

# **MAR GREGORIOS COLLEGE OF ARTS & SCIENCE**

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## **DEPARTMENT OF COMMERCE (CORPORATE SECRETARYSHIP)**

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# **CORE PAPER XV-INDUSTRIAL LAWS**

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# **THE FACTORIES ACT, 1948 ACT NO. 63 OF 1948<sup>1</sup>**

An Act to consolidate and amend the law regulating labour in factories.

## CHAPTER I PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the Factories Act, 1948.

<sup>2</sup>[(2) It extends to the whole of India <sup>3\*\*\*.</sup>]

(3) It shall come into force on the 1st day of April 1949.

**2. Interpretation.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) “adult” means a person who has completed his eighteenth year of age;

(b) “adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

<sup>4</sup>[(*bb*) “calendar year” means the period of twelve months beginning with the first day of January in any year;]

(c) “child” means a person who has not completed his fifteenth year of age;

<sup>5</sup>[(*ca*) “competent person”, in relation to any provision of this Act, means a person or an institution recognised as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to—

(i) the qualifications and experience of the person and facilities available at his disposal; or

(ii) the qualifications and experience of the persons employed in such institution and facilities available therein,

with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognised as a competent person in relation to a factory;

(*cb*) “hazardous process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution or the general environment:

Provided that the State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule;]

(d) “young person” means a person who is either a child or an adolescent;

(e) “day” means a period of twenty-four hours beginning at midnight;

(f) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

(g) “power” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

(h) “prime mover” means any engine, motor or other appliance which generates or otherwise provides power;

(i) “transmission machinery” means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;

(j) “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

(k) “manufacturing process” means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

<sup>1</sup>[(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

<sup>2</sup>[(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; <sup>3</sup>[or]]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; <sup>3</sup>[or]

<sup>3</sup>[(vi) preserving or storing any article in cold storage;]

(l) “worker” means a person <sup>4</sup>[employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process <sup>3</sup>[but does not include any member of the armed forces of the Union];

(m) “factory” means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of <sup>5</sup>[the Mines Act, 1952 (35 of 1952)], or <sup>6</sup>[a mobile mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place].

<sup>1</sup>[*Explanation* <sup>2</sup>[I]—For computing the number of workers for the purposes of this clause all the workers in <sup>3</sup>[different groups and relays] in a day shall be taken into account;]

<sup>4</sup>[*Explanation* II.—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;]

(n) “occupier” of a factory means the person who has ultimate control over the affairs of the factory <sup>5</sup>\*\*\*.

<sup>4</sup>[Provided that—

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:]

<sup>1</sup>[<sup>6</sup>[Provided further that] in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,—

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under—

(a) section 6, section 7, <sup>4</sup>[section 7A, section 7B,] section 11 or section 12;

(b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;

(c) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the

workers employed on such repair or maintenance;

(2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to—

(a) the workers employed directly by him, or by or through any agency; and

(b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;

(p) “prescribed” means prescribed by rules made by the State Government under this Act;

(r) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a <sup>9</sup>“group” or “relay”] and each of such periods is called a “shift”.

**3. References to time of day.**—In this Act references to time of day are references to Indian Standard Time, being five and a half hours ahead of Greenwich Mean Time:

Provided that for any area in which Indian Standard Time is not ordinarily observed the State Government may make rules—

(a) specifying the area,

(b) defining the local mean time ordinarily observed therein, and

(c) permitting such time to be observed in all or any of the factories situated in the area.

**<sup>1</sup>[4. Power to declare different departments to be separate factories or two or more factories to be a single factory.**—The State Government may, <sup>2</sup>[on its own or] on an application made in this behalf by an occupier, direct, by an order in writing <sup>2</sup>[and subject to such conditions as it may deem fit that for all or any of the purposes of this Act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory:]

<sup>3</sup>[Provided that no order <sup>3</sup>under this section shall be made by the State Government on its own motion unless an opportunity of being heard is given to the occupier.]

**5. Power to exempt during public emergency.**—In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act <sup>4</sup>[except section 67] for such period and subject to such conditions as it may think fit:

Provided that no such notification shall be made for a period exceeding three months at a time.

<sup>5</sup>[*Explanation.*—For the purposes of this section “public emergency” means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.]

**6. Approval, licensing and registration of factories.**—(1) The State Government may make rules—

<sup>6</sup>[(a) requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;]

<sup>7</sup>[(aa)] requiring, the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

(b) requiring for the purpose of considering applications for such permission the submission of plans and specifications;

(c) prescribing the nature of such plans and specifications and by whom they shall be certified;

(d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;

(e) requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.

(2) If on an application for permission referred to in <sup>8</sup>[clause (aa)] of sub-section (1) accompanied by the plans and specifications required by the rules made under clause (b) of that sub-section, sent to the State Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

(3) Where a State Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to the State Government in any other case.

*Explanation.*—A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed, of the addition of any plant or machinery <sup>1</sup>[if such replacement or addition does not reduce the minimum clear space required for safe working around the plant or machinery or adversely affect the environmental conditions from the evolution or emission of steam, heat or dust or fumes injurious to health].

**7. Notice by occupier.**—(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

(a) the name and situation of the factory;

(b) the name and address of the occupier;

<sup>2</sup>[(bb) the name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93;]

(c) the address to which communications relating to the factory may be sent;

(d) the nature of the manufacturing process—

(i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and

(ii) to be carried on in the factory during the next twelve months in the case of all factories;

<sup>3</sup>[(e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;]

(f) the name of the manager of the factory for the purposes of this Act;

(g) the number of workers likely to be employed in the factory;

(h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;

(i) such other particulars as may be prescribed.

(2) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) <sup>4</sup>[at least thirty days] before the date of the commencement of work.

(4) Whenever a new manager is appointed, the occupier shall send to the <sup>5</sup>[Inspector a written notice and to the Chief Inspector a copy thereof] within seven days from the date on which such person takes over charge.

(5) During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

CHAPTER II  
THE INSPECTING STAFF

<sup>1</sup>[7A. **General duties of the occupier.**—(1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include—

(a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;

(b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;

(d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

**\*7B. General duties of manufacturers etc., as regards articles and substances for use in factories.**—(1) Every person who designs, manufactures, imports or supplies any article for use in any factory, shall—

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;

(b) carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);

(c) take such steps as may be necessary to ensure that adequate information will be available—

(i) in connection with the use of the article in any factory;

(ii) about the use for which it is designed and tested; and

(iii) about any conditions necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers:

Provided that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see—

(a) that the article conforms to the same standards if such article is manufactured in India, or

(b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

(2) Every person, who undertakes to design or manufacture any article for use in any factory, may carry out or arrange for the carrying out of necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to the health or safety of the workers to which the design or article may give rise.

(3) Nothing contained in sub-sections (1) and (2) shall be construed to require a person to repeat the testing, examination or research which has been carried out otherwise than by him or at his instance in so far as it is reasonable for him to rely on the results thereof for the purposes of the said sub-sections.

(4) Any duty imposed on any person by sub-sections (1) and (2) shall extend only to things done in the course of business carried on by him and to matters within his control.

(5) Where a person designs, manufactures, imports or supplies an article on the basis of a written undertaking by the user of such article to take the steps specified in such undertaking to ensure, so far as is reasonably practicable, that the article will be safe and without risks to the health of the workers when properly used, the undertaking shall have the effect of relieving the person designing, manufacturing, importing or supplying the article from the duty imposed by clause (a) of sub-section (1) to such extent as is reasonable having regard to the terms of the undertaking.

(6) For the purposes of this section, an article is not to be regarded as properly used if it is used without regard to any information or advice relating to its use which has been made available by the person who has designed, manufactured, imported or supplied the article.

*Explanation.*—For the purposes of this section, “article” shall include plant and machinery.]

**8. Inspectors.**—(1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

<sup>1</sup>[(2A) The State Government may, by notification in the Official Gazette, appoint as many Additional Chief Inspectors, Joint Chief Inspectors and Deputy Chief Inspectors and as many other officers as it thinks fit to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in such notification.

(2B) Every Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector and every other officer appointed under sub-section (2A) shall, in addition to the powers of a Chief Inspector specified in the notification by which he is appointed, exercise the power of an Inspector throughout the State.]

(3) No person shall be appointed under sub-section (1), sub-section (2) <sup>1</sup>[, sub-section (2A)] or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) <sup>2</sup>[Every Chief Inspector, Additional Chief Inspector, Joint Chief Inspector, Deputy Chief Inspector, Inspector and every other officer appointed under this section] shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the State Government may specify in this behalf.

**9. Powers of Inspectors.**—Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, <sup>1</sup>[or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

<sup>2</sup>[(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;



(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (b), taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is, in the circumstances necessary, for carrying out the purposes of this Act), and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise such other powers as may be prescribed.]

**10. Certifying surgeons.**—(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(3) No person shall be appointed to be, or authorised to exercise the powers of, a certifying surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory:

<sup>3</sup>[Provided that the State Government may, by order in writing and subject to such conditions as may be specified in the order, exempt any person or class of persons from the provisions of this sub-section in respect of any factory or class or description of factories.]

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

(a) the examination and certification of young persons under this Act;

(b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

(c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—

(i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

(ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

(iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

*Explanation.*—In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or

in the Schedules to the Indian Medical Council Act, 1933 (27 of 1933)<sup>1</sup>.

## CHAPTER III

### HEALTH

**11. Cleanliness.**—(1) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular—

(a) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;

(b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;

(c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;

(d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—

(i) where they are <sup>2</sup>[painted otherwise than with washable water-paint] or varnished, be repainted or revarnished at least once in every period of five years;

<sup>3</sup>[(ia) where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months;]

(ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;

(iii) in any other case, be kept whitewashed, or colourwashed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;

<sup>3</sup>[(dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;]

(e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

**12. Disposal of wastes and effluents.**—<sup>3</sup>[(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.]

(2) The State Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

**13. Ventilation and temperature.**—(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

(a) adequate ventilation by the circulation of fresh air, and

(b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health;

and in particular,—

(i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable;

(ii) where the nature of the work carried on in the factory involves, or is likely to involve the production of excessively high temperatures, such adequate measures as are practicable shall be taken

to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

(2) The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that <sup>4</sup>[proper measuring instruments, at such places and in such position as may be specified, shall be provided and such records, as may be prescribed, shall be maintained.]

<sup>5</sup>[(3) If it appears to the Chief Inspector that excessively high temperatures in any factory can be reduced by the adoption of suitable measures, he may, without prejudice to the rules made under sub-section (2), serve on the occupier, 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.]

**14. Dust and fume.**—(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

**15. Artificial humidification.**—(1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,—

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air;

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

(d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager 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 specified date.

**16. Overcrowding.**—(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least <sup>1</sup>[9.9 cubic metres] and of a factory built after the commencement of this Act at least <sup>2</sup>[14.2 cubic metres] of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than <sup>3</sup>[4.2 metres] above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may by order in writing exempt, subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

**17. Lighting.**—(1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of—

(a) glare, either directly from a source of light or by reflection from a smooth or polished surface:

(b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any worker.

(4) The State Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

**18. Drinking water.**—(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within <sup>1</sup>[six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.

(3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cool drinking water during hot weather by effective means and for distribution thereof.

(4) In respect of all factories or any class or description of factories the State Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

**19. Latrines and urinals.**—(1) In every factory—

(a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;

(b) separate enclosed accommodation shall be provided for male and female workers;

(c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage;

(d) all such accommodation shall be maintained in a clean and sanitary condition at all times;

(e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed—

(a) all latrine and urinal accommodation shall be of prescribed sanitary types;

(b) the floors and internal walls, up to a height of <sup>2</sup>[ninety centimetres], of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface;

(c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in

this regard, as it considers necessary in the interest of the health of the workers employed therein.

**20. Spittoons.**—(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

(3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

## CHAPTER IV

### SAFETY

**21. Fencing of machinery.**—(1) In every factory the following, namely:—

(i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not;

(ii) the headrace and tailrace of every water-wheel and water turbine;

(iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:—

(a) every part of an electric generator, a motor or rotary converter;

(b) every part of transmission machinery; and

(c) every dangerous part of any other machinery;

shall be securely fenced by safeguards of substantial construction which <sup>1</sup>[shall be constantly maintained and kept in position] while the parts of machinery the y are fencing are in motion or in use:

<sup>2</sup>[Provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when—

(i) it is necessary to make an examination of any part of the machinery aforesaid while it is in motion or, as a result of such examination, to carry out lubrication or other adjusting operation while the machinery is in motion, being an examination or operation which it is necessary to be carried out while that part of the machinery is in motion, or

(ii) in the case of any part of a transmission machinery used in such process as may be prescribed (being a process of a continuous nature the carrying on of which shall be, or is likely to be, substantially interfered with by the stoppage of that part of the machinery), it is necessary to make an examination of such part of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts or lubrication or other adjusting operation while the machinery is in motion,

and such examination or operation is made or carried out in accordance with the provisions of sub-section (1) of section 22.]

(2) The State Government may by rules prescribe such further precautions as it may consider necessary in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

**22. Work on or near machinery in motion.**—(1) <sup>3</sup>[Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result

of such examination, to carry out—

(a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or

(b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,

while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of this appointment, and while he is so engaged,—

(a) such worker shall not handle a belt at a moving pulley unless—

(i) the belt is not more than fifteen centimetres in width;

(ii) the pulley is normally for the purpose of drive and not merely a fly-wheel or balance wheel (in which case a belt is not permissible);

(iii) the belt joint is either laced or flush with the belt;

(iv) the belt, including the joint and the pulley rim, are in good repair;

(v) there is reasonable clearance between the pulley and any fixed plant or structure;

(vi) secure foothold and, where necessary, secure handhold, are provided for the operator; and

(vii) any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person;]

(b) without prejudice to any other provision of this Act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

<sup>1</sup>[(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.]

(3) The State Government may, by notification in the Official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.

**23. Employment of young persons on dangerous machines.**—(1) No young person <sup>2</sup>[shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—

(a) has received sufficient training in work at the machine, or

(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

**24. Striking gear and devices for cutting off power.**—(1) In every factory—

(a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley;

(b) Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery

shall be provided and maintained in every workroom:

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to workrooms in which electricity is used as power.

<sup>1</sup>[(3) When a device, which can inadvertently shift from “off” to “on” position, is provided in a factory to cut off power, arrangements shall be provided for locking the device in safe position to prevent accidental starting of the transmission machinery or other machines to which the device is fitted].

**25. Self-acting machines.**—No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of <sup>2</sup>[forty-five centimetres] from any fixed structure which is not part of the machine:

Provided that the Chief Inspector may permit the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

**26. Casing of new machinery.**—(1) In all machinery driven by power and installed in any factory after the commencement of this Act,—

(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of <sup>3</sup>[sub-section (1) or any rules made under sub-section (3)], shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

<sup>4</sup>[(3) The State Government may make rules specifying further safeguards to be provided in respect of any other dangerous part of any particular machine or class or description of machines.]

**27. Prohibition of employment of women and children near cotton-openers.**—No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work:

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

**28. Hoists and lifts.**—(1) In every factory—

(a) every hoist and lift shall be—

(i) of good mechanical construction, sound material and adequate strength;

(ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

(b) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part;

(c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon;

(d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing;

(e) every gate referred to in clause (b) or clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirement shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely:—

(a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load;

(b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments;

(c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued, use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The State Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirement of sub-sections (1) and (2), by order direct that such requirement shall not apply to such class or description of hoist or lift.

<sup>1</sup>[*Explanation.*—For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.]

<sup>2</sup>[**29. Lifting machines, chains, ropes and lifting tackles.**—(1) In any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:—

(a) all parts, including the working gear, whether fixed or movable, of every lifting machine and every chain, rope or lifting tackle shall be—

(i) of good construction, sound material and adequate strength and free from defects;

(ii) properly maintained; and

(iii) thoroughly examined by a competent person at least once in every period of twelve months, or at such intervals as the Chief Inspector may specify in writing; and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register; and where this is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on the premises;



(c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within <sup>1</sup>[six metres] of that place.

(2) The State Government may make rules in respect of any lifting machine or any chain, rope or lifting tackle used in factories—

(a) prescribing further requirements to be complied with in addition to those set out in this section;

(b) providing for exemption from compliance with all or any of the requirements of this section, where in its opinion, such compliance is unnecessary or impracticable.

(3) For the purposes of this section a lifting machine or a chain, rope or lifting tackle shall be deemed to have been thoroughly examined if a visual examination supplemented, if necessary, by other means and by the dismantling of parts of the gear, has been carried out as carefully as the conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined.

*Explanation.*—In this section.—

(a) “lifting machine” means a crane, crab, winch, teagle, pulley block, gin wheel, transporter or runway;

<sup>2</sup>[(b) “lifting tackle” means any chain sling, rope sling, hook, shackle, swivel, coupling, socket, clamp, tray or similar appliance, whether fixed or movable, used in connection with the raising or lowering of persons, or loads by use of lifting machines.]

**30. Revolving machinery.**—(1) <sup>3</sup>[In every factory] in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

**31. Pressure plant.**—<sup>4</sup>[(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.]

(2) The State Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1) and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

<sup>5</sup>[(3) The State Government may, by rules, exempt, subject to such conditions as may be specified therein, any part of any plant or machinery referred to in sub-section (1) from the provisions of this section.]

**32. Floors, stairs and means of access.**—In every factory—

(a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained <sup>6</sup>[and shall be kept free from obstructions and substances likely to cause persons to slip], and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.

<sup>1</sup>[(c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.]

**33. Pits, sumps openings in floors, etc.**—(1) In every factory every fixed vessel, sump, tank, pit or

opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

(2) The State Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

**34. Excessive weights.**—(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

(2) The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying or any specified process.

**35. Protection of eyes.**—In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

(a) risk of injury to the eyes from particles or fragments thrown off in the course of the process,  
or

(b) risk to the eyes by reason of exposure to excessive light, the State Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

<sup>2</sup>**36. Precautions against dangerous fumes, gases, etc.**—(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless—

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.]

