

CHAPTER VI.

INDUSTRIAL SAFETY, SECURITY AND WELFARE.

In any industrial society, workers need to be ensured of their safety, security and welfare. Workers, particularly those employed to attend to machinery have to be safeguarded against industrial accidents. This, naturally involves an elaborate machinery of inspection to list out safeguards and precautions to minimize industrial accidents.

Workers have, in addition, to be made secure as far as their income after retirement is concerned. Rather than to allow workers to be "stranded" financially on retirement, legislation has to be passed to provide for a system of old age provident fund which could take care of the workers on retirement.

Workers' welfare is another area of concern to the State. While effective measures may be adopted to prevent injury through accidents, they could not be avoided totally. When such mishap takes place, provision must be made to compensate the workers for their loss or injury. Children should be prevented from working during night, their welfare should be looked after and their conditions of employment should be regulated. Similar women's welfare as far as their maternity protection, hours of work and place of work should be ensured. It is the aim of this section to review the conventions relating to the subjects and the corresponding Malayan labour laws.

SECURITY OF WORKERS.

The importance that the International Labour Organisation attached to old age pension schemes could be from the fact that the entire 1933 International Labour Conference (Twenty-Fifth Session) was devoted to conventions on this topic.

There are two conventions providing for old-age pensions. They are Old Age Insurance Convention 1933 for industrial and commercial workers and Old Age Insurance Convention 1933 for Agricultural workers. They stipulate that member states who ratify these conventions set up and maintain a scheme of compulsory insurance.

"The scheme shall provide for compulsory old-age insurance for manual and non-manual workers employed in industrial and commercial undertakings." (1)

(1) Article 2, Old-Age Insurance (Industry & Commerce) Convention 1933

" The scheme shall provide for compulsory old-age insurance for manual workers in agricultural undertakings " (2)

The Employees Provident Fund Ordinance 1951 without making any distinction between industrial, commercial and agricultural workers, states that " every employee and employer shall be liable to pay monthly contributions " (3) to the Employees Provident Fund Board. The employer is liable to pay contributions payable by himself and also the contribution payable by his employees. Section 10 permits the employer to recover from his employees the amount payable on behalf of them. This recovery is made through deductions from the wages of the employees. While the employer may thus recover from the employees the latter's share of the Fund his own contribution to the Fund is irrecoverable from his employer.

The second schedule to the Ordinance states the amount of contribution by both parties. When the wages do not exceed ten dollars, no contribution is required. When the wages exceed ten dollars, contributions by each party vary beginning from \$1.50.

At a wage of \$100/- contribution by each party is \$5.50. From \$100/- and above, the rate of contribution by one dollar for every increase of twenty dollars of the wages. The schedule states contributions up to a wage of \$380/- when the contribution by each party is \$20/-. The Workmen's Compensation (Amendment) Ordinance 1963 provides \$1/- of contribution for every \$20/- above a wage of \$400/-. The average contribution is about 5% of the wages. This is not a big sum, for a wage earner who earns \$200/- a month has in his credit about \$240/- per annum. If one assumes he works for 30 years his accumulated contributions is about \$7,200/-. This sum would not last him for half a dozen years.

All such contributions of the employers and employees shall be put into an Employees Provident Fund in such manner as the Employees Provident Fund Board (4) decides. The Board then credits to the employees account the amount of contributions paid on their behalf and on behalf of the employer. The contributions are entitled to an annual rate of interest of 2½%. But this rate of interest varies in different circumstances.

The Old-Age Insurance Conventions permits that " Any member may in its National laws or regulations make such exceptions from liability in insurance " (5). It suggests that these exceptions could be in respect of workers whose remuneration exceeds a certain amount or with regards to members of the employer's family.

(2) Article 2, Old-Age Insurance (Agriculture) Convention 1933

(3) Section 7, Employees Provident Fund Ordinance, 1951

(4) Section 3 of the Ordinance provides for the creation of the Board.

(5) Article 2

✓ The Ordinance states that it is applicable to all workers who are about the age of 16 and who are employed under a contract. It only excludes those who have worked for a period of less than one month. The 1951 Ordinance had excluded domestic servants from its application but 1964 Amended Ordinance provides that any domestic servant shall if he intends to be a contributor give notice to his employer and the Board. His employer shall then become liable to contribute to the employees Fund.

Article 2 of the convention which permits this exemption also allows those who contribute to a different special pension scheme to be freed from liability to contribute to the national fund.

Section 16 of the Employees Provident Fund Ordinance makes a provision for recognition of existing funds. In such cases or when new funds are to be started the employers and employees need not contribute to the Fund. When an employee is transferred to a new job where a special pension scheme exists, he is no longer required to contribute to the Fund and his amount in the Fund shall be transferred to the new fund.

