII, p.604. as quoted in Supra note 4 p.23.

minor contracts of employment or employee if it is on the whole for the benefit of the minor. The benefit to minor in contracts of employment depends on the terms generally available in the type of employment and the locality in which he works.[29] If the minor was employed on the terms which are usual terms from benefit point of view, the terms will bind him in spite of the fact that some of them are disadvantageous to him.[30] Even if the terms were not worst than what is usually offered to adults a minor would not be bound by them if they were harsh or oppressive.[31] However, it is well established in England also that a minor is not liable on trading contracts which primarily mean that a minor cannot buy or sell goods as a dealer.[32]

In India it is considered that minor's contracts are void ab-initio whereas in England the minor's contracts are voidable at the instance of the minor. *In Raj Rani V. Prem Adib*[33] In this case, on contract of service a film producer entered into an agreement with a minor girl, through her father, to act in a film. The agreement was to pay Rs. 9500 in total to be paid in twelve equal installments. After the minor had acted for about one month the producer refused to employ her any more for the acting in his film. The minor sued the producer for the breach of contract and claimed Rs. 8708 as the damage for the breach of contract which she had suffered because of producer fault. In this case Desai J. of the Bombay High Court relying on *Mohari Bibee's* case did not give relief to the minor on the ground that " the minors contract is a void contract, he is not entitled to sue for damages for breach of such contract including the contract of service which was entered in to by the minor herself.

B) Offer, Acceptance and intention: The general principles of offer and acceptance apply to the creation of all contracts of employments.[34] The law does not recognize the existence of contract of employment merely because of the presence of mutual promises. Agreements are made every day in domestic and social life where the parties do not intend to invoke the assistance of the courts. As has been clearly pointed out by lord Stowell in *Dalrymple v. Dalrymple*[35] that the contracts must not be sports of an idle hour, mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatever. Hence there should be offer and acceptance and there must be intention to create relationship of employer and employee. Further in addition to the phenomena of agreement and the presence of lawful consideration another element also is essential for the creation of employment contract i.e., the employer and the employee shall have the intention to create legal relations. Cases in which, the contract of employment is denied on the ground that there is no intention to create legal relations,

[29]G.H.Treitel, An Outline of the Law of Contract, 2nd edn., (1979) p.195.
[30]*Clements* v. *L & N.W.Rly*. (1894) 2.Q.B. 482.
[31]*De. Francesco v..Barnum* (1890) 45 C.D.430.
[32]*Cowern v. Nield* (1912) 2 K.B. 419.
[33]A.I.R. (1949) Bom.215.
[34]See 11 of I.C. Act, 1872 says every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.
[35](1811) 2 Hag. Con. p.54: as Quoted in Cheshire and Fifoot's Law of Contract, p. 102.

the inference to be drawn from the language and the circumstances in which the parties entered into an agreement. This is vehemently supported by the Scrutton L.J. in *Rose & Frank v. Crompton*[36] wherein he observed: 'it is quite possible for the parties to come to an agreement by accepting a proposal with the rest that the agreement does not give rise to legal relations. The reason for this is that the parties do not intend that their agreement shall give rise to legal relations. This intention may be implied from the subject matter of the agreement, but it may also be expressed by the parties. In social and family relations such an intention is readily implied, while in business matters the opposite result would ordinarily follow. But I can see no reason why, even in business matters, the parties should not intend to rely on each other's good faith, and honor, and to exclude all idea of settling disputes by any outside intervention, with the accompanying necessity of expressing themselves so precisely that outsiders may have no difficulty in understanding what they mean. A contract of employment is, created by the simple offer of employment subsequently accepted. There have been a number of occasions where employers have been caught out by offering employment to an individual, the offer has been accepted, and subsequently the employer finds out that there is some reason why they do not want to continue to take the person on. Very often an assumption is made that the employer can simply disengage. A contract has, however, been created and has to be terminated. If the terms of the offer and acceptance included any provision as to notice, then notice will, on the face of it, have to be given subject to any obligation to mitigate.[37]

C) **Consideration:** The next relevant general principle of contract applicable to contract of employment is the principle of consideration.[38] The basic notion of consideration in the contract is that of reciprocity or mutuality. The law requires that a promise should not be able to enforce the promise, unless he has given or unless the promisor has obtained something in exchange for it. Consideration is a benefit to the promisor or a determent to the promise.

Where the contract is bilateral one, each party will give and receive promise. Reciprocity being the idea in consideration gratuitous promise to charity for no return and not supported by consideration is void in law. Mutual promises can be and are generally in the contract of employment consideration for each other.[39] The consideration on the one side "If you will enter into my employment, I will make you one, two or more several promises." The consideration on the other side is, "If you will take me into your employment, I will make you one, two or more several promises."