<sup>3</sup>**36A. Precautions regarding the use of portable electric light.**—In any factory—

(a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space <sup>4</sup>[unless adequate safety devices are provided]; and

(b) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space, no lamp or light other than that flame-proof construction shall be permitted to be used therein.]

**37. Explosive or inflammable dust, gas, etc.**—(1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measure shall be taken to prevent any such explosion by—

(a) effective enclosure of the plant or machinery used in the process;

(b) removal or prevention of the accumulation of such dust, gas, fume or vapour;

(c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1) is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

(3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas

or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely:—

(a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part of any such pipe shall be effectively stopped by a stop-valve or other means;

(b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure;

(c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken or prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured, or the case may be, securely replaced;

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non-inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The State Government may by rules exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

<sup>1</sup>[**38. Precautions in case of fire.**—(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain—

(a) safe means of escape for all persons in the event of a fire, and

(b) the necessary equipment and facilities for extinguishing fire.

(2) Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such cases.

(3) The State Government may make rules, in respect of any factory or class or description of factories, requiring the measures to be adopted to give effect to the provisions of sub-sections (1) and (2).

(4) Notwithstanding anything contained in clause (a) of sub-section (1) or sub-section (2), if the Chief Inspector, having regard to the nature of the work carried on in any factory, the construction of such factory, special risk to life or safety, or any other circumstances, is of the opinion that the measures provided in the factory, whether as prescribed or not, for the purposes of clause (a) of sub-section (1) or sub-section (2), are inadequate, he may, by order in writing, require that such additional measures as he may consider reasonable and necessary, be provided in the factory before such date as is specified in the order.]

**39. Power to require specifications of defective parts or tests of stability.**—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 may be dangerous to human life or safety, he may serve on <sup>1</sup>[the occupier or manager or both] of the factory an order in writing requiring him before a specified date—

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

**40. Safety of buildings and machinery.**—(1) 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 <sup>1</sup>[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.

(2) 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 <sup>1</sup>[the occupier or manager or both] of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

<sup>2</sup>**40A. Maintenance of buildings.**—If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, 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 taken and requiring the same to be carried out before such date as is specified in the order.]

**40B. Safety Officers.**—(1) In every factory—

- (i) wherein one thousand or more workers are ordinarily employed, or
- (ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory, the occupier shall, if so, required by the State Government by notification in the Official Gazette, employ such number of Safety Officers as may be specified in that notification.

(2) The duties, qualifications and conditions of service of Safety Officers shall be such as may be prescribed by the State Government.]

**41. Power to make rules to supplement this Chapter.**—The State Government may make rules requiring the provision in any factory or in any class or description of factories of such further <sup>3</sup>[devices and measures] for securing the safety of persons employed therein as it may deem necessary.

## CHAPTER IVA

### PROVISIONS RELATING TO HAZARDOUS PROCESSES

**41A. Constitution of Site Appraisal Committee.**—(1) The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of an such factory, appoint a Site Appraisal Committee consisting of—

- (a) the Chief Inspector of the State who shall be its Chairman;
- (b) a representative of the Central Board for the Prevention and Control of Water Pollution appointed by the Central Government under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (d) a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (e) a representative of the State Board for the Prevention and Control of Air Pollution referred to in section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (f) a representative of the Department of Environment in the State;
- (g) a representative of the Meteorological Department of the Government of India;
- (h) an expert in the field of occupational health; and
- (i) a representative of the Town Planning Department of the State Government,

and not more than five other members who may be co-opted by the State Government who shall be—

(i) a scientist having specialised knowledge of the hazardous process which will be involved in the factory,

(ii) a representative of the local authority within whose jurisdiction the factory is to be established, and

(iii) not more than three other persons as deemed fit by the State Government.

(2) The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

(3) Where any process relates to a factory owned or controlled by the Central Government or to a corporation or a company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of that Committee.

(4) The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(5) Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process, it shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981).

**41B. Compulsory disclosure of information by the occupier.**—(1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufactures, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity.

(2) The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

(3) The information furnished under sub-section (1) shall include accurate information as to the quantity, specification and other characteristics of wastes and the manner of their disposal.

(4) Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

(5) Every occupier of a factory shall,—

(a) if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 (20 of 1987), within a period of thirty days of such commencement; and

(b) if such factory proposes to engaged in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process,

inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.

(6) Where any occupier of a factory contravenes the provisions of sub-section (5), the licence issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier or factory shall be subjected to under the provisions of this Act, be liable for cancellation.

(7) The occupier of a factory involving a hazardous process shall, with the previous approval of the

Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

**41C. Specific responsibility of the occupier in relation to hazardous processes.**—Every occupier of a factory involving any hazardous process shall—

(a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;

(b) appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed:

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

(c) provide for medical examination of every worker—

(a) before such worker is assigned to a job involving the handling of, or working with, a hazardous substance, and

(b) while continuing in such job, and after he has ceased to work in such job, at intervals not exceeding twelve months, in such manner as may be prescribed.

**41D. Power of Central Government to appoint Inquiry Committee.**—(1) The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

(2) The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

(3) The recommendations of the Committee shall be advisory in nature.

**41E. Emergency standards.**—(1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialised in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

**\*41F. Permissible limits of exposure of chemical and toxic substances.**—(1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or experts in the field by notification in the Official Gazette, make suitable changes in the said Schedule.

**41G. Workers' participation in safety management.**—(1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodical the measures taken in that behalf:

Provided that the State Government may, by order in writing and for reasons to be recorded exempt

the occupier of any factory or class of factories from setting up such Committee.

(2) The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed.

**41H. Right of workers to warn about imminent danger.**—(1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

(2) It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

(3) If the occupier, agent, manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

## CHAPTER V

### WELFARE

#### **42. Washing facilities.**—(1) In every factory—

(a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein;

(b) separate and adequately screened facilities shall be provided for the use of male and female workers;

(c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

**43. Facilities for storing and drying clothing.**—The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

**44. Facilities for sitting.**—(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(3) The State Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

**45. First-aid appliances.**—(1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed <sup>1</sup>[at any one time] in the factory.

<sup>2</sup>[(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person <sup>3</sup>[who holds a certificate in first-aid treatment recognised by the State Government] and who shall always be readily available during the working hours of the factory.]

<sup>4</sup>[(4)] In every factory wherein more than five hundred workers are <sup>5</sup>[ordinarily employed] there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed <sup>6</sup>[and those facilities shall always be made readily available during the working hours of the factory].

**46. Canteens.**—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.]

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

<sup>1</sup>[(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]



(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

**47. Shelters, rest rooms and lunch rooms.**—(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exists no worker shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may—

(a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section;

(b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

**48. Creches.**—(1) In every factory wherein more than <sup>2</sup>[thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules—

(a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;

(b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

(c) requiring the provision in any factory of free milk or refreshment or both for such children;

(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

**49. Welfare officers.**—(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

**50. Power to make rules to supplement this Chapter.**—The State Government may make rules—

(a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter;

(b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

## CHAPTER VI

### WORKING HOURS OF ADULTS

**51. Weekly hours.**—No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

**52. Weekly holidays.**—(1) No adult worker shall be required or allowed to work in a factory on the

first day of the week (hereinafter referred to as the said day), unless—

(a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

(b) the manager of the factory has, before the said day or the substituted day under clause (a), whichever is earlier,—

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

**53. Compensatory holidays.**—(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

**54. Daily hours.**—Subject to the provisions of section 51, not adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

<sup>1</sup>[Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.]

**55. Intervals for rest.**—<sup>2</sup>[(1)] <sup>3</sup>[The periods of work] of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

<sup>1</sup>[(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt any factory from the provisions of sub-section (1) so, however, that the total number of hours worked by a worker without an interval does not exceed six.]

**56. Spread over.**—The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55, they shall not spread over more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing increase the <sup>2</sup>[spread over up to twelve hours].

**57. Night shifts.**—Where a worker in a factory works on a shift which extends beyond midnight,—

(a) for the purposes of sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

**58. Prohibition of overlapping shifts.**—(1) Work shall not be carried on in any factory by means of system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at

the same time.

<sup>3</sup>[(2) The State Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub-section (1).]

**59. Extra wages for overtime.**—(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

<sup>4</sup>[(2) For the purposes of sub-section (1), “ordinary rate of wages” means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be ordinary rates of wages of those workers:

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

*Explanation.*—For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.]

<sup>1</sup>[(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

*Explanation 1.*—“Standard family” means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

*Explanation 2.*—“Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(5) The State Government may make rules prescribing—

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.]

**60. Restriction on double employment.**—No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

**61. Notice of periods of work for adults.**—(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of

sections 51, 52, 54, <sup>2</sup>[ 55, 56 and 58].

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shifts, the manager of the factory shall fix the periods during which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts where under the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The State Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

**62. Register of adult workers.**—(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing—

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted;
- (e) such other particulars as may be prescribed:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as the register of adult workers in that factory.

<sup>1</sup>[(1A) No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.]

(2) The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

**63. Hours of work to correspond with notice under section 61 and register under section 62.**—No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

**64. Power to make exempting rules.**—(1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory <sup>2</sup>[or empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position

in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed], and the provisions of this Chapter, other than the provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined <sup>2</sup>[or declared]:

<sup>2</sup>[Provided that any person so defined or declared shall, where the ordinary rate of wages of such person <sup>3</sup>[does not exceed the wage limit specified in sub-section (6) of section 1 of the Payment of Wages Act, 1936 (4 of 1936), as amended from time to time], be entitled to extra wages in respect of overtime work under section 59.]

(2) The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed—

(a) of workers engaged on urgent repairs, from the provisions of sections 51, 52, 54, 55 and 56;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of sections 51, 54, 55 and 56;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required by or under section 55, from the provisions of sections 51, 54, 55 and 56;

(d) of workers engaged in any work which for technical reasons must be carried on continuously <sup>1\*\*\*</sup> from the provisions of sections 51, 52, 54, 55 and 56;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of <sup>2</sup>[section 51 and section 52];

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons, from the provisions of <sup>2</sup>[section 51, section 52 and section 54];

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces, from the provisions of sections 52 and 55;

(h) of workers engaged in engine-rooms or boiler-houses or in attending to power-plant or transmission machinery, from the provisions of <sup>2</sup>[section 51 and section 52];

<sup>3</sup>[(i) of workers engaged in the printing of newspapers, who are held up on account of the breakdown of machinery, from the provisions of sections 51, 54 and 56.

*Explanation.*—In this clause the expression “newspapers” has the meaning assigned to it in the Press and Registration of Books Act, 1867 (25 of 1867);

(j) of workers engaged in the loading or unloading of railway wagons, <sup>4</sup>[or lorries or truck] from the provisions of sections 51, 52, 54, 55 and 56];

<sup>4</sup>[(k) of workers engaged in any work, which is notified by the State Government in the Official Gazette as a work of national importance, from the provisions of section 51, section 52, section 54, section 55 and section 56.]

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of section 61 which the State Government may deem to be expedient, subject to such conditions as it may prescribe.

<sup>5</sup>[(4) In making rules under this section, the State Government shall not exceed, except in respect of exemption under clause (a) of sub-section (2), the following limits of work inclusive of overtime:—

(i) the total number of hours of work in any day shall not exceed ten;

(ii) the spread over, inclusive of intervals for rest, shall not exceed twelve hours in any one day:

Provided that the State Government may, in respect of any or all of the categories of workers referred to in clause (d) of sub-section (2), make rules prescribing the circumstances in which, and the conditions subject to which, the restrictions imposed by clause (i) and clause (ii) shall not apply in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty;

<sup>4</sup>[(iii) the total number of hours of work in a week, including overtime, shall not exceed sixty;]

<sup>6</sup>[(iv)] the total number of hours of overtime shall not exceed fifty for any one quarter.

*Explanation.*—“Quarter” means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October.]

(5) Rules made under this section shall remain in force for not more than <sup>7</sup>[five years].

**65. Power to make exempting orders.**—(1) Where the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class or description of factories should be fixed beforehand, it

may, by written order, relax or modify the provisions of section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government, the Chief Inspector may by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

<sup>1</sup>[(3) Any exemption granted under sub-section (2) shall be subject to the following conditions, namely:—

(i) the total number of hours of work in any day shall not exceed twelve;

(ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

(iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy-five.

*Explanation.*—In this sub-section “quarter” has the same meaning as in sub-section (4) of section 64.]

**(a) Further restrictions on employment of women.**—(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:—

(b) no exemption from the provisions of section 54 may be granted in respect of any woman;

(c) no woman shall be <sup>3</sup>[required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.:

Provided that the State Government may, by notification in the Official Gazette, in respect of <sup>4</sup>[any factory or group or class or description of factories,] vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M.:

<sup>5</sup>[(c) there shall be no change of shifts except after a weekly holiday or any other holiday.]

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

CHAPTER VII  
EMPLOYMENT OF YOUNG PERSONS

**67. Prohibition of employment of young children.**—No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

**68. Non-adult workers to carry tokens.**—A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless—

(a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and

(b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

**69. Certificates of fitness.**—(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work;

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for a full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)—

(a) shall be valid only for a period of twelve months from the date thereof:

(b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewal thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section with reference to any young person is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

**70. Effect of certificate of fitness granted to adolescent.**—(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter VI and VIII.

<sup>2</sup>[(1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.:

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,—

(i) vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female adolescent between 10 P.M. and 5 A.M.  
grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.]

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

**71. Working hours for children.**—(1) No child shall be employed or permitted to work, in any factory—

(a) for more than four and a half hours in any day;

<sup>1</sup>[(b) during the night.

*Explanation.*—For the purpose of this sub-section “night” shall mean a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M.]

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of section 52 shall apply also to child workers and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

<sup>2</sup>[(5) No female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M.]

**72. Notice of periods of work for children.**—(1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of section 71.

(3) The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

**73. Register of child workers.**—(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—

(a) the name of each child worker in the factory,

(b) the nature of his work,

(c) the group, if any, in which he is included,

(d) where his group works on shifts, the relay to which he is allotted, and

(e) the number of his certificate of fitness granted under section 69.

<sup>3</sup>[(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.]

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.



**74. Hours of work to correspond with notice under section 72 and register under section 73.**—No child worker shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

**75. Power to require medical examination.**—Where an Inspector is of opinion—

(a) that any person working in a factory without a certificate of fitness is a young person, or

(b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein,

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.

**76. Power to make rules.**—The State Government may make rules—

(a) prescribing the forms of certificates of fitness to be granted under section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates;

(b) prescribing the physical standards to be attained by children and adolescents working in factories;

(c) regulating the procedure of certifying surgeons under this Chapter;

(d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

**77. Certain other provisions of law not barred.**—The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (26 of 1938).

## <sup>1</sup>[CHAPTER VIII

### ANNUAL LEAVE WITH WAGES

**78. Application of Chapter.**—(1) The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, <sup>2</sup>[agreement (including settlement)] or contract of service:

<sup>3</sup>[Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourably therein, the provisions of sections 79 to 82, so far as may be, shall apply.]

(2) The provisions of this Chapter shall not apply to workers <sup>4</sup>[in any factory] of any railway administered by the Government, who are governed by leave rules approved by the Central Government.

**79. Annual leave with wages.**—(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

*Explanation 1.*—For the purpose of this sub-section—

(a) any days of lay off, by agreement or contract or as permissible under the standing orders;

(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed,

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

*Explanation 2.*—The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(2) A worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-section (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

<sup>1</sup>[(3) If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section (1) or sub-section (2) making him eligible to avail of such leave, and such payment shall be made—

(i) where the worker is discharged or dismissed or quits employment, before the expiry of the second working day from the date of such discharge, dismissal or quitting; and

(ii) where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.]

(4) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

(5) If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child:

Provided further that a worker, who has applied for leave with wages but has not been given such leave in accordance with any scheme laid down in sub-sections (8) and (9) <sup>2</sup>[or in contravention of sub-section (10)] shall be entitled to carry forward the <sup>3</sup>[leave refused] without any limit.

(6) A worker may at any time apply in writing to the manager of a factory not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year:

Provided that the application shall be made not less than thirty days before the date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in clause (ii) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947):

Provided further that the number of times in which leave may be taken during any year shall not exceed three.

(7) If a worker wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (6); and in such a case wages as admissible under section 81 shall be paid not later than fifteen days, or in the case of a public utility service not later than thirty days from the date of the application for leave.

(8) For the purpose of ensuring the continuity of work, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under section 3 of the Industrial Disputes Act, 1947 (14 of 1947), or a similar Committee constituted under any other Act or if there is no such Works Committee or a similar Committee in the factory, in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing

whereby the grant of leave allowable under this section may be regulated.

(9) A scheme lodged under sub-section (8) shall be displayed at some conspicuous and convenient places in the factory and shall be in force for a period of twelve months from the date on which it comes into force, and may thereafter be renewed with or without modification for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar Committee, or as the case may be, in agreement with the representatives of the workers as specified in sub-section (8), and a notice of renewal shall be sent to the Chief Inspector before it is renewed.

(10) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused, unless refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9).

(11) If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment, before he has taken the leave, the occupier of the factory shall pay him the amount payable under section 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker who quits his employment, on or before the next pay day.

(12) The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

**80. Wages during leave period.**—(1) For the leave allowed to him under <sup>1</sup>[section 78 or section 79, as the case may be,] a worker <sup>2</sup>[shall be entitled to wages] at a rate equal to the daily average of his total full time earnings for the days on which <sup>3</sup>[he actually worked] during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles:

<sup>4</sup>[Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.]

(2) The cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food grains and other articles admissible to a standard family.

*Explanation 1.*—“Standard family” means a family consisting of a worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

*Explanation 2.*—“Adult consumption unit” means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(3) The State Government may make rules prescribing—

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

**81. Payment in advance in certain cases.**—A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child, shall, before his leave begins be paid the wages due for the period of the leave allowed.

**82. Mode of recovery of unpaid wages.**—Any sum required to be paid by an employer, under his Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of

Wages Act, 1936 (4 of 1936).