Article 4 of the convention further stipulates that " An insured person is entitled to an old age pension at an age which shall be determined by national laws or regulations which shall not exceed 65. " Accordingly the Employees Provident Fund Ordinance under Section 13 forbids the withdrawal from the Fund except with the authority of the Board. Such authority shall not be given unless the employee is dead, or is no longer able to work or has reached the age of 55 or is leaving Malaya for good.

Article 10 of the Old Age Insurance Conventions states that insurance scheme shall be administered by^a institution founded by public authorities and should not be conducted on a profit basis. The Employees Provident Fund Board, referred to earlier, has been established by the Minister of Finance under the powers given to him under Section 3 of the Ordinance. It consists of six persons holding office of emolument under the government and six representatives of labour and six management and they shall serve for a period of three years. The Board is the Trustee of the Fund and it has powers to deposit or invest the money within the provisions of the written rule.

The Ordinance considers it to be an offence either the failure to remit contributions to the fund or the failure to remit them within

the prescribed time. (6) Given below is a table which gives the details of the summary of prosecutions under the Ordinance.

TABLE VIII. Summary of Prosecutions during 1961.

<u>Offences.</u>	<u>No. of convictions on charges</u>	<u>Total amount of fines</u> ₹
Failure to register a liable employee)	120	3,980
Failure to pay contribution) by due date)	458	17,450
Failure to pay full amount) of contribution)	3	240
Others	18	425
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	599	22,095
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Sources:- Appendix 37, p.85, Annual Report 1961, Ministry of Labour.

The table indicates that the failure on the part of the employers to contribute to the Fund number few. But about 75% of the charges are for late payment of contributions. Thus either failure to pay or delay in payment of the contributions are liable to be punished. The Officers of the Department of Labour are permitted under provisions of the Ordinance to visit places of employment and carry out checks to ensure that the provisions of the Ordinance are being complied with.

Besides the security of men, the welfare of women and children are important too. The provisions for securing their welfare would reflect the social advancement of a society. Let us now look at these two classes of people.

WELFARE OF WOMEN.

The International Labour Conference has enacted several conventions for the promotion of the welfare of women. The conventions range from hours and place of work to maternity protection.

(6) Section II, provides a fine not exceeding one hundred dollars for such offences.

MATERNITY PROTECTION.

The Maternity Protection Convention 1919, defines women as a female irrespective of age, nationality or marital status. It seeks to guarantee a six weeks of pre and post confinement leave for women and during these weeks they are entitled to be paid for their maintenance. " In any public or private industrial or commercial undertaking a woman shall not be permitted to work during the six weeks following her confinement " (7) Women have also the right to leave work if they are able to produce medical certificate to indicate that confinement is expected to take place within six weeks. While women are away on these two occasions, they shall be paid " benefits sufficient for maintenance of herself and child by means of a system of insurance or public funds and as an additional benefit shall be entitled to free medical treatment " (8)

These privileges of women are provided for in Part IX of the Employment Ordinance 1955. It provides that female labourers are entitled to thirty days of pre-confinement allowance period and thirty days of post confinement allowance period. They shall also be entitled to maternity allowances in respect of such absence from work. Maternity leave of sixty days is not usually granted. It often happens that only about forty days are given. This figure falls very short of the confinement leave provided for in the convention. But since Malaya has not ratified the maternity protection convention it need not follow the convention's time allowance.

Section 40, however, states that maternity allowance may be forfeited if a female labourer fails to notify within 14 days of her confinement.

In 1959 there was only one case of the violation of the provision to pay maternity allowance which was prosecuted and fined . In 1961, there was not a single such case.

Next we shall look into laws that prohibit the working of women at night.

NIGHT WORK.

The Night Work (Women) Convention 1948 states that " Women shall not be employed at night in any public or private industrial undertaking " (9) It defines " night " as at least "12 consecutive hours with at least 7 hours between 10.00 p.m. and 7.00 a.m. Dealing with Employment of Women, Part VIII of the Employment Ordinance 1955, does not permit women labourers to be employed between 1.00 a.m. and 5.00 a.m in the morning. It also secures for female labourers eleven consecutive hours free from such work before they could be asked to commence work. Section 34 of the Ordinance prohibits night work for women in industrial and agricultural undertaking between the hours 10.00 p.m. to 5.00 a.m.

(7) Article 3, Maternity Protection Convention 1919.

(8) Article 3, Maternity Protection Convention 1919

(9) Article 3, Night Work (Women) Convention 1948.