For employers, consideration should be something of value above and beyond anything employees would ordinarily receive in the course of their employment, in exchange for signing the new agreement. Otherwise, the contract may not be enforceable if

[36] (1923) 2 K.B. 261.
[37] *Supra note* 2 p. 19.
[38] Section 25 of the I.C. Act, 1872 says an agreement made without consideration is void.
[39] *Supra note* 2 p. 21.

challenged in court. For employees, it is important to understand that new employment agreements in your workplace require such consideration in order to be seen by the courts as valid. Without it, your employment agreement, including key clauses the employer intended to restrict the terms of your employment, may not be enforceable.

D) Coercion, fraud, misrepresentation, and Mistake: The general principles of coercion, fraud and misrepresentation are equally applicable to the contracts of employment also. If the consent to a contract of service is obtained by undue influence, the agreement becomes voidable at the option of the party whose consent is obtained by undue influence.[40] In such cases the party whose consent was caused by fraud or misrepresentation may also if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.[41] Similarly if the consent to a contract of service is obtained by undue influence, the agreement becomes voidable at the option of the party whose consent is obtained by undue influence.[42] Again wherein both the parties to the contract of employment enter into a contract because of mistake of fact which is essential and goes to the root of the contract of employment then the contract of employment is void.[43] However, if the contract of employment is created because of the mistake on the part of only one of the parties to the contract it does not become voidable.[44] The voidability or voidness of the contract would depend on the scrutiny of the facts and circumstances of the each case. Moreover, the contract of employment is void if the object of such contract is illegal or against public policy.[45]

In order to give protection to the workmen against the superior economic position and bargaining strength of the employers in contractual relations, the Indian parliament enacted the I.E.S.O. Act,1946 to interfere with the contract of employment, or at least to have the terms of employment defined with precision. Under this Act the government has framed model standing orders defining the terms and conditions of service. The Act is applicable to all the industrial establishments employing more than hundred workmen,[46] and it is required under the Act to frame rules as for as possible in accordance and conformity with the model standing orders wherever they are prescribed. It is required of the industrial establishments to frame rules for the following matters:

1. Classification of workmen(whether permanent, temporary, apprentices, probationers or badlis);
2. Manner of intimating to workmen periods and hours of work, holiday, pay-days and wage rates;
3. Shift working;

[40] *Ibid*, p. 26.
[41] Section 19 of I.C. Act.1872.
[42] Section 19-A & section 16 of I.C. Act.1872.
[43] Section 20 of I.C. Act. 1872.
[44] Section 21 & 22 of I.C. Act. 1872.
[45] Section 23. I.C.Act, 1972.
[46] See section 3(2) of I.E.S.O. Act, 1946.

4. Attendance and late coming;
5. Conditions and procedure in applying for, and the authority which may grant, leave and holidays;
6. Requirement to enter premises by certain gates and liability to search;
7. Closing and reopening of sections of the industrial establishment, temporary stoppage of work and the rights and liabilities of the employer and workmen arising there from;
8. Termination of employment and the notice thereof to be given by employer and workmen;
9. Suspension or dismissal for misconduct and acts or omissions which constitute misconduct;
10. Means of redress for workmen against unfair treatment or wrongful extractions by the employer or his agents or servants;
11. Any other matter which may be prescribed.

The standing orders framed under the I.E.S.O Act, 1946 are in fact not law in the strict sense. They are understood more as an agreement between the employer and the employee. After the employers frame the standing orders under the Act, they are required to submit to a certifying officer who certifies them after giving notice to the union and proper hearing to employers and employees.[47] Initially, standing orders were meant to check malpractice by the employers who left conditions of services undefined and, therefore, the certifying officer under the Act was not supposed to see the reasonability aspect of the standing orders once they were agreed upon by the employers and the union.[48]The Supreme Court has expressed the view that the standing orders have a statutory force.[49]

VII. Conclusions

To conclude it can be said that, it is accepted fact that, the employment contract is the basis for employment relationship and the rights and duties of the party can be determined bases on the terms and conditions of employment contract. But surprisingly in India employment regulation law relating to industrial workers is silent on the modes and methods of formation of employment contract. Further though the law of contract, assumes that there is equal freedom to the parties to enter into a contract, but the law shuts its eyes to the inequality inherent in the employment relationship. It ignores the superior economic strength and the bargaining power of the employer. Though there are a number of restrictions imposed on the employment contract by statutes, judicial decisions or customs and practices of trade, yet the employment contract has not lost its essential character as being a contract. Therefore it is time to reconsider the law on this aspect and to amend or to enact law dealing with mode and methods of formation of written employment contract which not only helpful to the employer and workers but also to the court to determine the terms and conditions of employment contract.

[47]See section 5 of the I.E.S.O. Act,1946.
[48]*Hissar Distt Electric Supply Co. v. State of U.P.*, A.I.R. 1966 S.C. 1471.
[49]*Bagalkot Cement Co. v. R.K. Pathan*, A.I.R. 1963 S.C. 439.