**83. Power to make rules.**—The State Government may make rules directing managers of factories to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by Inspectors.

**84. Power to exempt factories.**—Where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion are not less favourable than those for which this Chapter makes provision it may, by written order; exempt the factory from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.]

<sup>1</sup>[*Explanation.*—For the purposes of this section, in deciding whether the benefits which are provided for by any leave rules are less favourable than those for which this Chapter makes provision, or not, the totality of the benefits shall be taken into account.]

## CHAPTER IX

### SPECIAL PROVISIONS

**85. Power to apply the act to certain premises.**—(1) The State Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that—

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

*Explanation.*—For the purposes of this section, “owner” shall include a lessee or mortgagee with possession of the premises.

**86. Power to exempt public institutions.**—The State Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, <sup>2</sup>[training, research] or reformation, from all or any of the provisions of this Act:

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays, unless the persons having the control of the institution submit, for the approval of the State Government, a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates of the institution, and the State Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of this Act.

**87. Dangerous operations.**—Where the State Government is of opinion that any <sup>1</sup>[manufacturing process or operation] carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the <sup>1</sup>[manufacturing process or operation] is carried on—

(a) specifying the <sup>1</sup>[manufacturing process or operation] and declaring it to be dangerous;

(b) prohibiting or restricting the employment of women, adolescents or children in the <sup>1</sup>[manufacturing process or operation];

(c) providing for the periodical medical examination of persons employed, or seeking to be employed, in the <sup>1</sup>[manufacturing process or operation], and prohibiting the employment of persons not certified as fit for such employment <sup>2</sup>[and requiring the payment by the occupier of the factory of fees for such medical examination];

(d) providing for the protection of all persons employed in the <sup>1</sup>[manufacturing process or operation] or in the vicinity of the places where it is carried on;

(e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the <sup>1</sup>[manufacturing process or operation];

<sup>2</sup>[(f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation.

**[87A. Power to prohibit employment on account of serious hazard.]—***(1)* Where it appears to the Inspector that conditions in a factory or part thereof are such that they may cause serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity, he may, by order in writing to the occupier of the factory, state the particulars in respect of which he considers the factory or part thereof to be the cause of such serious hazard and prohibit such occupier from employing any person in the factory or any part thereof other than the minimum number of persons necessary to attend to the minimum tasks till the hazard is removed.

(2) Any order issued by the Inspector under sub-section *(1)* shall have effect for a period of three days until extended by the Chief Inspector by a subsequent order.

(3) Any person aggrieved by an order of the Inspector under sub-section *(1)*, and the Chief Inspector under sub-section (2), shall have the right to appeal to the High Court.

(4) Any person whose employment has been affected by an order issued under sub-section *(1)*, shall be entitled to wages and other benefits and it shall be the duty of the occupier to provide alternative employment to him wherever possible and in the manner prescribed.

(5) The provisions of sub-section *(4)* shall be without prejudice to the rights of the parties under the Industrial Disputes Act, 1947 (14 of 1947).]

**88. Notice of certain accidents.**—<sup>1</sup>[(*1*)] Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

<sup>2</sup>[(2) Where a notice given under sub-section *(1)* relates to an accident causing death, the authority to whom the notice is sent shall make an inquiry into the occurrence within one month of the receipt of the notice or, if such authority is not the Inspector, cause the Inspector to make an inquiry within the said period.

(3) The State Government may make rules for regulating the procedure at inquiries under this section.]

<sup>3</sup>[**88A. Notice of certain dangerous occurrences.**—Where in a factory any dangerous occurrence of such nature as may be prescribed occurs, whether causing any bodily injury or disability or not, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.]

**89. Notice of certain diseases.**—*(1)* Where any worker in a factory contracts any disease specified in <sup>4</sup>[the Third Schedule], the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) If any medical practitioner attends on a person who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be, suffering from any disease specified in <sup>4</sup>[the Third Schedule], the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating—

(a) the name and full postal address of the patient,

(b) the disease from which he believes the patient to be suffering, and

(c) the name and address of the factory in which the patient is, or was last, employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector, by the certificate of a certifying surgeon or otherwise, that the person is suffering from a disease specified in <sup>4</sup>[the Third Schedule], he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land-revenue from the occupier of the factory in which the person contracted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to <sup>5</sup>[one thousand rupees].

<sup>6</sup>[(5) The Central Government may, by notification in the Official Gazette, add to or alter the Third Schedule and any such addition or alteration shall have effect as if it had been made by this Act.]

**90. Power to direct enquiry into cases of accident or disease.**—(1) The State Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in <sup>7</sup>[the Third Schedule] has been, or is suspected to have been contracted in a factory, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (45 of 1860).

(3) The person holding an inquiry under this section shall make a report to the State Government stating the causes of the accident, or as the case may be, disease, and any attendant circumstances, and addition any observations which he or any of the assessors may think fit to make.

(4) The State Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.

(5) The State Government may make rules for regulating the procedure at inquiries under this section.

**91. Power to take samples.**—(1) An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in charge of the factory, take in the manner hereinafter provided a sufficient sample of any substances used or intended to be used in the factory, such use being—

(a) in the belief of the Inspector in contravention of any of the provisions of this Act or the rules made there under, or

(b) in the opinion of the Inspector likely to cause bodily injury to, or injury to the health of, workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1), he shall, in the presence of the person informed under that sub-section unless such person wilfully absents himself, divide the sample into three portions and effectually seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall—

(a) forthwith give one portion of the sample to the person informed under sub-section (1);

(b) forthwith send the second portion to a Government Analyst for analysis and report thereon;

(c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance.

(5) Any document purporting to be a report under the hand of any Government Analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

<sup>1</sup>**[91A. Safety and occupational health surveys.**—(1) The Chief Inspector, or the Director General of Factory Advice Service and Labour Institutes, or the Director General of Health Services, to the Government of India, or such other officer as may be authorised in this behalf by the State Government or the Chief Inspector or the Director General of Factory Advice Service and Labour Institutes or the Director General of Health Services may, at any time during the normal working hours of a factory, or at any other time as is found by him to be necessary, after giving notice in writing to the occupier or manager of the factory or any other person who for the time being purports to be in charge of the factory, undertake safety and occupational health surveys, and such occupier or manager or other person shall afford all facilities for such survey, including facilities for the examination and testing of plant and machinery and collection of samples and other data relevant to the survey.

(2) For the purpose of facilitating surveys under sub-section (1) every worker shall, if so required by the person conducting the survey, present himself to undergo such medical examination as may be considered necessary by such person and furnish all information in his possession and relevant to the survey.

(3) Any time spent by a worker for undergoing medical examination or furnishing information under sub-section (2) shall, for the purpose of calculating wages and extra wages for overtime work, be deemed to be time during which such worker worked in the factory.]

<sup>1</sup>[*Explanation.*—For the purposes of this section, the report, if any, submitted to the State Government by the person conducting the survey under sub-section (1) shall be deemed to be a report submitted by an Inspector under this Act.]

## CHAPTER X

### PENALTIES AND PROCEDURE

**92. General penalty for offences.**—Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to <sup>2</sup>[two years] or with fine which may extend to <sup>3</sup>[one lakh rupees] or with both, and if the contravention is continued after conviction, with a further fine which may extend to <sup>4</sup>[one thousand rupees] for each day on which the contravention is so continued:

<sup>5</sup>[Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than <sup>6</sup>[twenty-five thousand rupees] in the case of an accident causing death, and <sup>7</sup>[five thousand rupees] in the case of an accident causing serious bodily injury.

*Explanation.*—In this section and in section 94 “serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint (not being fracture of more than one bone or joint) of any phalanges of the hand or foot.]

<sup>8</sup>**[93. Liability of owner of premises in certain circumstances.**—(1) Where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation.

(2) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out of the provisions of sub-section (1).

(3) Where in any premises, independent or self-contained, floors or flats are leased to different occupiers for use as separate factories, the owner of the premises shall be liable as if he were the occupier or manager of a factory, for any contravention of the provisions of this Act in respect of—

(i) latrines, urinals and washing facilities in so far as the maintenance of the common supply of water for these purposes is concerned;

(ii) fencing of machinery and plant belonging to the owner and not specifically entrusted to the custody or use of an occupier;

(iii) safe means of access to the floors or flats and maintenance and cleanliness of staircases and common passages;

(iv) precautions in case of fire;

(v) maintenance of hoists and lifts; and

(vi) maintenance of any other common facilities provided in the premises.

(4) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (3).

(5) The provisions of sub-section (3) relating to the liability of the owner shall apply where in any premises independent rooms with common latrines, urinals and washing facilities are leased to different occupiers for use as separate factories:

Provided that the owner shall be responsible also for complying with the requirements relating to the provision and maintenance of latrines, urinals and washing facilities.

(6) The Chief Inspector shall have, subject to the control of the State Government, the power to issue orders to the owner of the premises referred to in sub-section (5) in respect of the carrying out of the provisions of section 46 or section 48.

(7) Where in any premises portions of a room or a shed are leased to different occupiers for use as separate factories, the owner of the premises shall be liable for any contravention of the provisions of—

(i) Chapter III, except sections 14 and 15;

(ii) Chapter IV, except sections 22, 23, 27, 34, 35 and 36:

Provided that in respect of the provisions of sections 21, 24 and 32 the owner's liability shall be only in so far as such provisions relate to things under his control:

Provided further that the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him;

(iii) section 42.

(8) The Chief Inspector shall have, subject to the control of the State Government, power to issue orders to the owner of the premises in respect of the carrying out the provisions of sub-section (7).

(9) In respect of sub-sections (5) and (7), while computing for the purposes of any of the provisions of this Act the total number of workers employed, the whole of the premises shall be deemed to be a single factory.]

**94. Enhanced penalty after previous conviction.**—<sup>1</sup>[(I)] If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to <sup>2</sup>[three years] or with fine <sup>3</sup>[which shall not be less than <sup>4</sup>[ten thousand rupees] but which may extend to <sup>5</sup>[two lakh rupees]] or with both:

<sup>6</sup>[Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than <sup>4</sup>[ten thousand rupees]

Provided further that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than <sup>1</sup>[thirty-five thousand rupees] in the case of an accident causing death and <sup>2</sup>[ten thousand rupees] in the case of an accident causing serious bodily injury.]

<sup>3</sup>[(2) For the purposes of sub-section (I), no cognizance shall be taken of any conviction made more than two years before the commission or the offence for which the person is subsequently being convicted.]

**95. Penalty for obstructing Inspector.**—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any



registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined by, an Inspector, shall be punishable with imprisonment for a term which may extend to <sup>4</sup>[six months] or with fine which may extend to <sup>5</sup>[ten thousand rupees] or with both.

**96. Penalty for wrongfully disclosing results of analysis under section 91.**—Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under section 91, shall be punishable with imprisonment for a term which may extend to <sup>6</sup>[six months] or with fine which may extend to <sup>7</sup>[ten thousand rupees] or with both.

**96A. Penalty for contravention of the provisions of sections 41B, 41 C and 41 H.**—(1) Whoever fails to comply with or contravenes any of the provisions of section 41B, 41 C or 41 H or the rules made thereunder, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.]

**97. Offences by workers.**—(1) Subject to the provisions of section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to <sup>9</sup>[five hundred rupees].

(2) Where a worker is convicted of an offence punishable under sub-section (1) the occupier or manager of the factory shall not be deemed to be guilty of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

**98. Penalty for using false certificate of fitness.**—Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to <sup>10</sup>[two months] or with fine which may extend to <sup>11</sup>[one thousand rupees] or with both.

**99. Penalty for permitting double employment of child.**—If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to <sup>1</sup>[one thousand rupees], unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

**100.** [*Determination of occupier in certain cases.*] *Rep. by the Factories (Amendment) Act, 1987 (20 of 1987), s. 38 (w.e.f. 1-12-1987).*

**101. Exemption of occupier or manager from liability in certain cases.**—Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be

discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offenders cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

**102. Power of Court to make orders.**—(1) Where the occupier or manager of a factory is convicted of an offence punishable under this Act the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order (which the court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1) the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period, or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order or the Court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefore by the Court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine, as aforesaid.

**103. Presumption as to employment.**—If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

**104. Onus as to age.**—(1) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court *prima facie* under such age, the burden shall be on the accused to prove that such person is no under such age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

<sup>1</sup>[**104A. Onus of proving limits of what is practicable, etc.**—In any proceeding for an offence for the contravention of any provision of this Act or rules made thereunder consisting of a failure to comply with a duty or requirement to do something, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable or, as the case may be, all practicable measures were taken to satisfy the duty or requirement.]

**105. Cognizance of offences.**—(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

**106. Limitation of prosecutions.**—No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

<sup>2</sup>[*Explanation.*—For the purposes of this section,—

(a) in the case of a continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues;

(b) where for the performance of any act time is granted or extended on an application made by the occupier or manager of a factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.]

**106A. Jurisdiction of a court for entertaining proceedings, etc., for offence.**—For the purposes of conferring jurisdiction on any court in relation to an offence under this Act or the rules made thereunder in connection with the operation of any plant, the place where the plant is for the time being situate shall be deemed to be the place where such offence has been committed.]

## CHAPTER XI SUPPLEMENTAL

**107. Appeals.**—(1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the prescribed authority, and such authority may, subject to rules made in this behalf by the State Government, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf by the State Government (which may prescribe classes of appeals which shall not be heard with the aid of assessors), the appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed:

Provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

(3) Subject to such rules as the State Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

**108. Display of notices.**—(1) In addition to the notices required to be displayed in any factory by or under this Act, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed and also the name and address of the Inspector and the certifying surgeon.

(2) All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

**109. Service of notices.**—The State Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

**110. Returns.**—The State Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may in its opinion be required for the purposes of this Act.

**111. Obligations of workers.**—(1) No worker in a factory—

(a) shall wilfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;

(b) shall wilfully and without reasonable cause do anything likely to endanger himself or others;  
and

(c) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

<sup>1</sup>[**111A. Right of workers, etc.**—Every worker shall have the right to—

(i) obtain from the occupier, information relating to workers' health and safety at work,

(ii) get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training center or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work,

(iii) represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory.]

**112. General power to make rules.**—The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

**113. Powers of Centre to give directions.**—The Central Government may give directions to a State Government to the carrying into execution of the provisions of this Act.

**114. No charge for facilities and conveniences.**—Subject to the provisions of section 46 no fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided, or any equipments or appliances to be supplied by the occupier under the provisions of this Act.

**115. Publication of rules.**—<sup>1</sup>[(*I*)] All rules made under this Act shall be published in the Official Gazette, and shall be subject to the condition of previous publication; and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), shall be not less than <sup>2</sup>[forty-five days] from the date on which the draft of the proposed rules was published.

<sup>3</sup>[(2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

**116. Application of Act to Government factories.**—Unless otherwise provided this Act shall apply to factories belonging to the Central or any State Government.

**117. Protection to persons acting under this Act.**—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**118. Restrictions on disclosure of information.**—(*I*) No Inspector shall, while in service or after leaving the service, disclose otherwise than in connection with the execution, or for the purposes, of this Act any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties.

(2) Nothing in sub-section (*I*) shall apply to any disclosure of information made with the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

(3) If any Inspector contravenes the provisions of sub-section (*I*) he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<sup>4</sup>[**118A. Restriction on disclosure of information.**—(*I*) Every Inspector shall treat as confidential the source of any complaint brought to his notice on the breach of any provision of this Act.

(2) No inspector shall, while making an inspection under this Act, disclose to the occupier, manager or his representative that the inspection is made in pursuance of the receipt of a complaint:

Provided that nothing in this sub-section shall apply to any case in which the person who has made the complaint has consented to disclose his name. ]

<sup>5</sup>[**119. Act to have effect notwithstanding anything contained in Act 37 of 1970.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970 <sup>6</sup>[or any other law for the time being in force.]]

**120. Repeal and savings.**—The enactments set out in the Table appended to this section are hereby repealed:

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act.

*TABLE.*—[*Enactments repealed.*] *Rep. by the Repealing and Amending Act, 1950 (35 of 1950), s. 2 and the First Schedule (w.e.f. 10-4-1950.)*

# Unit II

# PAYMENT OF WAGES ACT,1936

## 2.1 INTRODUCTION

In the initial stages of industrialisation, workers had to suffer from exorbitant delays in payment of wages, arbitrary deductions and other unfair practices on the part of employers. Delay in the payment of wages, deductions of two days wages-for one day's absence, heavy fines for small omissions and commissions, were quite common. Irregularities committed by employers were brought to the notice of the Royal Commission of Labour in India. In the report submitted in 1931, the Commission pointed out wide prevalence of such unfair practices in regard to the payments of wages due to workers such as non-payment of wages, short payment, irregular payment., payment in kind rather than in cash, short measurement of work of piece rate workers, and excessive fines and deductions. The Commission stressed the need for protecting the earned wages of workers by elimination of these practices. The Commission also observed that the purpose of laying down a machinery for evolving a proper and equitable wage structure is defeated if mal-practices in regard to payment of wages are not checked.

In pursuance of the recommendations of the Commission, the Payment of Wages Act, was passed in 1936, and it came into force on 28th March, 1937. It has since been amended several times, and its latest amendment in 1982 extended its coverage by raising the wage limit from Rs. 1000 to Rs. 1600.

**Object of the Act:** The Act is a protective piece of legislation. It seeks to regulate the payment of wages of certain class of workers employed in industry. The main object of Act is to ensure to worker payment of their earned wages on due date without unauthorized deduction. In order to ensure timely payment of wages, the Act regulates the manner of payment of wages at regular intervals. It lays down permissible deductions to protect the employed persons against arbitrary or unauthorized deductions being made from their wages.