UNDERGROUND WORK

The Underground Work (women) Convention, 1935 stipulates that "No female shall be employed on underground work at any time".(10)

Section 35 of the Employment Ordinance 1955 prohibits underground work for female labourers. The Convention exempts women holding managerial positions or those employed in health and welfare services from its provision as those occupation require women only to visit underground work area at irregular intervals for inspection or medical treatment.

WELFARE OF CHILDREN

The safety and protection of children is a matter of international concern. Driven by humane considerations, countries all over the world legislate laws to ensure the safety and protection of children. Malaya has enacted several Ordinances with a similar purpose and they clearly mirror the government's realization of this concern for children.

Various conditions of child labour are discussed in the International Labour Organisation Conventions and Malayan labour laws. Setting a minimum age for the employment of children in the various undertakings, the time of day when they can be employed, the absence of health and morally injurious factors are some of the standards set out in them.

The International Labour Organisation has drafted out several Conventions on this topic. The minimum age (Industry) Compensation 1937, sets out 15 as the age limit below which no child is to be employed in any public or private industrial undertaking (11) except where the undertaking is a family concern. The Convention also makes a condition that if there is risk of life, health or morals of employees in a particular occupation, national laws may prescribe a higher age than 15.

Another Convention - the minimum Age (Agricultural) Convention 1921 stipulates 14 as the minimum age for the employment of children in agricultural undertakings. "If employment of children is outside the hours of school attendance, it shall not be such as to prejudice their attendance at school"(12). One can note a concern for the education of the children in this Convention.

A further development of their minimum age setting for children is found in the minimum age (Non-Industrial Employment) Convention 1937.

(10) Article 2, Underground Work (Women) 1935.

(11) "Industrial Undertaking" include mining, manufacturing, construction of building, transport and public utilities.

(12) Article 1, minimum^M age^A (Agricultural) Convention 1921.

While it prohibits the employment of children under 15 years of age the hours fixed for school attendance, it provides some exceptions.

These exceptions include the employment of children of 13 years on light work which is "not harmful to their health and normal development".(13) The same Convention also prohibits the employment of children under 14 years on light work for more than 2 hours per day and limits the total number of hours spend on work in school to 7 days. The Convention also provides that national laws may prescribe the number of hours per day during which children over 14 may be employed on light work.

Thus far our attention has been focused on the Convention that sets out the minimum age of children to be employed in the various undertakings. There exists at least 2 Conventions which does not permit the Employment of children below a certain age to work at night.

The Night Work of Young Persons (Industry) Convention 1948 states that a person below 16 years of age shall not be allowed to work between 10.00 p.m. and 6.00 a.m.. If he is between 16 years and 18 years he shall not be permitted to be employed for at least 7 consecutive hours between 10.00 p.m. and 7.00 a.m.

Article 3 of the Convention prohibits the employment of a person below 18 years at night in any public or private industrial undertaking.

The Night Work of children and Young Persons (Non-Industrials) Convention 1946 states that "national laws may stipulate minimum age for the employment of children in public entertainment and licence shall be granted for the participation of children in public entertainment if in so doing they may not run the risk of their life, or face the dangers to their health or morals".

Malaya has enacted the Children and Young Persons Ordinance 1947 to provide for these standards. But strictly speaking, Malaya has not formally recognised the above-mentioned Conventions relating to children's employment. Nevertheless, one could easily notice the influence of these Conventions on the Children and Young Persons Ordinance and a few other Ordinances relating to the subject.

Children and Young Persons Ordinance makes a distinction between a child and a young person - a distinction omitted by the International Labour Organisation Conventions. The Ordinance does not state an age below which an individual is a child or a young person; but rather sets several age limits for several classes of individuals. A child for

(13) Article 3, Minimum Age (Non-Industrial Employment) Convention 1937.

example, is anyone below the age of 16 years if he is employed in public entertainment. If it is a transferred child (14) a female under the age of 14 years is regarded as a child. In any other case, a person under 14 is considered a child.

A young person, if he is employed in public entertainment, is one between the ages of 16 and 18. In all other cases the age limit is between 14 and 18.

Part II of the same Ordinance besides limiting the age for employment of children and young person also sets some standards of treatment of children at home and prohibits ill-treatment of them. This is in the work places.

Article 3 of the Ordinance, for instance clearly prohibits mishandling of children, "If any one willfully assaults, ill-treats neglects or abandons a child or young person is guilty of an offence."

Neglect of provision of food, clothing, medical aid and lodging is similarly considered an offence.

Further a child is not to be permitted to beg; "any one who causes or procures any child allows the child to beg is guilty." (15). Although these provisions for the protection of children exist, in practice is not easy to be implemented. One can always notice cases of ill-treatment of children or servant boys and girls, yet they go unpunished. It is not uncommon, also, to see children and young persons begging on the streets and cinema halls. Apparently the Officers of the Department of Labour have not noticed them or taken steps to eliminate such practices.

When evidence exists as to the guilt of any of these offences, a police officer may take a child to a place of custody.

With a warrant a police officer may, "Search for or remove the child or young person to a place safety and the guilty shall be brought before the court."(16) on receipt of a complaint of the violation of any of the provisions of Part II.

Section 8 of the Ordinance sets 8 as the minimum age for the employment of a child. "No child under the age of 8 shall be employed in any form of labour."(17)

(14) A female under the age of 14 living apart from her father or mother.

(15) Article 4. Children and Young Persons Ordinance 1947.

(16) Article 7. Children and Young Persons Ordinance 1947.

(17) Article 8. Children and Young Persons Ordinance 1947.

Although this minimum age is below 15 in the case of industry (18) and 14 in the case of agriculture as suggested by the International Labour Organisation Convention, Malaya has felt that this age is more in keeping with our standards of social development. In fact even above the age of 8 a child is only allowed to be employed in "light agricultural or horticultural work carried out collectively." (19) Furthermore, no child (i.e. one below the age of 14) is permitted to be employed in any godown or workshop. In the same article a provision is also made authorizing the Minister to prohibit the employment of children or young persons below certain minimum conditions.

The Minister is also authorized, if he is satisfied of the necessity, to prescribe minimum wages for children and young persons in any employment.

As regards the employment of children in public entertainment, no child under 12 is to be engaged in the said occupation irrespective of the day. However, children and young persons below 17 could be so employed on the issue of a licence by the Commissioner for labour after ascertaining of the safety and fitness of the child. (20)

Another aspect of the child welfare the prevention of immoral use of transferred children is safeguarded in part II of the Ordinance under discussion. A transferred child is a female under the age of 14 and who lives apart from her natural father or mother.

Section 14 provides that desire to transfer or have a transferred child shall be notified to the Protector (an official of the Ministry of Labour) to obtain his approval. When permission is obtained from the Protector to have a transferred child, it is the obligation of the holder to ensure that the child is not ill-treated or neglected or employed or trained for any immoral purpose. Failure to comply with the condition makes the holder guilty of an offence.

The same Ordinance in Part IV considers it unlawful to transfer the possessions custody or control of a child of ^{of} any valuable consideration.

An attempt is made in this Ordinance to comply with the obligation laid in the Night Work of Young Persons (Industry) Convention 1943 and Convention 1946. In the Section entitled hours of work in the Ordinance it is clearly stated the age group and its relation to the total number of hours a child could be employed and the time of the day it should not be employed.

(18) Minimum Age (Industry) Convention 1937.

(19) Minimum Age (Agricultural) convention 1921.

(20) This fulfils the requirement as stated in the Night Work of Children and Young Persons (Non-Industrial) Convention 1946.

A person between the age of 8 and 12 shall not be employed for more than 4 hours a day and if schooling, the total hours of work and schooling shall not exceed 6 hours in a day (21). Children in this age group shall not be employed between the hours 8.00 p.m. to 6.00 a.m.(22).

Persons between 12 and 14 years should not be employed for more than 2 hours without a break (23) and the numbers of work shall not exceed 6 in a day and the total number of hours (at school and at work place) shall be 7. Night work between the hours 8.00 p.m. and 6.00 a.m. is prohibited.

Adhering to the provision made in the minimum Age (Non-Industrial Employment) Convention 1937 that "national laws and regulations shall prescribe the numbers of hours per day during which children over 14 may be employed on light work", the Ordinance has stipulated that anyone between 14 - 18 years shall not be employed for more than 3 hours without a break and the number of hours at work shall not exceed 8 hours a day and the total numbers at work and at school shall not exceed 8. Night work between the hours 8.00 p.m. and 6.00 a.m. is prohibited.

The Ordinance also prohibits the employment of children or Young Persons for more than 6 days on a week. This implies a day of rest in every week.

We thus see that women and children are adequately protected against hard labour and at unusual hours. For women, their maternity allowance is assured. For children, proper precaution taken so that that their work may not interfere with their schooling.

We s all now consider national and international standards regarding the safety of workers during their hours.)

SAFETY OF WORKERS

The International Labour Conference has several Conventions on industrial safety. But more than the Conventions, two Recommendations of the Organisation are relevant to the Machinery Ordinance, 1953. The Prevention of Industrial Accidents Recommendation 1929 and Power-Driven Machinery Recommendation 1929 are the two Recommendations.