**Scope and Coverage:** The Act applies to the whole of India. The Act applies to the payment of wages to persons employed in any factory and to person employed (otherwise than in a factory) upon any railway by a railway administration. In the latter case, it also applies to persons employed either directly or through a contractor by a person fulfilling a contract with a railway administration. The State Government may after giving three months notice extend the provisions of the Act to any class of persons employed in any industrial establishment specified by the Central Government and State Governments. In the case of industrial establishments owned by the Central Government the notification can be issued with the concurrence of the Central government. In some States the Act has been extended to shops and establishments also. (Section 1)

The Act does not apply to persons whose wages exceed Rs. 1600 per month. This limit was raised from Rs. 1000 by amending the Act in 1982. The need for amending the Act was felt as a large number of workers previously covered by the Act got excluded with the upward revision of pay scales and increase in dearness and other allowances in recent years. The present limit of Rs. 1600 per month has again become? as with the increase in levels of wages. A very large number of workers do not get the benefit of the Act.

The Act is also applicable to persons employed in coal mines and plantations, as well as establishments in which work relating to the construction, development or maintenance of building, roads, bridges, supply of water, or relating to operations connected with navigation, irrigation or the supply of water, or relating to generation, transmission and distribution of electricity, or other form of power is carried on.

## Definitions (Sec. 2)

1. **Employed Person:** Employed person includes the legal representative of a deceased employed person.

2. **Employer:** Employer includes the legal representative of deceased employer.

3. **Industrial Establishment:** It means any:

a) Tram-way service or motor transport engaged in carrying passengers & goods or both by road for hire or reward.

b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or Airforce of the Union, or the Civil Aviation Department of the Government of India.

c) Dock, wharf, or jetty;

d) Inland vessel mechanically propelled;

e) Mine, quarry or oilfield;

f) Plantation;

g) Workshop, or other establishments in which articles are produced, adopted, or manufactured, with a view to their use, transport or sale;

h) establishment in which any work relating to the construction, development or maintenance of building, roads, bridges or canals or relating to transmission, or distribution of electricity, or any other form of power is being carried on,

i) any other establishment or class of establishment which the Central Government or a State Government may, having regard to the nature there- to the need for protection of persons employed there-in, and other relevant

circumstances, specified by notification in the Official Gazette.

4) **Wages:** "Wages" means all remuneration (whether by way of salary, allowances,

otherwise) expressed in terms of money or capable of being expressed which would, if the terms of employment, expressed or implied are fulfilled, be payable to person employed in respect of his employment or of work done in such employment.

The definition of "wages" is made sufficiently wide by including within the expression:

a) any remuneration payable under award or settlement between parties or order of a court;

b) any additional remuneration under the terms of employment (whether called a bonus or by any other name);

c) any remuneration to which the person employed is entitled in respect of overtime work or holiday or any leave period.

d) any sum which by reason of termination of employment of the person employed is liable under any other law, contract or instrument which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment has to be made;

e) any sum to which the person employed is entitled under any other scheme framed under any law for the time being in force.

The amount of bonus payable under the payment of Bonus Act, 1965, the amount of retrenchment compensation payable, and a sum payable to the employee on the termination of his service under the Industrial Disputes Act, 1947, are wages as defined under this Act. The amount of Gratuity payable under the terms of any award is also covered by this Act.



The expression "Wages" does not include:

1. The Bonus declared voluntarily on the basis of profits, and the bonus (whether under a Scheme of profit sharing-or otherwise) which does not form part of the remuneration payable under the terms of employment, or which is not payable under any award or settlement between the parties or order of a Court;
2. The value of any house accommodation, of the supply of water, light, medical attendance, or other amenity or any service excluded from the computation of wages by a general or specific order of the State Government;
3. Any contribution paid by the employer to any pension or provident fund, and the interest accrued thereon;
4. Any travelling allowance or the value of any travelling concession;
5. Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;
6. Any gratuity payable on the termination of employment;
7. Whether house rent are wages depends on terms of contract. It is so, if its payment is compulsory, otherwise it is not.
8. The term "wages" means wages earned and not potential wages.
9. No other meaning can be assigned to the term "wages" than is mentioned in the definition.

## 2.2 RESPONSIBILITY FOR PAYMENT OF WAGES

Every employer shall be responsible to pay wages to persons employed by him. But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments and upon railways, the following persons shall be responsible for payment of wages:-

- a) in factories, the person named as manager
- b) in industrial establishments, the person who is responsible to the employer for the supervision and control of the industrial establishment;
- c) Upon railways (otherwise than in factories) the person nominated by the railway administration in this behalf for the local area concerned. (Section 3)

Rules for payment of wages:

Under the payment of Wages Act, 1936, rules regarding the payment of wages are as follows.

**Fixation of wage-period:** Every person responsible for the payment of wages under Sec. 3 shall fix periods, known as Wages Periods in respect of which such wages shall be payable. A wage period shall not exceed one month. (Section 4)

Time of payment of wages:

The following rules have been laid down regarding the time of payment of wages:

1. If the number of persons employed in a factory, an industrial establishment, or railway including daily rated workers, is less than 1000, wages must be paid before the expiry of the seventh day after the last day of the wage period.
2. In other cases, wages must be paid before the expiry of the tenth day after the expiry of the wage period.

3. In the case of persons employed on dock, mine, wharf or jetty, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, shall be paid before the expiry of the seventh day after such completion.
4. Where the employment of any person is terminated by or on behalf the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which employment is terminated,
5. If the employment is terminated due to the closure of establishment for any reason other thanes weekly or other recognized holiday, wages will be paid before the expiry of second working day from the day on which employment is being terminated.
6. The State Government may, by a general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.
7. All payment 'of wages shall be made on a working day. (Section 5) Medium of payment of wages:  
All wages shall be paid in current coin or currency notes or both. The employer may after obtaining the written' permission of the employed person pay him wages either by cheque or by crediting the wages- in the bank account. (Section 6)

### **2.3 DEDUCTION FROM WAGES**

The wages of an employed person *WO* be paid to him without deductions of any kind except those authorised under the Payment of Wages Act. This is notwithstanding the Provisions of Sec. 47 of the Indian Railways Act, 1890 (Sec. 7).

#### **Kind of deductions**

The following kinds of deductions are permitted under the Act:

#### **1 Fines (Sec. 8):** Provisions regarding fines are as follow:

- a) No fine shall be imposed on any employed person except in respect of such acts omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have been specified by a notice.
- b) The notice specifying the acts and omissions for which fines may be imposed shall be exhibited in the prescribed manner on the premises or the place in which the employment is carried on.
- c) No fine shall be imposed on an employed person until he has given an opportunity of showing cause against the fine.
- d) The total amount of fine in any one wage period on any employed person shall not exceed three per cent of the rupee wages payable to him in respect of that wages period.
- e) No fine shall be imposed on a person who is below the age of fifteen years.
- f) No fine shall be recovered from the employed person by installments or after the expiry of sixty days from the day on which it was imposed.
- g) Eve fine shall be deemed to have been imposed on the day of the actor omission.
- h) All fines and realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed. All realization of fines shall be applied only to such purposes as re beneficial to the persons employed in the factory.

## 2 Deductions for Absence from Duty (Sec.9)

- a) Deductions may be made on account of the absence of an employed person from duty from the place or place where, by the terms of employment, he is required to work.
- b) An employed person shall be deemed to be absent from duty if, though present at the place of work, he refuses to carry out his work, in pursuance of a stay-in strike or for any other cause which is not reasonable.
- c) The ratio between the amount of deductions for absence from duty and the wages payable shall not exceed the ratio between the period of absence and total period within such wage period.
- d) If, however, ten or more persons, acting in concert, absent themselves without due notice and without reasonable cause, the deduction for absence from duty from any such person may include such amount not exceeding his wages for eight days as may be due to the employer in lieu of notice.

## 3 Deductions for Damage of Loss (Sec.10)

- a) A deduction for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money which he is required to account can be made where such loss is directly attributable to his neglect or default.
- b) A deduction for damage or loss shall not exceed the amount of damage or loss caused to the employer by his neglect or default.
- c) A deduction for damage or loss shall not be made until the employed person has been given an opportunity of showing cause against the deduction.
- d) All deductions and realizations in respect of damage or loss shall be recorded in a register to be kept by the person responsible for the payment of wages.

## 4 Deductions for Accommodation and Service (Sec.11)

Deduction for house accommodation and amenities and service supplied by the employer can be made subject to the following conditions:

- a) Wages and Labor taxes
- b) deductions made, with the written authorization
- c) Deductions cannot be made unless such services have been accepted by the employee's person as a term of his employment the purpose of the employment and no deduction can be made; in that respect.
- d) The amount of deduction cannot exceed an amount equivalent to the value of house accommodation, amenity or service supplied.
- e) The amenities and services must be authorized by the State Government by a general or special order.
- f) State Governments are empowered to make rules governing deductions for amenities and services.

**a) Deductions for Recovery of Advance (Sec. 12).** Deductions for recovery of advances or adjustments of over-payment of wages can be made subject to the following conditions:

- a) Recovery of an advance of money given before employment shall be made from the first payment of wages in respect of complete wage period, but no recovery can be made of such advance given for travelling expenses.
- b) Recovery of an advance of money given after employment began shall be subject to such conditions as the State Government may impose,
- c) Recovery of advances of wages not already earned shall be subject to any rules made by the State

Government in this regard. The State Government may regulate the extent to which such advances may be given, the installments by which they may be recovered and the rate of interest that may be charged on such advance.

#### 6. Deductions for Recovery of Loans (Sec.12-A)

- a) Deduction for recovery of loans made from any fund constituted for the welfare of labour and the interest due in respect thereof can be made provided the fund is constituted in accordance with the rules approved by the State Government.
- b) Deductions can be made for recovery of loans granted for house building or other purposes approved by the State Government and the interest due in respect thereof:

#### 7. Deductions for Payments to Co-operative Societies and Insurance Schemes (Sec. 13). These deductions shall include:

- a) deductions for payments to co-operative societies approved by the State Government-or to a scheme of insurance maintained by the Indian Post Office;
- b) deduction made with the written authorization of the person employed for the payment of any premium on his life insurance, policy to the Life Insurance Corporation of India or for the purchase of securities of the Government of India or of any State Government, or for being deposited in any Post office Savings Bank in furtherance of any savings scheme of any such Government.

These deductions shall be subject to such conditions as the State Government may impose.

#### 8. Other Deductions. The following deductions are also permissible under the Act;

- a) deductions of income-tax payable by the employed person;
- b) deductions required to be made by order of court
- c) deductions for subscriptions to, and for repayments of advances from any provident fund to which the Provident Funds Act. 1925 applies or *any* recognized provident fund or any provident fund approved in this behalf by the State Government.
- d) deductions for payment of insurance premia of Fidelity Guarantee Bonds. of the employed person, for the payment of his contribution to any fund constituted by the employer are trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the state government or any officer specified by it in the behalf, during a continuing of such approval.
- f) deductions made, with the written authorization of the employed persons for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act,1926.
- g) deductions for recovery of losses` sustained by a railway administration on account of acceptance by the employed person of counter-feit or base coins or mutilated or forged currency notes.
- h) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares freight, demurrage, warfare and carriage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise; ,
- i) deductions for recovery of losses sustained by a railway administration on account of any rebates of refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or fault;
- j) deductions made with the written authorisation of the employed person for contribution to the Prime Minister's National Relief Fund or to such other funds as the Central Government may be notified in the official Gazette specify;

k) deductions for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

The list of deductions in Sec. 7 (2) is exhaustive. Further, if any deduction is claimed by an employer, the burden specifically -and clearly lies upon him to prove that the deduction is of a nature which is capable of falling within the several clauses of Sec. 7 (2).

There is no provision in the Act limiting the period within which the employer should make the deduction for adjustment of overpayment of wages.

Every payment by the employed person to the employer or his agent shall-be-deemed to be a deduction: Any loss of wage resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties;-shall not be deemed to be a deduction from any wages. These penalties are suspension, with- holding of increment or promotion (including stopping of increment at the efficiency bar).

**Illegal Deductions.** Any deductions other than those authorized under Section 7 of the Act would constitute illegal deductions.

#### Limit on the amount of deductions (Sec. 7(3))

The total amount of deduction which may be made under Section 7 in a wage period from the wages of any employed person shall not exceed 75 per cent of such wages in asend re such deductions ye wholly or partly made for payments to co-operative societies. In air, other case, the deductions shall not exceed SO per cent of such wages any agreement or contract by which an employee agrees to any deductions other than those authorised under the Act would be null and void under Section 23 of the Act. There is, however, no provision in the Act limiting the period within which the employer should make the deduction for adjustment of over payment of wages.

#### Maintenance of registers and records (Sec. 13-A)

Every employer must maintain registers and records giving the following particulars of the every person employed by him:

- a) the wages paid to him;
- b) the deductions made from his wages;
- c) the receipts given by him.

The registers and records shall be in such form as may be prescribed, They shall be preserved for a period of three years after the date of the last entry made therein.

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## 2.4 INSPECTORS AND THEIR POWERS

An Inspector of Factories appointed under the Factories Act, 1948 shall be an inspector for the purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him.

Moreover, the State Government may be notification' in the Official Gazette appoint such other persons as it thinks fit to be Inspectors for the purposes of the Act. It may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions. It may also appoint Inspectors for the purpose of the Act in respect of persons employed upon a railway to whom the Act applies.

## Power of Inspectors (Sec. 14 and 14-A)

Inspector may-

- a) make such examination and inquiry as he thinks fit in order to ascertain if the provisions of the Act are being observed;
- b) enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of the Act;
- c) Supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishments.
- d) examine the registers and records maintained in pursuance of the Act and take statements of any persons which he considers necessary for carrying out the purposes of the Act;
- e) Seize-or take copies of registers or documents which may be relevant in respect of an offence committed by an employer;
- f) Exercise such other powers as may be prescribed.

No person shall be compelled to answer any question or make any statement tending to incriminate himself. Every Inspector shall be deemed to be a public servant. within the meaning of the Indian Penal Code. Every employer shall afford an inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

## 2.5 APPOINTMENT OF COMPETENT AUTHORITY

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The State Government may by notification in the Official Gazette appoint a person as the Authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area, including all matters incidental to such claims. The following may be appointed as the Authority:

- a) a presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947, or
- b) any Commissioner or Workmen's compensation, or Magistrate.

If the State Government considers it necessary so to do, it may appoint more than one Authority for any specified area and may, by general or special order provide for the distribution or allocation of work to be performed by them under this Act. (Section 15)

Every authority so appointed shall have all the powers of a civil Court under the Code of Civil Procedure, 1908. For the purpose of taking evidence, enforcing the attendance of witnesses and compelling the production of documents. Further, every such authority shall be deemed to be a civil Court for all the purpose of Sec. 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973

## 2.6 WHO MAY FILE APPLICATION AND WHEN

An application for claims arising under this Act may be filed by-

- a) the employed person himself;
- b) any legal practitioner; or
- c) any official of a registered trade union authorised in writing to act on his behalf; or
- d) any Inspector under the Act; or
- e) any other person acting with the permission of the Authority appointed under the Act.

Every such application must be made within twelve months from the date on which the deduction from wages was made, or from the date on which the payment of the wages was due to be made. An application may also be admitted after twelve months if the applicant satisfied the Authority that there was a sufficient cause for not making the application within twelve months. But sufficiency of the cause is to be decided by proper legal principles. Before admitting any such application the Authority must give notice to and hear, the opposite party and, admission should be conscientious. The discretionary power conferred on the Authority, to condone delay in filing an application is not excessive because the aggrieved party can seek redress against abuse of this power by invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution. (Section 15)

## **2.7 PROCEDURE AND DIRECTIONS**

When any application for claims under this Act is entertained, the Authority shall hear the applicant and the employer or other person responsible for payment of wages or give them an opportunity of being heard. After such further inquiry (if any) as - may be necessary, the Authority may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount improperly deducted and twenty five rupees in case of delayed wages. Even before the amount deducted or the delayed wages are paid before the disposal of the application, the Authority may direct the payment of compensation as the authority may think fit, not exceeding rupees twenty-five.

No direction for the payment of compensation shall be made in the case of delayed wages if the Authority is satisfied that the delay was due to-

- a) a bonafide error or bonafide dispute as to the amount payable to the employed person; or
- b) the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence to make prompt payment, or If the authority hearing an application is satisfied that the application was malicious or vexatious, it may direct a penalty not exceeding fifty rupees to be paid to the employer or other person responsible for payment of wages, by the person presenting the application. The authority may further direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages in case where the application ought not to have been compelled to seek redress under the Act (Sec. 15 (4)).

Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final (Sec.15(4A)).

Any inquiry under this section shall be deemed to be judicial proceeding within the meaning of section 193, 219 and 228 of the Indian Penal Code (Sec. 15 (413)).

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## 2.8 RECOVERY OF AMOUNT

An amount directed to be paid under Sec. 15 may be recovered.

- a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by him as a Magistrate, and,
- b) if the Authority is not a Magistrate, by any Magistrate, to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate. (Section 15(5))

**Single application for same unpaid group (Sec. 16).** A single application may be presented under Sec. 15 on behalf of or in respect of any number of employed persons belonging to the same unpaid group. When a single application is made, every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in Section 15 (3).

Employed persons are said to belong to the same unpaid group if-

- a) they are borne on the same establishment, and
- b) deductions have been made from their wages in contravention of the Act for the same cause and during the same wage period or periods, or
- c) if their wages for the same wage period or periods have remained unpaid after the day fixed under Section 5.

The Authority may deal with any number of separate pending applications, presented under Section 15 in respect of persons belonging to the same unpaid group, as single application.

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## 2.9 APPEALS

An appeal may be preferred against the following:

1. An order dismissing either wholly or in part an application made on the ground that deductions are made contrary to the Act or payment of *wages* has been delayed.
2. A direction to refund the amount deducted from wages to the employed person.
3. A direction by the Authority to pay penalty to the employer from making , malicious or vexatious application.

The appeal may be preferred before the Court of Small Causes in case. of a Presidency town and before the District Court in other cases. The appeal must be preferred within 30 days of the date on which the order or direction was made.

The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.