The Prevention of Industrial Accidents Recommendation, 1929 has formed a rough guide to the drafting our Machinery Ordinance 1953. The Conventions on industrial safety are not very relevant to our industrial environment and hence have not been ratified. The first article of the

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- (21) Minimum Age (Non-Industrial Employment) Convention 1937 limits the number of working hours for this age group to 2 while the total number of hours (at school and at work) is 7.
- (22) Night work of children and Young Persons (Non-Industrial) Convention 1946 prohibits child work between the hours of 8.00 p.m. to 8.00 a.m..
- (23) This does not apply if the child is employed in agricultural or horticultural light work.

Prevention of Industrial Accidents Recommendation suggests a machinery "for collection and utilization of information of the causes of accidents in each industry and the effect of measures taken to avoid them".

The Machinery Department of the Ministry of Labour undertakes the duty to ensure adherence to the provision of the Machinery Ordinance, in particular the duties of engineer surveyors and factory inspectors and is responsible for the safety of boilers, unfired pressure vessels and hoisting machines."(24) It also looks after the safety, health and welfare of the employees attending to machinery. In addition, it collects information of different types of machinery, number of inspections carried out on them and a breakdown of industrial accidents by industries. These information are published in the Annual Reports of the Ministry of Labour (25).

The Recommendation places great importance on dissemination of knowledge of the causes of and remedies for industrial accidents. It recommends that each member should conduct exhibits of safety appliances, methods and arrangements for the prevention of accidents. Moreover, employers do also have their share of the responsibility. They are required to do all in their power to improve the ducation of workers to prevent accidents.

Article 3 of the Recommendation believes that scientific research into methods of vocational guidance would ensure that workers chose jobs according to their interest and suitability both of which "are factors of primary importance for the promotion of safety"(26).

But the Machinery Ordinance in order to be 100% sure of the suitability and competence of such workers provides for the appointment of a Board of Examiners "to hold such examination as may be prescribed and may grant to successful candidates the certificate of competency"(27). Such a certificate qualifies a worker to be in charge of a machinery. This would reduce industrial accidents.

Article 8 of the Recommendation suggests that a systematic arrangements be made for the supervision of machinery and plant to ensure safety and to see that all safety appliances are maintained in proper order and position.

(24) P. 23. Annual Report of the Ministry of Labour, 1962.

(25) These information are found, for example, on p.p. 23 - 50 of the Annual Report, 1962.

(26) Article 2.

(27) Section 4, Machinery Ordinance, 1953.

The Machinery Ordinance has elaborate provisions for this article. Section 6 of the Ordinance prohibits the operation of any machinery without the appropriate certificate of fitness. The latter is not granted until the machinery has been inspected to satisfy the requirements of the Ordinance regarding safety. Following the granting of a certificate of fitness, the Inspectors of the Machinery Department make periodical inspection to satisfy themselves that the required safety measures have been properly maintained. The Recommendation rewards this requirement by stating that it is the duty of the employer to equip his undertaking so that the workers are adequately protected. Section 13 of the Ordinance prohibits any installation of Machinery without a certificate of fitness from the Inspector. The owner is required to submit particulars about the machinery regarding the safety appliances and fencing. When permission is granted to install a machinery, the Inspector may call for an inspection before giving his approval for its operation. Hence we notice several precautionary measures adopted by the Ordinance. Firstly, only trained men possessing a certificate of competency could be permitted to operate machines. Being trained men, they are less prone to cause accidents than untrained men. The Machinery Department conducts regular examinations to produce competent men. In 1961, the Department held Engine Drivers Examinations for 720 men out of which 477 passed the examinations. The percentage of failures amount to more than 50%. This reflects a high standard expected out of men in such occupations. Another precautionary measure of the Department is its rule to obtain certificate of fitness before the operation of a machinery. When this rule is also complied with, industrial accidents could be further reduced competent men operating machinery which are adequately protected would minimize accidents. Moreover, regulation-inspection of the machinery would help to spot defects in the machinery much faster, thus forestalling accidents. The responsibility of the owner is not over, after submitting particulars of his machinery. When he discovers a defect which may endanger life or damage property, he is required to make good the defect immediately or report the matter to the Inspector, if he is unable to remove the defect.

Further any alteration or addition to machinery is prohibited without the approval of Inspectors especially if such changes affect the safety devices or fencing of the machinery (28). As the Recommendation is concerned only with the prevention of industrial accidents, it makes no suggestion for procedures in case of an accident. The Machinery Ordinance, however, is concerned with both prevention of accidents as well as the measure to be adopted in case accidents do occur. It requires the employer to report to the Inspector of any accident which causes

(28) Section 15, Machinery Ordinance, 1953

disablement of an employee for more than 4 days. Should death occur, the place of the accident would be inspected and a report would be made to the Senior Inspector. If the Senior Inspector has reason to believe that the accident has been caused by a failure to comply with the provisions of the Ordinance and that it could have been avoided if safety precautions had been taken, he may report the matter to the Chief Inspector who may then order an inquiry into it. The Chief Inspector has power to suspend the Certificate of Competency and Fitness. After the inquiry, if the minister of Labour feels it necessary, he is empowered under Section 18 to cancel the certificate. The table below gives the number of accidents industry-wise and the amount of compensation paid for them in 1961.

TABLE IX. NUMBER OF INDUSTRIAL ACCIDENTS AND COMPENSATION PAID, 1961

<u>Industry</u>	<u>Number of Accidents</u>	<u>Compensation Paid</u>
Agriculture, Forestry and Fishing	7926	\$984,210
Mining and Quarrying	1272	375,766
Manufacturing and Processing	1321	462,267
Construction	1342	411,044
Electricity, Gas, Water and Sanitary	183	29,706
Commerce / <u>Services</u>	328	183,347
Transport, Storage and Communication	1422	391,413
Services	413	184,803
GRAND TOTAL:	14213	\$3,022,556

Source:- Appendix 39, p.p. 88 - 89, Ministry of Labour Annual Report, 1961.

The table shows that 14,213 industrial accidents occurred in 1961. This appears to be a high figure inspite of the precautionary measures taken. In 1959, the total number of accidents were 11,489. We can see a big jump of almost 3,000 accidents in two years. The highest number of accidents (almost 50%) occurred in Agriculture, Forestry and Fishing. In fact accidents in rubber estates amount to 6,201 which is about 45% of the total number of accidents for the year.

The Sections 28 and 29 prohibits any one to manufacture, repair, hire or sell any machinery which does not comply with any Regulation made under the Ordinance. Thus part of the aims of the 6th item (Prohibition of the sale, hire and use of inadequately guarded machinery) on the Agenda for 4th Session of the International Labour Conference (1962) are covered.

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The Recommendation also places responsibility on the workers to refrain from removing any safety devices without permission. In ensuring this duty of the worker, Section 25 of the Ordinance prohibits any worker (or any person for that matter) to act in any matter in the premises where machinery is operating as to cause injury to lives or property. He shall not fail to take all due precautions to ensure the safety of lives and property. No person shall "render ineffective any safety appliance fitted in connection with any machinery" (29) or "wilfully temper with or adjust any part of machinery so as to cause injury to lives and property" (30).

One would agree that to make effective such precautions against industrial accidents, systematic and effective supervision of the safety measures is indispensable. Article 13 of the Recommendation suggests that officials of the inspection service responsible for supervising the enforcement of the statutory requirements for the protection of workers should be empowered to instruct owners of machinery to take steps to fulfil his obligations. The Machinery Ordinance states that the Inspector could cause defects to be made good at the owner's expense (31). Section 33 of the Ordinance spells out the powers and duties of an Inspector. For the purposes of the Ordinance and any Regulation made under the Ordinance, an Inspector has power to enter the premises where there is machinery to make examinations to ascertain that the provisions of the Ordinance and Regulations are complied with and he could render any machine inoperative which does not so comply with the provisions of the Ordinance and Regulations. The Annual Report of the Ministry of Labour, 1961, states that initial and regular inspections of machinery for the year amounted to 8865 (32). In addition to these 2598, surprise visits were made. The aim of these inspections as stated earlier is to keep the machines under proper care.

Under the Ordinance, various Regulations have been made:-

- (a) Electric Passengers and Goods Lifts Regulations is designed to ensure the safety of persons using electric lifts.
- (b) Safety, health and Welfare Regulations lay down the minimum standards regards the safety, health and welfare of factory employees. This Regulation has been hailed as a notable advance in social legislation in Malaya.
- (c) Board of Examiners Regulation prescribes the types of Certificate of Competency that may be issued.

(29) and (30). Section 25, Machinery Ordinance, 1951

(31). Section 16, Machinery Ordinance, 1951

(32). Annual Report, Ministry of Labour, p. 117.

- (d) Inspection and Certificates of Fitness Regulation lays down the classes of machinery for which a Certificate of Fitness must be held. It provides for the regular inspection of these machinery.
- (e) Steam-Boiler and Unfired Pressure Vessel Regulations control the design of boilers and Pressure Vessels by ensuring the use of an approved code.
- (f) Foundry Regulations prescribe the minimum standards of condition for premises where the casting of metals is carried on.
- (g) Driven Machinery Regulations (33) prescribe the use of guards required on the various types of driven machinery.

The Machinery Ordinance and the above-mentioned Regulations control and help to reduce industrial accidents. The Ordinance requires certificates of competency for operators and certificates of fitness for machinery before operating them. Regular and surprise inspections help to spot defects of machinery early. The Regulations spell out in detail, the rules of operation of the various type of machinery.