(Section 17)

1. The employer or other person responsible for the payment of wages if the total sum directed to be paid by way of wage and compensation exceeds Rs. 300 or such direction has the effect of imposing on the employer or the other person a financial liability exceeding rupees one thousand, or
2. An employed person,
3. Any legal practitioner,
4. Any official of a registered trade union authorized in writing to act on his behalf,



5. Any inspector under this Act,
6. Any person permitted by the Authority to make an application under Sec.15(2).
7. If the total amount of wages claimed to have been withheld from him exceeds twenty rupees or from the unpaid group to which he belongs or belonged exceeds fifty rupees.
8. Any person directed to pay a penalty under Sec.15(4)

**Conditions for an Appeal (Sec. 17).**No appeal shall be made as aforesaid unless:

a) The memorandum of appeal in accompanied by a certificate by the prescribed authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

Where an employer prefers an appeal the authority against whose decision the appeal has been preferred may, and if so directed by the Court shall, pending the decision of the appeal, withhold payment of any sum in deposit with it. Any order dismissing either wholly or in part an application made under Sec. 15 (2) or a direction made under Sec. 15(3) or Sec. 15(4) shall be final save as provided in Sec. 17(1). The appeal under Section 17 must be governed by and disposed of according to the rules of practice and procedure prescribed by the code of Civil Procedure.

#### Conditional Attachment of Property (Sec. 17-A)

Where at any time after an application has been made under Section 15(2) or where at any time after an appeal has been filed under Sec. 17 and where the Authority in the first instance and the court in the second instance, is satisfied that the employer or other person responsible for the payment of wages is likely to evade payment of any amount that may be directed to be paid, then the Authority or the Court may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the Authority or Court, - sufficient to satisfy the amount which may be payable under the direction. Before giving such a direction, the employer or other person must be given an opportunity of being heard except when the Authority or Court is of the opinion that the ends of justice would be defeated by the delay.

The provisions of the code of Civil Procedure, 1908 relating to attachment before judgment shall, so far as may, apply to any order of attachment.

#### Offences and Penalties (Sec. 20)

1. Whoever being responsible for the payment of wages to an employed person:

- a) fails to pay wages intimaes;
- b) makes unauthorized deductions from wages;
- c) imposes fines in contravention of Sec. 8;

Shall be punishable with fine which shall not be less than two hundred rupees but which may extend to rupees one thousand.

2) Whoever:

- c) fails to fix wages periods or fixed wage periods exceeding one month; fails to pay wages in current coins or currency or both;
- d) fails to record fines and all realizations in the register;
- e) fails to apply all such realizations as per the provisions of Section8(8).

Shall be punishable with fine which may extend to rupees five hundred for each offence.

3) Whoever being required under this Act to maintain any record or to furnish any information or return:

- a) fails to maintain such registers or records; or
- b) willfully refuses or without lawful excuse neglects to furnish such information or return; or
- c) willfully furnishes or causes to be furnished any information or return which he knows to be false; or
- d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act;

Shall, for each such offence, be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

4) Whoever:

- a) willfully obstructs an Inspector in the discharge of his duties under this Act: or
- b) refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorized by or under the Act in relation to any railway, factory or industrial or other establishment; or
- c) willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of the Act; or
- d) prevents or attempts to prevent any person from appearing before an inspector acting in pursuance of his duties under the Act;

shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

5) If any person who has been convicted of any offence punishable under the Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to three months, or with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees, or with both. But no cognizance shall be taken of an earlier conviction made more than two years before the date of commission of the offence being punished.

6) If any person fails or willfully neglects to pay the wages of any employed person by the fixed date, he shall without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.

### **Cognizance and Trial of Offences (Sec. 21).**

No court shall take cognizance of:

1 a complaint against any person for an offence arising out of non-compliance with the provisions of the Act relating to delay in payment of wages and unauthorized deductions from wages, unless an application in respect of the facts constituting the offence has been presented under Section 15 and has been granted wholly or in part and the Authority or the appellate court granting such application has sanctioned the making of the complaint; payment of wages in current coin or currency notes except on a complaint made by or with the sanction of an Inspector under the Act;

3. any offence punishable under Section 20 (3) and 20 (4) except on a complaint made by or with the sanction of an Inspector under the Act.

In imposing any fine for an offence under Sec. 21(1) above the Court shall take into consideration

the amount of any compensation already awarded against the accused in any proceedings taken under Section 12. Before sanctioning the making of a complaint against any person for an offence under Sec. 20(1), the Authority or the appellate court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction. The sanction shall not be granted if such person satisfies the Authority or Court *that his* default was due to:

- a) a bonafide error or bonafide dispute as to the amount payable to the employed person; or
- b) the occurrence of an emergency, or the existence of exceptional circumstances,-  
-such,4 that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- c) the failure of the employed person to apply for or accept payment.

Bar on. Suits (Sec. 22)

No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed:

- a) forms the subject of an application under Section 15 for claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims which has been presented by the plaintiff and which is pending before the authority appointed, or of an appeal under Section 17 ;or,
- b) has formed the subject of a direction under Section 15 in favour of the plaintiff; or
- c) has been adjudged, in any procedure under Section 15 not to be onto the plaintiff; or
- d) could have been recovered by an application under Section15;
- e) where an application has been presented after a period of twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be without any sufficient cause.

The provisions of the Act and rules made under it do not bar a civil suit for recovery of arrears payable to <a workman whose dismissal has been set aside.

**Protection (Sec. 22-A).** No suit, prosecution or other legal proceeding shall be against the Government or any officer or the Government for anything which is in good faith done or intended to be done under the Act.

**Contracting Out (Sec. 23)**

Any contract or agreement whereby an employed person relinquishes any right conferred by the Act shall be null and void in so far as it purports to deprive him of such right.

**Application of Act (Sec. 24).**In relation to railways, air transport services, mines and oil fields, the powers conferred upon the State Government by the Act shall be powers of the Central Government.

**Display of Notice (Sec. 25).**The person responsible for the payment of wages to persons employed in a factory or an industrial or other establishment-shall cause to be displayed a notice containing such abstracts of the Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory or An industrial or other establishment, as may be prescribed.

## **2.10 PAYMENT OF WAGES IN CASE OF DEATH**

In case of death of an employed person or in case of his where about not being known, all amounts payable to him as wages, shall

- a) be paid to the persons nominated by him in this behalf in accordance with the rules made under the

Act;

- b) be deposited with the prescribed authority;
- i) where no nomination has been made, or
- ii) where for any reasons such amounts cannot be paid to the person nominated.

The prescribed authority shall deal with the amounts deposited in the prescribed manner. Where the amounts payable by an employer as wages are disposed of in the manner referred to above, the employer shall be discharged of his liability to pay those wages. (Section 25-A)

## 2.11 POWER TO MAKE RULES

The State Government is empowered to make rules to regulate the procedure to be followed by Authorities and Courts. The State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect provisions of the Act.

In making any rule under Sec. 26, the State Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees. All rules made under Sec. 26 shall be subject to the condition of previous publication, and the date to be specified under Sec. 23(3) of the General Clauses Act, 1897 shall not be less than three months from the date on which the draft of the proposed rules was published.

Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of the Parliament. If both House agree in making any modification in the rule, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, it shall have no effect. But any such modification or annulment of the rule shall be without prejudice to the validity of anything previously done under that rule. (Section 26)

## Obligations of Employers

Under the Act every employer is required:

1. to see that all his workmen are paid their wages regularly and in time as required under the Act (Sec. 3 & 5);
2. to fix wage periods which shall not exceed one month (Sec.4);
3. to pay wages in current coin or currency notes or both (Sec.6);
4. not to make unauthorised deductions (Sec.7);
5. to impose fines only for permissible acts and omissions and after giving adequate opportunity to show cause against the fines and deductions (Sec.8);
6. to maintain registers and records giving particulars of persons employed, the work performed by them, the wages paid to them and the deductions made from their wages, fines imposed and realizations made (Sec. 10,13A);
7. not to enter into any agreement with an employed person where by the relinquishes any right conferred by the Act (Sec. 23);and
8. to display a notice containing abstracts of the Act and the rules made thereunder

in English and in the language of the majority of the employed persons (Sec.25).to deduct from the wages of a worker an amount not exceeding his wages for 8 days as may, by any terms be due to the employer in lieu of due notice, if the worker together with 10 or more workers absents himself from

duty without notice or without any reasonable cause, or go on strike or resort to stay-in strike (Sec.9(2));

a) appeal to District Court against the directions made by the Authority appointed under the Act for payment of wages and compensation, if the amount of these sums exceeds rupees three hundred (Sec.17).

**Right of Employees:** Every workman is entitled:

- i) to receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account (Sec.3);
  - ii) to refuse to agree to any deductions and fines other than those authorised under the Act. (Sec 7, 8);
  - iii) approach within six months the prescribed authority to claim unpaid or delayed wages, unauthorised deductions and fines along with compensation (Sec. 15,16); and
  - iv) to appeal against the direction made by the authority if the amount of wages claimed exceeds rupees, one hundred (Sec.17).
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## 2.12 GENERALREMARKS

This Act is a Central legislation being administered by both Central and State Government in their respective spheres as defined under the Act. In its original form, it suffered from a number lacunae and thus failed to provide effective protection against unfair practices in regard to payment of wages. With the gaining of experience in its working it was amended several times. To start with it was made applicable to factory and railways employees with monthly wages upto Rs. 200.

Since then it applied to workers of most of the organised industries, and the pay limit for coverage of workers was raised to Rs, 1600/- per month in 1982. Now again this - wage limit is proving to be too low to cover most of the workers due to large increase in their wages and salaries during the last fifteen years, the government is considering seriously to amend the Act to raise the wage limit suitably and also to make Penalties for contravention of the Act more deterrent. Both the Central and State Governments have framed rules under this Act which provide necessary safeguards to workers against delay in the payment of wages and unauthorised deductions and fines.

The working of the Act and its rules have, no doubt, benefited the working class, as complaints regarding non-payment of wages and erosion of wages by unauthorised and heavy deductions and fines are not so many as before. In fact since the enactment of this Act, employers have started disciplining their workers more by suspending, discharging and dismissing them than by imposing heavy fines and deductions.

Increasing education, awakening among workers, growth of trade unions, and increasing desire on the part of employers to play fair to their workers, have also contributed to this improvement.

But still, as observed by the National Commission on Labour, which reviewed the working of the Act, all the mal-practices regarding payment of wages on the part of some employers have not been checked by this Act. Some unfair practices still prevail largely in unorganised sector and small industries, and also in some big industries like mines, plantations, and other establishments where substantial number of workers are paid piece rate wages by weighing and measuring their daily output. Complaints regarding wrong measurement are not rare. In regard to time-rated workers complaints regarding non-payment of overtime are also not few. Rejection of sub-standard work in industries like

Bidi, still affects earnings of workers adversely. The enforcement machinery has also been finding difficult to bring round defaulting employer because of cumbersome procedure for prosecution, and small penalties as compared to monetary benefits reaped by employers by delaying the payment of wages, Inspectors appointed under this Act are experiencing difficulty in enforcing compliance with the provision of the Act in Government owned industries like railways. Mere amendment of the Act for simplifying the procedure for prosecution; or making penalties for defaults more deterrent may not produce all the desired results. Other possible measures which may ensure greater protection of earned wages are the strengthening of inspection machinery, exercising greater vigilance by the implementing authorities, policing by workers and their unions, and more education and awareness of workers and supervisors in regard to the provisions of this Act and rules framed thereunder.

The I.L.O has also laid down international standards for the protection of wages by adopting one convention and one recommendation.

## **Minimum Wages act, 1948**

### **Objects of Minimum Wages Act, 1948**

Objects of passing Minimum Wages Act, 1948 are as follows:

- ◆ To prevent exploitation of labour.
- ◆ To provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as 'Scheduled Employments'.
- ◆ To empower the Appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries and
- ◆ To empower the Appropriate Government to give effect to other provisions of Act.

The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi vs. State of Kerala AIR 1962 SC 12*.

### **Definitions**

**Adolescent [section 2(a)]:** Adolescent means a person who has completed his 14 year of age but has not completed his 18 year.

**Adult [section 2(aa)]:** Adult means a person who has completed his 18 year of age.

**Appropriate Government [section 2(b)]:** Appropriate Government means:

- In relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act: **the Central Government** and

(1) In relation to any other scheduled employment: **the state Government**.

### **significance of Appropriate Government:**

- The minimum rates of wages are fixed and revised by Appropriate Government.
- Appropriate Government is empowered to lay down the procedure for fixing and revising minimum rates of wages.
- The advisory board is constituted by Appropriate Government.
- Appropriate Government is empowered to state the records to be maintained under the Act.
- Appropriate Government appoints an authority to hear and decide any claims arising under the

**Child [section 2(bb)]:** Child means a person who has not completed his fourteenth year of age.

**employee [section 2(i)]:** Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed.

Employee includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, net being premises under the control and management of that person.

Employee also includes an employee declared to be an employee by the Appropriate Government..

In a factory		Person named as Manager u/s 7 of Factories Act, 1948
In any scheduled employment under the control of	Central Government	The person or authority appointed for the supervision and control of employees. Where no person of authority is so appointed, the Head of the Department.
	Local Authority	The person appointed for the supervision and control of employees. Where no person is so appointed, the Chief Executive Officer of the local authority.
In any other case		Any person responsible to the owner for the supervision and control of the employees or for the payment of wages.

**Wages [section 2(h)]:** Wages means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes House Rent Allowance(HRA).

*Wages does not include following:*

- (1) The value of:
  - (a) House accommodation, supply of light, water medical attendance
  - (b) Other amenity/service excluded by order of the Appropriate Government
- (2) PF & ESI contributions
- (3) Travelling allowance/travelling concession
- (4) Sum paid to defray special expenses due to nature of his employment
- (5) Gratuity payable on discharge

### **Fixation & revision of minimum wages**

#### **fixation of minimum rates of wages [section 3]**

- ◆ Appropriate Government shall fix the minimum rates of wages, payable to employees in an employment specified in Parts I & II of the Schedule.
- ◆ In the case of an employment covered in Part I, the minimum rates of wages must be fixed for the

entire State, no parts of the State being omitted.

- ◆ In case of the employments specified in Part II, the minimum rates of wages may not be fixed for the entire State Parts of the State may be left out altogether.
- ◆ If there are **less than 1000 employees in the whole state** in any scheduled employment the Appropriate Government *may not* fix minimum rates of wages for that scheduled employment. But when number increases 1,000 or more Appropriate Government shall fix minimum wage rate.  
[section3(1A)]

#### Revision of minimum wages [section 3(1)(b)]

Appropriate Government may review minimum rate of wages at intervals **not exceeding 5 years**. This means that minimum wages can be revised earlier than 5 years but gap between two revisions should not be more than 5 years.

#### Manner of fixation/revision of minimum wages [section 3(2)]

The Appropriate Government may fix minimum rate of wages as:

- Minimum time rate
- Minimum piece rate
- Guaranteed time rate for those employed in piece work and
- Over time rate

**section 3(3):** Different minimum rates of wages may be fixed for:

- Different scheduled employments
- Different classes of work for same scheduled employments
- Adults, adolescents, children and apprentices
- Different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods namely:

- By the hour
- By the day
- By the month or
- By such other large wage periods as may be prescribed

Where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

#### **Minimum rate of wages [section 4]**

Any minimum rate of wages may consist of:

- (i) Basic rate of wages (+) cost of living allowance or
- (ii) Basic rate of wages (+) cost of living allowance (+) cash value of the concession for supplies of essential commodities at concessional rates or
- (iii) All inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential



commodities at concessional rates shall be computed by the Competent Authority at specified intervals in accordance with directions specified by the Appropriate Government.

#### **Procedure for fixing and revising minimum wages [section 5]**

The Appropriate Government can follow *either of the two methods* described below :

- (1) **Committee Method:** The Appropriate Government may appoint committee to hold enquiries and advise it in respect of such fixation or revision of minimum wages. After considering the advice of the committee the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.
- (2) **Notification Method:** As per this method the Appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected and give 2 months time for making representation by the interested parties. After considering all the representations and consulting with the Advisory Board, the Appropriate Government shall fix or revise the minimum rates of wages by notification in the Official Gazette.

The minimum wage rates shall come into force from the date specified in the notification. If no date is specified, wage rates shall come into force on the expiry of *3 months* from the date of the issue of the notification.

#### **Advisory board & central advisory board**

##### **Constitution of Advisory Board [section 7]**

The Advisory Board is constituted by the Appropriate Government for the purpose of:

- Co-ordinating the work of committees appointed u/s 5 and
- Advising the Appropriate Government for fixing and revising of minimum rates of wages.

##### **Composition of Advisory Board [section 9]**

The Advisory Board shall consist of persons to be nominated by the Appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman by the Appropriate Government.

*Case study : Does the Minimum Wages Act, 1948 make it compulsory to have representative of any particular industry or of each and every scheduled employment on the Advisory Board.*

It was held that it is not necessary that the Advisory Board shall consist of representatives of any particular industry or of each and every scheduled employment. [*B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union AIR (1963) SC806*]

##### **Constitution of Central Advisory Board [section 8]**

Central Government *shall* appoint a Central Advisory Board for the purpose of advising the Central and State Government in the matters of:

- Fixation and revision of minimum rates of wages and other matters
- For co-ordinating work of the advisory boards.

##### **Composition of Central Advisory Board [section 9]**

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3<sup>rd</sup> of its total number of members. One of such independent persons shall be appointed as the Chairman by Central Government.

## **Liability of payment of minimum wages & consequences**

### **Wages in kind [section 11]**

Minimum wages shall be paid in *cash*. It can also be paid in kind if there is custom and approved by Appropriate Government. Supply of essential commodities at concessional rates can also be authorized.

### **Payment of minimum rate of wages [section 12]**

It is to be noted that minimum wages must be paid irrespective of the extent of profits, the financial condition of the establishment.

The employer shall pay to every employee engaged in a scheduled employment wages which should not be less than the minimum wages fixed by the Appropriate Government. Payment of less than the minimum wages notified by the Appropriate Government is an offence.

## **Fixation of normal working hours & over time payment**

### **fixation of normal working hours for normal working day [section 13]**

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, the Appropriate Government may:

- (a) Fix the number of working hours which shall constitute a normal working day, inclusive of specified interval.
- (b) Provide a paid holiday in every period of 7 days.
- (c) Provide for payment of work on a paid holiday at a rate not less than the overtime rate.

However for following classes of employees the above provisions shall apply subject to such conditions as may be prescribed:

# UNIT - III

## **THE INDUSTRIAL DISPUTES ACT, 1947**

### **Introduction**

Prior to the year 1947, industrial disputes were being settled under the provisions of the Trade Disputes Act, 1929. Experience of the working of the 1929 Act revealed various defects which needed to be overcome by a fresh legislation. Accordingly the Industrial Disputes Bill was introduced in the Legislature. The Bill was referred to the select committee. On the recommendations of the Select Committee amendments were made in the original Bill.

### **Statement of objects and reasons**

Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering under Rule 81A of the Defence of India, Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest in checking which this rule has proved useful, is gaining momentum due to the stress of post industrial re- adjustment, the need of permanent legislation in replacement of this rule is self-evident. This Bill embodies the essential principles of Rule 81A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two institutions for the prevention and settlement of industrial disputes provided for in the Bill are the Works Committees consisting of representatives of employers and workmen, Industrial Tribunal consisting of one or more members possessing qualifications ordinarily required for appointment as Judge of a High Court. Power has been given to appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100 workmen, or more and their duties will be to remove causes of friction between the employer and workmen in the day-to-day working of the establishment and to promote measures for securing amity and good relations between them. Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlements of disputes infrequent. A reference to an Industrial Tribunal will lie where both the parties to an industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that

lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishments. With a view to expedite conciliation proceedings time limits have been prescribed for conclusion thereof 14 days in the case of conciliation officers and two months in the case of Board of Conciliation from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by a 3 month's notice by either party to the dispute.

Another important new feature of the Bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation for adjudication a strike or lock-out, in furtherance thereof, is both unnecessary and inexpedient. Where, on the date of reference to conciliation or adjudication a strike or lock-out is already in existence, power is given to the appropriate Government to prohibit its continuance lest the chances of settlement or speedy determination of the dispute should be jeopardized.

The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires, by notification in the Official Gazette, any industry to be a public utility service, for such period, if any, as may be specified in the notification.

## CHAPTER I - PRELIMINARY

### 1. Short title, extent and commencement -

- (1) This Act may be called the Industrial Disputes Act, 1947.
- (2) It extends to the whole of India.
- (3) It shall come into force on the first day of April, 1947.

### 2. Definitions -

In this Act, unless there is anything repugnant in the subject or context,

(a) "**appropriate Government**" means

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning<sup>1</sup>a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or

<sup>1</sup>the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;

(aa) "**arbitrator**" includes an umpire;

(iii) (aaa) "**average pay**" means the average of the wages payable to a workman

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;

(b) "**award**" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

(bb) "**banking company**" means a banking company as defined in section 5 of the <sup>3</sup>Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export - Import Bank of India the Industrial Reconstruction Bank of India, the Industrial Development Bank of India, the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989, the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) a corresponding new bank constituted under section 3 of the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(c) "**Board**" means a Board of Conciliation constituted under this Act;

(cc) "**closure**" means the permanent closing down of a place of employment or part thereof;

(d) "**conciliation officer**" means a conciliation officer appointed under this Act;

(e) "**conciliation proceeding**" means any proceeding held by a conciliation officer or Board under this Act;

(ee) "**controlled industry**" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

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(f) "**Court**" means a Court of Inquiry constituted under this Act;

(g) "**employer**" means

(i) in relation to any 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;

(gg) "**executive**", in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;

(i) a person shall be deemed to be "**independent**" for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;

(j) "**industry**" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

(k) "**industrial dispute**" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;

(ka) "**Industrial establishment or undertaking**" means an establishment or undertaking in which any industry is carried on :

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then (a) if any unit of such establishment or

undertaking carrying on any

2A. Dismissal, *etc.*, of an individual workman to be deemed to be an industrial dispute -

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

## **CHAPTER II - AUTHORITIES UNDER THIS ACT**

### **3. Works Committee -**

(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

### **4. Conciliation officers -**

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

### **5. Boards of Conciliation -**

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.



(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

## 6. Courts of Inquiry -

(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a court consists of two or more members, one of them shall be appointed as the chairman.

(3) A court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the court that the services of the chairman have ceased to be available, the court shall not act until a new chairman has been appointed.

## 7. Labour Courts -

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless

(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(d) he has held any judicial office in India for not less than seven years; or

(e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

## 7A. Tribunals –

(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless

(a) he is, or has been, a Judge of a High Court; or

(aa) he has, for a period of not less than three-years, been a District Judge or an Additional District Judge;

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

#### **7B. National Tribunals -**

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a judge of a High Court.

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it

#### **7C. Disqualifications for the presiding officers of Labour Courts, Tribunals and National Tribunals -**

No person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal, if

(a) he is not an independent person; or

(b) he has attained the age of sixty-five years.

#### **8. Filling of vacancies -**

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour Court, Tribunal or National Tribunal or in the office of the Chairman or any other member of a Board or court, then, in the case of a National Tribunal, the Central Government and in any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.

#### **9. Finality of orders constituting Boards, *etc.***

(1) No order of the appropriate Government or of the Central Government appointing any person as the Chairman or any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court.

(2) No settlement arrived at in the course of a conciliation proceeding shall be invalid by reason only of the fact that such settlement was arrived at after the expiry of the period referred to in sub-section (6) of section 12 or sub-section (5) of section 13, as the case may be.

(3) Where the report of any settlement arrived at in the course of conciliation proceeding before a Board is signed by the chairman and all the other members of the Board, no such settlement shall be invalid by reason only of the casual or unforeseen absence of any of the members (including the Chairman) of the Board during any stage of the proceeding.

## CHAPTER IIA - NOTICE OF CHANGE

### 9A. Notice of change -

No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change

- (a) where the change is effected in pursuance of any settlement or award; or

## CHAPTER III - REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS

### 10. Reference of disputes to Boards, Courts or Tribunals -

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication :

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately,

for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(8) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

#### 10A. Voluntary reference of disputes to arbitration -

(1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1A) 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 purpose of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the 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.

(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(5) Nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitrations under this section.

## CHAPTER IV-PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

### 11. Procedure and power of conciliation officers, Boards, Courts and Tribunals –

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

(2) A conciliation officer or a member of a Board, or court or the presiding officer of a Labour Court, Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely :

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of enforcing the attendance of any person and examining him or of compelling the production of documents.

(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or assessors to advise it in the proceeding before it.

All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)

(1) Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(2) Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

## 11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen -

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

## 12. Duties of conciliation officers -

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute without delay investigate the dispute and all matters affecting the merits and right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

## 13. Duties of Board -

(1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit

and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting for the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government: Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate: Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

#### **14. Duties of Courts -**

A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

#### **15. Duties of Labour Courts, Tribunals and National Tribunals -**

Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to sub-section (2A) of section 10, submit its award to the appropriate Government.

#### **16. Form of report or award -**

(1) The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be: Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein.

(2) The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.

#### **17. Publication of reports and awards -**

(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

**17A. Commencement of the award -**

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

## **CHAPTER V - STRIKES AND LOCK-OUTS**

**18. Prohibition of strikes and lock-outs -**

(1) No person employed in a public utility service shall go on strike, in breach of contract

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice ; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workman



- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days, thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

#### **19. General prohibition of strikes and lock-outs -**

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months, after the conclusion of such proceedings;
  - (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

#### **20. Illegal strikes and lock-outs -**

(1) A strike or a lock-out shall be illegal if

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

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal

lock-out shall not be deemed to be illegal.

**21. Prohibition of financial aid to illegal strikes and lock-outs –**

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

**CHAPTER VA - LAY-OFF AND RETRENCHMENT**

**25A. Application of sections 25C to 25E -**

(1) Sections 25C to 25E inclusive shall not apply to Industrial Establishments to which Chapter VB applies, or

(a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

**Explanation -** In this section and in sections 25C, 25D and 25E, "industrial establishment" means

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); or

(ii) a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951).

**25B. Definition of continuous service -**

For the purposes of this Chapter,

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

**Explanation** - For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

#### 25C. Right of workmen laid-off for compensation -

Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment..

#### 25D. Duty of an employer to maintain muster rolls of workmen –

Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

#### 25E. Workmen not entitled to compensation in certain cases -

No compensation shall be paid to a workman who has been laid-off

- (i) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have

been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

#### 25F. Conditions precedent to retrenchment of workmen -

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette.

#### 25FF. Compensation to workmen in case of transfer of undertakings-

Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched :

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation not being a corporation referred to in sub-clause (i) of clause (a) of section 2 established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

#### 25M. Prohibition of lay-off –

(1) No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and

adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

(10) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

## 25N. Conditions precedent to retrenchment of workmen –

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under, sub-section (4), every workman who is employed in that

establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

#### 25-O. Procedure for closing down an undertaking –

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1) the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a tribunal for adjudication : which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

**Explanation** - For the purposes of this sub-section, a "**protected workman**", in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes

of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

#### 25P. Special provision as to restarting undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976 -

If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976)

(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and

(c) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, it may, after giving an opportunity to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.

#### 25Q. Penalty for lay-off and retrenchment without previous permission –

Any employer who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

#### 25R. Penalty for closure –

(1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend



to two thousand rupees for every day during which the contravention continues after the conviction.

25S. Certain provisions of Chapter VA to apply to industrial establishment to which this Chapter applies –

The provisions of sections 25B, 25D, 25FF, 25G, 25H and 25J in Chapter VA shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.

## **CHAPTER VI - PENALTIES**

### **22. Penalty for illegal strikes and lock-outs -**

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

### **23. Penalty for instigation, etc.**

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **24. Penalty for giving financial aid to illegal strikes and lock-outs -**

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **25. Penalty for breach of settlement or award -**

Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion has been injured by such breach.

### **26. Penalty for disclosing confidential information -**

Any person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

### **30A. Penalty for closure without notice –**

Any employer who closes down any undertaking without complying with the provisions of section 25FFA shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**27. Penalty for other offences -**

(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made there under shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

No.	STRIKE	LOCK-OUT
1	It is the weapon of employees against employers to bend the employer in their side.	It is the weapon of the employer against employees to restrict the militant's spirits of the workers of industry.
2	Cessation of work by employees in the industry to show grievance or to compel the employer to fulfil their demands.	Cessation of work by the employer to accept the terms and conditions decided by the management.
3	The Strike involves the united withdrawal of the supply of labour at work.	Lockout Involves the withholding of demand of labour.
4	The reasons are often economic.	Reasons can be economic or non-economic
5	The strike is of various types.	The lock-out does not have varieties.
6	The strike is conducted to gain a concession from the employer.	Lock-out is used to enforce the terms of employment during the dispute.
7	It is a full cessation of work by employees until the fulfilment of their demands.	It is a temporal shutdown by the employer, refusal of employment.
8	The strike is a union power as it is sported by the labour or union.	The Lockout is the employer power to compel the workers to do the work according to their guidelines.

### Definition of Layoff

To layoff is to temporarily or permanently terminate or get rid of the staff / employee. This is usually done by a company / firm on account of a business slowdown as a result of which there is insufficient work to be allotted to an employee who is registered with the establishment and who has not yet been retrenched.

It is Suspension or termination of employment (with or without notice) by an employer or management. A company layoff involves the cessation of employee benefits such as salary or wages. The laid-off employees are paid laid-off compensation. All of the laid-off employees should be taken back in their usual posts, as soon as the layoff lifted out. It may be due to, one of the given reasons:

- Shortage of raw materials
- Economic recession
- Breakdown of machinery
- Accumulation of stocks

### Definition of Retrenchment

Retrenchment is to reduce the amount of corporate expenses. When a company/firm implements retrenchment, it cuts off or minimises all the unnecessary expenditures, usually by cutting back on the diversity of products or services it offers and often reducing the size of its company by closing down some of its offices that don't necessarily mean a reduction in a company's workforce.

It simply means termination of employee's services, because of replacement of the worker by machines or closure of the unit due to the lack of product's demand, produced by the unit. In retrenchment, the termination of services of several employees takes place where they are sent to the home and their connection with the organisation are completely and immediately severed.

### Key Differences between layoff and retrenchment

1. Layoff refers to the provisional termination of the employee, at the instance of the employer. Retrenchment means involuntary separation of an employee due to the replacement of labour by machines or the close of the department.<sup>236</sup>
2. The layoff is an action step, whereas retrenchment is a business strategy to reduce company's expenses.
3. The layoff is defined in section 2 (kkk) of the Industrial Disputes Act, 1947. Conversely, Retrenchment is defined in section 2 (oo) of the Industrial Disputes Act, 1947.
4. The layoff is of a temporary nature, i.e. it is for a definite period, in which the employees are recalled after the expiry of the term. As i.e. it is for a definite period, in which the employees are recalled after the expiry of the term. As opposed to retrenchment, is permanent in nature.
5. After the declaration of layoff, the company's operations stops because of the shortage of raw material, the breakdown of machinery, economic recession and so on. On the other hand, the operations of the company continue even after retrenchment is declared.
6. As soon as the layoff period is over, the employees are re-appointed to their previous posts. Unlike Retrenchment, in which the employees are not taken back by the company, once they are terminated.

# **Unit -IV**

# THE TRADE UNIONS ACT, 1926 ACT NO. 16 OF 1926

An Act to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions.

WHEREAS it is expedient to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions <sup>2\*\*\*</sup>; It is hereby enacted as follows:—

## CHAPTER I

**1. Short title, extent and commencement.**—(1) This Act may be called the <sup>3\*\*\*</sup> Trade Unions Act, 1926.

<sup>4</sup>[(2) It extends to the whole of India <sup>5\*\*\*</sup>.]

(3) It shall come into force on such date<sup>6</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, <sup>7</sup>["the appropriate Government" means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government, and] unless there is anything repugnant in the subject or context,—

(a) "executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted;

(b) "<sup>8</sup>[office-bearer]", in the case of a Trade Union, includes any member of the executive thereof, but does not include an auditor;

(c) "prescribed" means prescribed by regulations made under this Act;

(d) "registered office" means that office of a Trade Union which is registered under this Act as the head office thereof;

(e) "registered Trade Union" means a Trade Union registered under this Act;

<sup>9</sup>[(f) "Registrar" means—

(i) a Registrar of Trade Unions appointed by the appropriate Government under section 3, and includes any Additional or Deputy Registrar of Trade Unions; and

(ii) in relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated;]

(g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and

(h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and

workmen, or between employers and employees, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect—

- (i) Any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

## CHAPTER-II

**3. Appointment of Registrars.**—<sup>1</sup>[(1)] <sup>2</sup>[The appropriate Government] shall appoint a person to be the Registrar of Trade Unions for <sup>3</sup>[each State].

<sup>4</sup>[(2) The appropriate Government may appoint as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging, under the superintendence and direction of the Registrar, such powers and functions of the Registrar under this Act as it may, by order, specify and define the local limits within which any such Additional or deputy Registrar shall exercise and discharge the powers and functions so specified.

(3) Subject to the provisions of any order under sub-section (2), where an Additional or Deputy Registrar exercises and discharges the powers and functions of a Registrar in an area within which the registered office of a Trade Union is situated, the Additional or Deputy Registrar shall be deemed to be the Registrar in relation to the Trade Union for the purposes of this Act.]

**4. Mode of registration.**—<sup>5</sup>[(1)] Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

<sup>6</sup>[Provided that no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.]

<sup>7</sup>[(2) Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact

that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.]

**5. Application for registration.**—(1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:—

(a) the names, occupations and addresses of the members making the application;

<sup>1</sup>[(aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;]

(b) the name of the Trade Union and the address of its head office; and

(c) The titles, names, ages, addresses and occupations of the <sup>2</sup>[office-bearers] of the Trade Union.

(2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

**6. Provisions to be contained in the rules of a Trade Union.**—A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely:—

(a) the name of the Trade Union;

(b) the whole of the objects for which the Trade Union has been established;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;

(d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the <sup>2</sup>[office-bearers] and members of the Trade Union;

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as <sup>2</sup>[office-bearers] required under section 22 to form the executive of the Trade Union;

<sup>3</sup>[(ee) the payment of a minimum subscription by members of the Trade Union which shall not be less than—

(i) one rupee per annum for rural workers;

(ii) three rupees per annum for workers in other unorganized sectors; and

(iii) twelve rupees per annum for workers in any other case;]

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

(g) the manner in which the rules shall be amended, varied or rescinded;

(h) the manner in which the members of the executive and the other <sup>1</sup>[office-bearers] of the Trade Union shall be <sup>2</sup>[elected] and removed; <sup>3</sup>[(hh) the duration of period being not more than three years, for which the members of the executive and other office-bearers of the Trade Union shall be elected;]



(i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the<sup>1</sup>[office-bearers]and members of the Trade Union; and

(j) the manner in which the Trade Union may be dissolved.

**7. Power to call for further particulars and to require alteration of name .—**(1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section6,and may refuse to register the Trade Union until such information is supplied.

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or,in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

**8. Registration.**—The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration.

**9. Certificate of registration.**—The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under thisAct.Provided that not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the TradeUnion.

<sup>1</sup>[**11. Appeal.**—(1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal,—

(a) where the head office of the Trade Union is situated within the limits of a Presidency-town<sup>2</sup>\*\*\*, to the High Court, or

<sup>3</sup>[(aa) where the head office is situated in an area, falling within the jurisdiction of a Labour Court or an Industrial Tribunal, to that Court or Tribunal, as the case may be;]

(b) where the head office is situated in any other area, to such Court, not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the<sup>4</sup>[appropriate Government] may appoint in this behalf for that area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under sub-section (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and may direct by whom the whole or any part of the costs

of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in as under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause ( b) of sub-section (1), the person aggrieved shall have a right of appeal to the High Court, and the High Court shall, for the purpose, of such appeal, have all the powers of an appellate Court under sub-sections (2)and (3), and the provisions of those sub-sections shall apply accordingly.]