But as the statistics quoted above show, these precautionary measures have not been successful in preventing industrial accidents. As no preventive measures could be 100% effective, it becomes necessary that those affected by the accidents be adequately compensated. ^A Labour has a right to demand compensation for industrial accidents, especially if the accidents occur due to no fault of his. The provisions that exist for compensation at national and international level in cases of industrial accidents shall form the subject matter of the next section.

COMPENSATION FOR INDUSTRIAL ACCIDENTS

The International Labour Organisation has drafted out at least 3 Conventions which Malaya has ratified regarding the payment of compensation to workmen for injury suffered in the course of their employment. They are Workmen's Compensation (Agriculture) 1921, Workmen's Compensation (Accidents) 1925, Equality of Treatment (Accident Compensation) 1925.

The first article of Workmen's Compensation (Agriculture) Convention stipulates that members extend to agricultural workers its laws and regulations which provide for the Compensation of Workers for injury by accident arising out of employment.

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- (33) This complies with the Power-Driven Machinery Recommendation 1929 which prohibits the use of any power-driven machinery unless it is furnished with the safety appliances.

This is automatically provided for in the Workmen's Compensation Ordinance 1952 and Regulation 1953 which apply to both agricultural workers and other workers without distinction.

A much more elaborate Convention is the Workmen's Compensation (Accident) Convention whose first article sets out briefly the aim of the Convention. "Each member undertakes to ensure that workmen who suffer from personal injury due to an industrial accident, or their dependants shall be compensated."

The Workmen's Compensation Ordinance having first defined "Workman" as any person who has entered into a contract of service whether by way of manual labour or otherwise and making exception in the case of domestic servants, civil servants, and armed forces states clearly in Section 4 that injury by accident to workmen shall be compensated by the employer who shall also meet any expenses in the treatment and rehabilitation of such workmen. Accidents to workmen while travelling or while attempting to ^{drive} ~~some~~ others are similarly liable to be paid compensation.

The Ordinance in the following Section enumerates the circumstances under which this privilege of compensation is denied. If an injury does not disable a workman for at least 4 days or when the workman was under the influence of drugs or alcohol (unless death occurs as a result) or if accident is due to deliberate self-injury or if the workman has represented to the employer that he was not suffering from an injury, then the workman is not eligible for compensation.

The Ordinance also guarantees compensation to workmen who contract a disease related to the occupation or who contract a disease within 12 months after ceasing to be so occupied and if disablement or death occurs because of this.

Should death occur as a result of an industrial accident compensation is payable to the dependants.

The Convention provides for exemption of certain categories of workers such as family workers and others who are employed otherwise than for the purpose of the employers trade or business.

The Ordinance, in addition to exempting some categories of workers, had until recently excluded domestic servants from its provision.

The Convention stipulates that Compensation for permanent incapacity or death shall not be paid in a lump sum unless the competent authority is satisfied that it will be properly utilised. The Department

of Labour in Malaya enlist the help of the Social Welfare Department to ensure proper utilization of the Compensation. This is equally so in the case of women or men (where death occurs or a lump sum is paid) in which case compensation is to be deposited with the Commissioner.

Article 9 and 10 seeks to place on the employer or the insurance company the responsibility to defray the cost of medical aid and such surgical and pharmaceutical aid as is recognised to be necessary in consequence of accidents"(34), and the supply and renewal of such artificial limbs and surgical appliances or an award representing the cost of such replacement.

The Ordinance provides for these privileges of a worker in Section 15 which states that if a medical practitioner recommends, special hospital fees are to be paid for by the employer and the cost of artificial limbs are similarly to be paid for by the employer. But no mention of renewal of limbs is made.

Another Article places a condition that in case of insolvency of the employer, the national laws should make provision to ensure payment of compensation. This condition is met in Section 21 of the Ordinance which reads, "When any employer has entered into a contract with any insurers in respect of any of the employer becoming bankrupt Then the insurers shall be subject to the same liabilities as if they were the employer." Another section of the Ordinance empowers the Minister of Labour to order certain classes of employers to insure with a Federation insurer in respect of their liabilities to the workmen, or deposit a sum of \$5,000 with the Commissioner.

Section 8 of the Ordinance elaborates on the amount of Compensation to be paid when the injury results in permanent total disablement, permanent partial disablement and temporary disablement (total or partial).

The table below shows the average amount of compensation received in each case of industrial accidents, industry wise.

We shall now consider the procedure of reporting on industrial accidents. Within seven days of the accident, a notice either orally or written must be given of the accident and unless a claim for compensation has been made within six months from the accident, proceedings for the recovery of compensation shall not be maintainable."(35) There is one exception to this and that is in the case of a fatal injury when no notice is required. The employer in turn has the obligation to notify

(34) Article 9, Workmen's Compensation (Agricultural) Convention 1921.