**12. Registered office.**—All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed addressshallberecordedintheregisterreferredtoinsection8.

**13. Incorporation of registered Trade Unions.**—Every registered Trade Union shall be a corporate by the name under which it is registered, and shall have perpetual succession and a body common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

**14. Certain Acts not to apply to registered Trade Unions.**—The following Acts, namely:—

(a) The Societies Registration Act, 1860 (21 of1860),

(b) The Co-operative Societies Act, 1912 (2 of1912),

shall not apply to any registered Trade Union, and the registration of any such Trade Union under any such Act shall be void.

### CHAPTER III

#### RIGHTS AND LIABILITIES OF REGISTERED TRADE UNIONS

**15. Objects on which general funds may be spent .**—The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:—

(a) the payment of salaries, allowances and expenses to <sup>1</sup>[office-bearers] of the Trade Union;

(b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution or defense of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken f or the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependant on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of

members, or under policies insuring members against sickness, accident or unemployment;

(h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

**16. Constitution of a separate fund for political purposes .—**(1) A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

(2) The objects referred to in sub-section (1) are:—

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under <sup>1</sup> [the Constitution] or of any local authority, before, during, or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under <sup>1</sup> [the Constitution] or of any local authority; or

(d) the registration of electors or the selection of a candidate for any legislative body constituted under <sup>1</sup> [the Constitution] or for any local authority; or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

<sup>2</sup>[(2A) In its application to the State of Jammu and Kashmir, references in sub-section (2) to any legislative body constituted under the Constitution shall be construed as including references to the Legislature of that State.]

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1); and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

**17. Criminal conspiracy in trade disputes .—**No <sup>3</sup> [office-bearer] or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code (45 of 1860), in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

**18. Immunity from civil suit in certain cases .—**(1) No suit or other legal proceeding shall be maintainable in

any Civil Court against any registered Trade Union or any <sup>3</sup>[office-bearer] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or

employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

**19. Enforceability of agreements.**—Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

**20. Right to inspect books of Trade Union.**—The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an <sup>1</sup>[office-bearer] or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

**21. Rights of minors to membership of Trade Unions.**—Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules.

<sup>3</sup>**21A. Disqualifications of office-bearers of Trade Unions.**—(1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office-bearer of a registered Trade Union if—

(i) he has not attained the age of eighteen years;

(ii) he has been convicted by a Court in India of any offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(2) Any member of the executive or other office-bearer of a registered Trade Union who, before the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), has been convicted of any offence involving moral turpitude and sentenced to imprisonment, shall on the date of such commencement cease to be such member or office-bearer unless a period of five years has elapsed since his release before that date.]

<sup>4</sup>[(3) In its application to the State of Jammu and Kashmir, reference in sub-section (2) to the commencement of the Indian Trade Unions (Amendment) Act, 1964 (38 of 1964), shall be construed as reference to the commencement of this Act in the said State.]

<sup>5</sup>**22. Proportion of office-bearers to be connected with the industry.**—(1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

*Explanation.*—For the purposes of this section, "unorganised sector" means any sector which the appropriate Government may, by notification in the Official Gazette, specify.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

*Explanation.*—For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.

(3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union.]

**23. Change of name.**—Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 25, change its name.

**24. Amalgamation of Trade Unions.**—Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent. of the votes recorded are in favour of the proposal.

**25. Notice of change of name or amalgamation.**—(1) Notice in writing of every change of name and of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated Trade Union is situated in a different State, to the Registrar of such State.

(2) If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

(4) The Registrar of the State in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

**26. Effects of change of name and of amalgamation.**—(1) The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more registered Trade Unions shall not prejudice any right of any of such Trade Unions or any right of a creditor of any of them.

**27. Dissolution.**—(1) When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

(2) Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds among the members in such manner as may be prescribed.

**28. Returns.**—(1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered Trade Union during the year ending on the 31st day of <sup>1</sup>[December] next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such 31st day of <sup>1</sup>[December]. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of <sup>2</sup>[office-bearers] made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of the dispatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within

fifteen days of the making of the alteration.

<sup>3</sup>[(4) For the purpose of examining the documents referred to in sub-sections (1), (2) and (3), the Registrar, or any officer authorized by him, by general or special order, may at all reasonable times inspect the certificate of registration, account books, registers, and other documents, relating to a Trade Union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a Trade Union.

## STATE AMENDMENT

### Maharashtra

**Insertion of new section 28-IA in Chapter III of Act XVI of 1926** .—In chapter III of the principal Act, after section 28, the following new section shall be inserted, namely: --

**“28-1A. Power of Industrial Court to decide certain disputes.**--(1) Where there is a dispute as respects whether or not any person is an office-bearer or a member of a registered Trade Union including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.

(2) The Industrial Court shall, after hearing the parties to the dispute, decide the dispute; and may require an office-bearer or member of the Registered Trade Union to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may appoint in this behalf or removed, in accordance with the rules of the Trade Union:

Provided that the Industrial Court may, pending the decision of the dispute, make an interim order specifying or appointing any person or appointing a Committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the Union pending the decision.

(3) The decision of the Industrial Court shall be final and binding on the parties and shall not be called in question in any Civil Court.

(4) No Civil Court shall entertain any suit or other proceedings in relation to the dispute referred to the Industrial Court as aforesaid, and if any suit or proceeding is pending in any such Court, the Civil Court shall, on receipt of an intimation from the Industrial Court that it is seized of the question, cease to exercise jurisdiction in respect thereof.

(5) Save as aforesaid, the Industrial Court may, in deciding disputes under this section, exercise the same powers and follow the same procedure as it exercises or follows for the purpose of deciding industrial disputes under the Bombay Industrial Relations Act, 1946.”

[Vide Maharashtra Act III of 1968, s. 3]

## CHAPTER IV REGULATIONS

**29. Power to make regulations.**—(1) <sup>1</sup>\*\*\* the <sup>2</sup>[appropriate Government] may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration;

(b) the transfer of registration in the case of any registered Trade Union which has changed its head office from one State to another;

(c) the manner in which, and the qualifications of persons by whom, the accounts of registered Trade Unions or of any class of such Unions shall be audited;

(d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections; and

(e) any matter which is to be or may be prescribed.

<sup>3</sup>[(3) Every notification made by the Central Government under sub-section (1) of section 22, and every regulation made by it under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or regulation, or both Houses agree that the notification or regulation should not be made, the notification or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or regulation.

(4) Every notification made by the State Government under sub-section (1) of section 22 and every regulation made by it under sub-section (1) shall be laid, as soon as may be after it is made, before the State Legislature.]

**30. Publication of regulations .—**(1) The power to make regulations conferred by section 29 is subject to the condition of the regulations being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897), as that after which a draft of regulations proposed to be made will be taken into consideration shall not be less than three months from the date on which the draft of the proposed regulations was published for general information.

(3) Regulations so made shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

## CHAPTER V PENALTIES AND PROCEDURE

**31. Failure to submit returns.—**(1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every <sup>1</sup>[office-bearer] or other person bound by the rules of the Trade Union to give or send the same, or, if there is no such <sup>1</sup>[office-bearer] or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 28, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

**32. Supplying false information regarding Trade Unions .—**Any person who, with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of any unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

**33. Cognizance of offences.—**(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) No Court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

# CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

## CHAPTER I PRELIMINARY

### **1. Short title, extent, commencement and application.-**

(1) This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force' on such date- as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act. -

(4) It applies-

(a) to every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour.

(b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

(b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

*Explanation.*-For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-

(i) if it was, performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year.

**Note.**-The Act came into force on 10th February, 1971, vide Noti No. G. S. R. 190, dated 1<sup>st</sup> February, 1971, and published in Gazette of India, Extra., Part II, Section 3(i), dated February 10, 1971, p.173. -

**Validity.**-Object and purpose of the Act-Application of the Act to pending construction works does not amount to unreasonable restriction on the right under Act 19(1) (g). The whole statute is constitutional and valid.

Gammon India Ltd. v. Union of India, 1974 SCC (L & S) 252.

**S.1- Applicability-** Where the dispute relates to service conditions of the workmen engaged in the factory canteen maintained by the company and there is no question of abolition of contract labour, the dispute can be



referred to the industrial Tribunal for adjudication *Indian Explosives Ltd. v. State of u. P.*, (1981) 1 LLJ 423 (All H.C.)

## NOTES

Act does not violate Arts. 14 and 15. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596,603: 1974 SCC (L & S) 252.

2. **Definitions.**-(1) In this Act, unless the context otherwise requires,-

(a) 'appropriate Government' means,-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.

(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work-of:-an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

(c) "contractor", in relation to an establishment, means- a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor ;

## NOTES

S.2 (1)(c)-Contractor engaged for S. 2(c) covers construction of building. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596: 1971 SCC (L & S) 252.

Ss. 2(1)(c) & 12-Where a person undertook to collect and manufacture quarry products for and on behalf of railways by engaging workmen to carry out his contract works under the railway establishment, the workmen employed by him from such work are to be deemed as "contract labour" as provided under S.2 (1)(b). The supply of such quarry products would produce a given result for the establishment, thus he fulfils all requirements of a "contractor" under S. 2 (1)(c) and therefore, is obliged to take licence under S. 12(1). *H.C. Bathra v. Union of India*, 1976 Lab IC 1199 (Gauhati).

(d) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(e) "establishment" means-

(i) any office or department of the Government or a local authority, or -

(ii) any place where any industries, trade, business, manufacture or occupation is carried on;

## NOTES

S.2 (1)(c)-'Contractor' is one who supplies contract labour to an establishment undertaking to produce a given result for it. He hires labour in connection with the work of an establishment. *State of Gujarat v. Vogue Garments*, (1983) 1 LLJ 255: 1983 Lab IC 129 (Guj HC).

S. 2 (2) (C)-Sub-contractors or 'piece wagers', are contractors. *Labourers Working on Salal Hydro Project v. State of J & K*, (1983)/2 SCG 181.

S.2 (1)(e)(ii)-A ship or vessel in which repair work is carried on is a place and an "establishment" within the meaning of S. 2 (I) (e) (ii). The work site or place may or may not belong to the principal employer, but that will not stand in the way of application of the Act or in holding that a particular place or work site where industry, trade, business, manufacture or occupation is carried on is not an establishment. *Lionel Edwards Led. v. Labour Enforcement Officer*, (1977) 51 FJR 199 (Cal).

S.2(1)(e)(ii)-Any object for the time being covering the surface and where industry, trade, business, manufacture or occupation is carried on would be a place under

S.2(1)(e)(ii). A ship anchored or berthed in a port would be a work site and the workmen employed for loading and unloading of the cargo, security, repairs to the ship would be all in connection with the business or trade. The Docks in which a ship may be berthed is controlled by the Port Authorities and the ship owners' agents would be unable to provide facilities for canteens, rest rooms etc. But these defects cannot be ground for totally excluding a ship in a port from the ambit of "establishment". *Lionel Edwards Ltd. v. Labour Enforcement Officer*, (1978) 53 FJR 116 (Cal DB).

(f) "prescribed" means prescribed by rules made under this Act;

(g) "principal employer" means-

(i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as "the Government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

## NOTES

The word 'Occupier' has been defined in Section 2(n) of the Factories Act; 1948 as under:

"Occupier" of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

*Explanation.*-For the purpose of sub-clause (iii) of this clause expressions "mine", "owner" and "agent" shall have the meanings respectively assigned in clause (j), clause (1) and clause (c) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952) ;

(h) "wages" shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936);

(i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

(A) who is employed mainly in a managerial or administrative capacity; or

(B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him? functions mainly of a managerial nature; or

(C) who is an out worker, that is to say, a person to whom any articles and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

## **CHAPTER II**

### **THE ADVISORY BOARDS**

#### **3. Central Advisory Board.-**

(1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The Central Board shall consist of--

(a) a Chairman to be appointed by the Central Government ;

(b) the Chief Labour Commissioner ( Central) , *ex officio*;

(c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government

may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government ought to be represented on the Central Board. ,

(3) The number of persons to be appointed and members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed :

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

#### **4. State Advisory Board.-**

(1) The State Government may constitute a board to be called the State Advisory Contract-Labour Board (hereinafter referred to as the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The State Board shall consist of-

- (a) a Chairman to be appointed by the State Government ;
- (b) the Labour Commissioner, *ex officio*, or in his absence any other officer nominated by the State Government in that behalf ;

(c) such numbers, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

#### **5. Power to constitute committees.-**

(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under sub-section (1) shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be

prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

### **CHAPTER III**

#### **REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR**

##### **6. Appointment of registering officers.--**

The appropriate Government may, by an order notified in the Official Gazette-

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and
- (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

##### **7. Registration of certain establishment.-**

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering office: in the prescribed manner for registration of the establishment:

Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

##### **8. Revocation of registration in certain cases--**

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by mis-representation or suppression of any material fact, or- that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.

##### **9. Effect of non-registration.-**

No principal employer of an establishment, to which this Act applies, shall-

- (a) in the case of an establishment required to be registered under Section 7, but which has not been

registered within the time fixed for the purpose under that section,

(b) in the case of an establishment the registration in respect of which has been revoked under Section 8, employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be.

#### **10. Prohibition of employment of contract labour.-**

(1) Notwithstanding anything contained in this Act, 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.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;

(b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment ;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

*Explanation.-* If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

### **CHAPTER IV**

#### **LICENSING OF CONTRACTORS**

##### **11. Appointment of licensing officers.-**

The appropriate Government may, by an order notified in the Official Gazette,-

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter ; and

(b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

##### **12. Licensing of contractors.-**

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour

except under and accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours or work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, If any, as security for the due performance of the conditions as may be prescribed.

## **NOTES**

S. 12-Sub-contractors or 'piece wagers' are equally responsible for obtaining licence and implementing the provisions of the Act and the Rules. Execution of a work in a government project by piece wagers through workers employed by them either directly or through khatedars must be in accordance with the licence obtained under S. 12 (1).

Failure to obtain licence will amount to criminal offence punishable under Ss. 16 to 21 read with Rules 41 to 62 of the Rules. *Labourers Working on Salal Hydro Project v. State of J & K*, (1983) 2 SCC 181: (1983) 1 LLJ 494.

Ss. 12 & 2(1)(e)(ii)-Where a firm under all agreement undertook the work of holding and storage of another company's materials and for that purpose utilized the services of some labourers employed through sirdars, the firm, its partners and employees could not be prosecuted for not obtaining licence under S. 12 as the firm is an "establishment" within the meaning of S. 2(1)(e)(ii) and not the company's contractor. Assuming the partners and employees of the firm or any of them were principal employers, they could not be both contractors and principal employers in relation to the same establishment. Moreover, each of the sirdars was a contractor within the meaning of the act in relation to the firm i.e. the establishment. The concerned workmen having been supplied through the medium of sirdars, neither the firm nor the partners nor the employees could be deemed to be a contractor in relation to the said workmen. Their liability to take out a licence cannot, therefore, arise. *Feroze Sons v. B. C. Basu*, (1979) 54, FJR 158 (Cal).

S. 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour without a licence, therefore, constituted a fresh offence everyday on which it continued. *Padam Prasad Jain v. State of Bihar*, 1978 Lab IC 145.

## **13. Grant of licences.-**

(1) Every application for the grant of a licence under sub-section (1) of Section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of

process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this adapter shall be valid for the period specified therein and may be renewed from time to time for such period, and on payment of such fees and on such conditions as may be prescribed.

#### **14. Revocation, suspension and amendment of licences.-**

(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that-

(a) a licence granted under Section 12 has been obtained by misrepresentation or suppression of any material fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under Section 12

#### **15. Appeal.-**

(1) Any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.



## CHAPTER V

### WELFARE AND HEALTH OF CONTRACT LABOUR

#### 16. Canteens.-

(1) The appropriate Government may make rules requiring that in every establishment-

- (a) to which this Act applies,
- (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
- (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contract, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the date by which the canteens shall be provided ;
- (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- (c) the foodstuffs which may be served therein and the charges which may be made therefore.

#### 17. Rest-rooms.-

(1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment-

- (a) to which this Act applies, and
- (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest-rooms or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

### NOTES

Provisions, held are not unreasonable. Gammon India Ltd. v. Union of India, (1974) 1 SCC 596.

#### 18. Other facilities.-

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain-

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;

- (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

## **NOTES**

Provision, held, reasonable. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

### **19. First-aid facilities.-**

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

### **20. Liability of principal employer in certain cases.-**

(1) If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

## **NOTES**

Ss. 20 & 21- Obligation to provide amenities conferred under the Act to the workers is on the principal employer. Government will be responsible for enforcement of those amenities where contractors engaged by it for executing its construction project fail to provide the amenities to its workers. Government's failure to perform its obligation amounts to violation of Art. 21 and workers can enforce their right by writ petition under Art. 32.

### **21. Responsibility for payment of wages.-**

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised

representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.

## **NOTES**

S. 21 -Payment of wages including overtime wages etc. must be made directly to the workers in full except with authorised statutory deductions, if any. Payment through khatedars after deducting any advance repayable by the workers to the khatedars or any messing charges etc. was not proper. Due amounts could be recovered from the workers after paying full wages.

## **CHAPTER VI**

### **PENALTIES AND PROCEDURE**

#### **22. Obstructions.-**

(1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under the Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

#### **23. Contravention of provisions regarding employment contract labour.-**

Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may/extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

## NOTES

S. 23 -Mere allegation of contravention is not sufficient. The complainant has to allege as to who are those persons who have contravened the prohibition of or restriction on the employment of contract labour.

### **24. Other offences.-**

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### **25. Offences by companies.-**

(1) 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:

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.

(2) Notwithstanding anything contained in sub-section (1), 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.

*Explanation.-*For the purpose of this section-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm means a partner in the firm.

### **26. Cognizance or offences.-**

No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.