(35) Section 12, Workmen's Compensation Ordinance, 1952.

the Commissioner of the injury within 10 days of its occurrence, failure to do which is punishable by a fine of \$500.

TABLE X. AVERAGE COMPENSATION PAID PER ACCIDENT.

<u>Industry</u>	<u>Approximate Amount Per Accident.</u>
Agriculture, Forestry and Fishing	\$120
Mining and Quarrying	310
Manufacturing and Processing	350
Construction	300
Electricity, Gas, Water and Sanitary Services	100
Commerce	600
Transport, Storage and Communication Services	230 450

Source: Appendix 39, pp. 88 - 89, Ministry of Labour, Annual Report, 1961.

(In three of the eight industries, the compensation per accident was less than \$250. The remainder five industries received more than \$300 per accident, commerce leading with a figure of \$600. This amount is rather small especially in cases of serious injury resulting in partial or total disablement).

The employer should have the workman medically examined free of charge but should the latter refuse to submit himself for an examination the Commissioner may order the suspension of Compensation or the half-monthly payments (one-third of his salary) that is due to the workman during the period of disablement.

Except with minor modification this Ordinance is applicable to seamen too. This appears to run contrary to Article 3 of the Convention being discussed which states that this Convention shall not apply to seamen.

The Workmen's Compensation Ordinance reads "Any agreement which purports to remove the liability of workmen's compensation is declared null and void." (36) This is to ensure that workmen's right to compensation is not denied.

In reply to a request made by the Committee of experts, the government answered that only the domestic servants employed exclusively in the work of a private dwelling home are excluded from the application

(36) Section 24, Workmen's Compensation Ordinance, 1952.

of the Ordinance for 2 reasons:- Many give employment to poor relatives as domestic servants but who might not do so if they have to insure them against accidents and secondly the work of domestic servants are not hazardous.

In answer to a further question regarding the responsibility of the employer to renew the artificial limbs of the disabled workmen the government stated that a select Committee which examined the Workmen's Compensation Ordinance considered it unreasonable to place the responsibility on the employer or his insurer for renewal of limbs and appliances, since it was provided that the employer would meet the cost on the initial occasion only.

Regarding the priority of compensation over all debts in the case of insolvency legislation makes it compulsory for an insurance company to deposit with the government a sum of \$200,000 before it can function.

As regards the guarantees required to ensure the proper utilization of compensation in a lump sum the worker has to satisfy the Commissioner that such payment is more beneficial than periodic payments. Since the Conventions while referring to "periodic payments" does not specify the number of such payments and conditions in the country favour the payment of indemnity in a lump sum for the purpose of an approved investment. To pay out this sum in small sum over a period of time would be unrealistic.

In another reply to the request of the Committee of experts in 1955, the government states that in its proposals for the setting up of a social insurance scheme, the government will take into consideration the question raised by the Committee of experts concerning periodic payments, cost of renewals of artificial limbs and surgical appliances.

In addition to these two Conventions on the topic, a third Conventions - Equality of Treatment (Accident Compensation) 1925 attempt to provide Compensation for injury by accident to workers irrespective of their nationality, i.e. uniform treatment for national and foreign workers. As the first Article of the Compensation puts its "Each member shall grant to the nationals of any other member who suffers from personal injury due to industrial accidents the same treatment in respect of Workmen's Compensation as it grants to its nationals."

By special arrangements between the members concerned the system of such payments could be regulated.

The second Article states that arrangements could be made between members so that the system of payments could be governed by the laws and regulations of the country in which the accident occurs.

As regards the first Article the Workmen's Compensation does not draw any distinction between nationals and non-nationals. Section 42(1) of the Ordinance provides (although it limits such provision to the Commonwealth countries) that reciprocal arrangements could be made between members for the payments of compensation for non-nationals.

We saw in this chapter, that the Employees Provident Fund Ordinance aims to secure the welfare of workers at their retirement age by a monthly contribution of 5% of the salary by both labour and management. The welfare of women and children, regarding their hours of work and place of work are ensured in the Employment Ordinance and Children and Young Persons Ordinance. But our labour laws provide far less number of maternity holidays than the Conventions of the International Labour Organisation. Workers need to be protected from industrial accidents and the Machinery Ordinance provides for preventive measures, which if strictly followed could help to lessen industrial accidents. But where accidents occur in spite of these precautions, the Workmen's Compensation Ordinance provides for compensation to workmen. But we found that the amount that is being paid out is rather insufficient.

We have reached the end of this study and a word of conclusion is essential to recapitulate and note any overall points that we would make. It shall be done in the next chapter.

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