**27. Limitation or prosecution.-**No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

## **CHAPTER VII**

### **MISCELLANEOUS**

#### **28. Inspecting staff.-**

(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

(2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed-

(a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection ;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein ;

(c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work ;

(d) seize to take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and

(e) exercise such other powers as may be prescribed.

(3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code, 1860 (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code\* .

### **NOTES**

S. 28-Frequent, detailed and thorough inspection should be undertaken by senior officers for ensuring compliance with S. 21. *Labourers Working Salal Hydro Project v. State of J. & K.*, (1983) 2SCC 181.

### **29. Registers and other records to be maintained.-**

(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

### **30. Effect of laws and agreements inconsistent with this Act.-**

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of the Act:

Provided that where under any such agreement, contract of service standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act the contract the labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

### **31. Power to exempt in special cases.-**

The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions if any, and for such period. or periods as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

### **32. Protection of action taken under this Act.-**

(1) No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder

### **33. Power to give directions.-**

The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

### **34. Power to remove difficulties.-**

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

### **35. Power to make rules.-**

(1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the fore going power, such rules may provide for all or any of the following matters, namely-

(a) The number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies ;

(b) The times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee ;

(c) The manner in which establishments may be registered under Section 7, the levy of a fee therefor and the form of certificate of registration ;

### **NOTES**

Levy of fee by Central and State Govts. for registration, licence and renewal of licence does not amount to levy of tax. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596: 1974 SCC (L & S) 252.

(d) The form of application for the grant or renewal of a licence under Section 13 and the particulars it may contain

(e) The manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence

- (f) The form of a licence which may be granted or renewed under Section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be leveled for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions
  - (g) The circumstances under which licences may be varied or amended under Section 14
  - (h) The form and manner in which appeals may be filed under Section 15 and the procedure to be followed by appellate officers in disposing of the appeals
  - (i) The time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer;
  - (j) The number and types of canteens, rest-rooms, latrines and urinals that should be provided and maintained
  - (k) The type of equipment that should be provided in the first aid boxes
  - (l) The period within which wages payable to contract labour should be paid by the contractor under sub-section (1) of Section 21
  - (m) The form of registers and records to be maintained by principal employers and contractors
  - (n) The submission of returns, forms in which, and the authorities to which, such returns may be submitted
  - (o) The collection of any information or statistics in relation to contract labour; and
  - (p) Any other matter which has to be, or may be, prescribed under this Act.
- (3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.



# UNIT-V

# The Employee's Compensation Act, 1923

## PREAMBLE.-

An Act to provide for the payment by certain classes of employers to their \*[Employees] of compensation for injury by accident.

*Whereas* it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident;

It is hereby enacted as follows:--

**1. Short title, extent and commencement.**-(1) This Act may be called the \*[Employee's] Compensation Act, 1923.

(2) It extends to the whole of India.

(3) It shall come into force on the first day of July, 1924.

**2. Definitions.**-(1) In this Act, unless there is anything repugnant in the subject or context,--

(a) Omitted by Act 8 of 1959

(b) "Commissioner" means a Commissioner for \*[employee]'s Compensation appointed under section 20;

(c) "compensation" means compensation as provided for by this Act;

(d) "dependant" means any of the following relatives of deceased \*[employee], namely:--

(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and

(ii) if wholly dependant on the earnings of the \*[employee] at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependant on the earnings of the \*[employee] at the time of his death,--

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the \*[employee] is alive;

Explanation.--For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.

\*[(dd) "employee" means a person, who is--

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

- (ii) (a) a master, seaman or other members of the crew of a ship,
- (b) a captain or other member of the crew of an aircraft,
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or

in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]

(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a \*[employee] are temporarily lent or let on hire to another person by the person with whom the \*[employee] has entered into a contract of service or apprenticeship, means such other person while the \*[employee] is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(ff) "minor" means a person who has not attained the age of eighteen years;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a \*[employee] in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified [in Part II of Schedule I] shall be deemed to result in permanent partial disablement;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "qualified medical practitioner" means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) Omitted by Act 15 of 1933

(k) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;

(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a \*[employee] for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;

(m) "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a

\*[employee] towards any pension or provident fund or a sum paid to a \*[employee] to cover any special expenses entailed on him by the nature of his employment;

(n) Omitted by Act 45 of 2009

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be

the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only

**3. Employer's liability for compensation.-** (1) If personal injury is caused to a \*[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

(a) in respect of any injury which does not result in the total or partial disablement of the \*[employee] for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the \*[employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the \*[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of \*[employees], or

(iii) the wilful removal or disregard by the \*[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of \*[employee],

(c) Omitted by Act 5 of 1929.

(2) If an \*[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a \*[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a \*[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

(a) that an \*[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a \*[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a \*[employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply,

in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to a

\*[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a \*[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a \*[employee] in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the \*[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

**4. Amount of compensation.-** (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury : an amount equal to fifty per cent. of the monthly wages of the deceased \*[employee] multiplied by the relevant factor; or an amount of \*[one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured \*[employee] multiplied by the relevant factor; \*[one lakh and twenty thousand rupees], whichever is more;

\*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]

Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a

\*[employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the \*[employee] on his last birthday immediately preceding the date on which the compensation fell due.

Explanation II .- Omitted by Act 45 of 2009.

(c) where permanent partial disablement result from the injury:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the \*[employee], to be paid in accordance with the provisions of sub-section(2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a \*[employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such \*[employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the \*[employee] in accordance with the law of that country.]

\*[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day--

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the \*[employee] is entitled the amount of any payment or allowance which the \*[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be;and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the \*[employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the \*[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

\*[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.]

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the \*[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of \*[not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the \*[employee] towards the expenditure of the funeral of such \*[employee] or where the \*[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

\*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]

**4A. Compensation to be paid when due and penalty for default.**- (1) Compensation under section 4 shall be

paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the \*[employee], as the case may be, without prejudice to the right of the\*[employee] to make any furtherclaim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the \*[employee] or his dependant, as the case may be.

**5. Method of calculating wages.-** In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows,namely:--

(a) where the \*[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the \*[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of thatperiod;

(b) where the whole of the continuous period of service immediately preceding the accident during which the \*[employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the \*[employee] shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a \*[employee] employed on the same work by the same employer, or, if there was no \*[employee] so employed, by a \*[employee] employed on similar work in the same locality;

(c) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. Explanation.--A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteendays.

(2)- omitted by Act 15 of 1933

**6. Review.-** (1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the

employer or of the \*[employee] accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

**7. Commutation of half-monthly payments.-** Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case maybe.

**8. Distribution of compensation.-** (1) No payment of compensation in respect of a \*[employee] whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased \*[employee], an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such \*[employee] and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer. Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(2) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(3) On the deposit of any money under sub-section (1), as compensation in respect of a deceased

\*[employee] the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(4) Compensation deposited in respect of a deceased \*[employee] shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased \*[employee] or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(5) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(6) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the \*[employee] or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the \*[employee].

(7) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation



or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(8) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.

**9. Compensation not to be assigned, attached or charged.-** Save as provided by this Act no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the \*[employee] by operation of law nor shall any claim be set off against the same.

**10. Notice and claim.-** (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of

the days during which the \*[employee] was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the \*[employee] to absent himself from work, the period of two years shall be counted from the day the \*[employee] gives notice of the disablement to his employer:

Provided further that if a \*[employee] who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if the claim is preferred in respect of the death of a \*[employee] resulting from an accident which occurred on the premises of the employer, or at any place where the \*[employee] at the time of the accident was working under the control of the employer or of any person employed by him, and the

\*[employee] died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured \*[employee] was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the

cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured \*[employee] was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which \*[employees] are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured \*[employee] employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

**10A. Power to require from employers statements regarding fatal accidents.-** (1) Where a Commissioner receives information from any source that a \*[employee] has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the

\*[employee]'s employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the \*[employee], and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased \*[employee] that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

**10B. Reports of fatal accidents and serious bodily injuries.-** (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury:

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

Explanation.-- "Serious bodily injury" means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

(2) The State Government may, by notification in the Official Gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

(3) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948 (34 of 1948), applies.

**11. Medical examination.-** (1) Where a \*[employee] has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any \*[employees] who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:

Provided that a \*[employee] shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a \*[employee], on being required to do so by the employer under subsection (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a \*[employee], before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a \*[employee], whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased\*[employee].

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (d) of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured \*[employee] has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the

\*[employee] has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably

have been expected to be if the \*[employee] had been regularly attended by a qualified medical practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly.

**12. Contracting.-** (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any \*[employee] employed in the execution of the work any compensation which he would have been liable to pay if that \*[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the \*[employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the \*[employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the \*[employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a \*[employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are

otherwise under his control or management.

**13. Remedies of employer against stranger.-** Where a \*[employee] has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

**14. Insolvency of employer.-** (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any \*[employee], then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the

\*[employee], and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the \*[employee] than they would have been under the employer.

(2) If the liability of the insurer to the \*[employee] is less than the liability of the employer to the

\*[employee], the \*[employee] may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurer is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-

section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the \*[employee]: Provided that the provisions of this sub-section shall not apply in any case in which the

\*[employee] fails to give the notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency- towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under section 530 of the Companies Act, 1956 (1 of 1956), are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if applications were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

**14A. Compensation to be first charge on assets transferred by employer.-** Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the

transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.

**15. Special provisions relating to masters and seamen.-** This Act shall apply in the case of

\*[employees] who are masters of ships or seamen subject to the following modifications, namely:--

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, lost:

Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured master or seaman is discharged or left behind in any part of India or in any foreign country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence--

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a

criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of proceedings under this Act in respect of any personal injury, if--

- (a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and
- (b) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

**15A. Special provisions relating to captains and other members of crew of aircrafts.-** This Act shall apply in the case of \*[employees] who are captains or other members of the crew of aircrafts subject to the following modifications, namely:--

(1) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft and if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(2) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence--

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a

criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

**15B. Special provisions relating to employees abroad of companies and motor vehicles.-** This Act shall apply—

- (i) in the case of \*[employees] who are persons recruited by companies registered in India and working as such abroad, and
- (ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other \*[employees], subject to the following modifications, namely:--

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the \*[employees] in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to

prefer the claim was due to sufficient cause.

(3) Where an injured \*[employees] is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence—

- (a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;
- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

**16. Returns as to compensation.-** The State Government may, by notification in the Official Gazette, direct that every person employing \*[employees], or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the State Government may direct.

**17. Contracting out.-** Any contract or agreement whether made before or after the commencement of this Act, whereby a \*[employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

**17A.** Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

**18. Proof of age (Repealed).-** [Rep. by the Workmen's Compensation (Amendment) Act, 1959 (8 of 1959), section 11 (w.e.f.1-6-1959).]

**18A. Penalties.-** (1) Whoever--

- (a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or
- (b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10A, or
- (c) fails to send a report which he is required to send under section 10B, or
- (d) fails to make a return which he is required to make under section 16 or

\*\* (e) fails to inform the employee of his rights to compensation as required under section 17A, shall be punishable with fine which \*\* shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence under this section, unless complaint thereof is

made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

**19. Reference to Commissioners.-** (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a \*[employee]) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

**20. Appointment of Commissioners.-** (1) The State Government may, by notification in the Official Gazette, appoint any person \*[who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnelmanagement, humanresourcedevelopmentandindustrialrelations]tobe a Commissioner for

\*[employees'] Compensation for such area as may be specified in the notification.

(2) Where more than one Commissioner has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business between them.

(3) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

**21. Venue of proceeding and transfer.-** (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which--

(a) the accident took place which resulted in the injury; or

(b) the \*[employee] or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner Prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the \*[employee], being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a \*[employee] in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the



decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard:

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire there into and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

**22. Form of application.-** (1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.

(1A) Subject to the provisions of sub-section (1), no application for the settlement of any matter by Commissioner, other than an application by a dependant or dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:--

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

**22A. Power of Commissioner to require further deposit in cases of fatal accident.-** (1) Where any sum has been deposited by an employer as compensation payable in respect of a \*[employee] whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

**23. Powers and procedure of Commissioners.-** The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**24. Appearance of parties.-** Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), or under sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), or by any other officer specified by the State Government in this behalf, authorized in writing by such person, or, with the permission of the Commissioner, by any other person so authorised.

**25. Method of recording evidence.-** The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

**\*[25A. Time limit for disposal of cases relating to compensation.-** The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.]

**26. Costs.-** All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

**27. Power to submit cases.-** A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

**28. Registration of agreements.-** (1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal

Disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that--

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) Omitted by Act 5 of 1929;

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in

any other law for the time being in force.

**29. Effect of failure to register agreement.-** Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the

\*[employee] by way of compensation whether under the agreement or otherwise.

**30. Appeals.-** (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under section 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased

\*[employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than \*\*ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Limitation Act, 1963 (36 of 1963)], shall be applicable to appeals under this section.

**30A.** omitted by Act 11 of 2017

**31. Recovery.-** The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890 (1 of 1890).

**32. Power of the State Government to make rules.-** (1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be

- made under section 6 when not accompanied by a medical certificate;
- (b) for prescribing the intervals at which and the conditions subject to which a \*[employee] may be required to submit himself for medical examination under sub-section (1) of section 11;
  - (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases;
  - (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;
  - (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased \*[employee] and for the transfer of money so invested from one Commissioner to another;
  - (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;
  - (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;
  - (h) for the withholding by Commissioners, whether in whole or in part of half-monthly payments pending decision on applications for review of the same;
  - (i) for regulating the scales of costs which may be allowed in proceedings under this Act;
  - (j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act;
  - (k) for the maintenance by Commissioners of registers and records of proceedings before them;
  - (l) for prescribing the classes of employers who shall maintain notice-books under sub-section (3) of section 10, and the form of such notice-books;
  - (m) for prescribing the form of statement to be submitted by employers under section 10A;
  - (n) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner;
  - (o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;
  - (p) for prescribing the manner in which diseases specified as occupational diseases may be diagnosed;
  - (q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;
  - (r) for prescribing the manner in which, and the standards by which, incapacity may be assessed.
- (3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

**33. Power of Local Government to make rules (Repealed).-** [Rep. by the A.O.1937.]

**34. Publication of rules.-** (1) The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 (10 of 1897) as that after which a draft of rules proposed to be made under section 32 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Official Gazette, and on such publication, shall have effect as if enacted in this Act.

**35. Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.-** (1) The Central Government may, by notification in the Official Gazette, make rules for the transfer to any foreign country of money deposited with a Commissioner under this Act which has been awarded to or may be due to, any person residing or about to reside in such foreign country and for the receipt, distribution and administration in any State of any money deposited under the law relating to

\*[employees]'s compensation in any foreign country, which has been awarded to, or may be due to any person residing or about to reside in any State:

Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned under the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of sub-sections (4) and (5) of section 8.

(2) Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Act regarding distribution by the Commissioner of compensation deposited with him shall cease to apply in respect of any such money.

**36. Rules made by Central Government to be laid before Parliament.-** Every rule made under this Act by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**SCHEDULE I :**

[See sections 2(1) and (4)]

**PART I :**

**LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT**

Serial No.	Description of Injury	Percentage of loss of earning capacity
1.	Loss of both hands or amputation at higher sites.	100
2.	Loss of a hand and a foot .	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement .....	100
6.	Absolute deafness .....	100

**PART II :**

**LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT**

Serial No.	Description of Injury	Percentage of loss of earning capacity
	<b>Amputation cases--upper limbs (either arm)</b>	
1.	Amputation through shoulder joint .	90
2.	Amputation below shoulder with stump less than 20.32 Cms. from tip of acromion ....	80
3.	Amputation from 20.32 Cms. from tip of acromion to less than 11.43 Cms. below tip of olecranon	70
4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 Cms. below tip of olecranon .....	60
5.	Loss of thumb .....	30
6.	Loss of thumb and its metacarpal bone	40
7.	Loss of four fingers of one hand ....	50
8.	Loss of three fingers of one hand ....	30
9.	Loss of two fingers of one hand ....	20
10.	Loss of terminal phalanx of thumb ....	20

10A.	Guillotine amputation of tip of thumb without loss of bone	10
	<b>Amputation cases--lower limbs</b>	
11.	Amputation of both feet resulting in end bearing stumps .	90
12.	Amputation through both feet proximal to the metatarsophalangeal joint .....	80
13.	Loss of all toes of both feet through the metatarso-phalangeal joint .....	40
14.	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint .....	30
15.	Loss of all toes of both feet distal to the proximal inter-phalangeal joint .....	20
16.	Amputation at hip .....	90
17.	Amputation below hip with stump not exceeding 12.70 Cms. in length measured from tip of great trechanter ..	80
18.	Amputation below hip with stump exceeding 12.70 Cms. in length measured from tip of great trechanter but not beyond middle thigh .....	70
19.	Amputation below middle thigh to 8.89 Cms. belowknee	60
20.	Amputation below knee with stump exceeding 8.89 Cms. but not exceeding 12.70 Cms. ....	50
21.	Amputation below knee with stump exceeding 12.70 Cms	50
22.	Amputation of one foot resulting in end bearing .	50
23.	Amputation through one foot proximal to the metatarsophalangeal joint ...	50
24.	Loss of all toes of one foot through the metatarsophalangeal joint ... . . .	20
	<b>Other injuries</b>	
25.	Loss of one eye, without complications, the other being normal ...	40
26.	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal .	30
26A.	Loss of partial vision of one eye ... Loss of--	10
	<b>A--Fingers of right or left hand Index finger</b>	
27.	Whole ....	14

28.	Two phalanges ....	11
29.	One phalanx ...	9
30.	Guillotine amputation of tip without loss of bone .	5
	<b>Middle finger</b>	
31.	Whole .....	12
32.	Two phalanges ...	9
33.	One Phalanx ...	7
34.	Guillotine amputation of tip without loss of bone .	4
	<b>Ring or little finger</b>	
35.	Whole .....	7
36.	Two phalanges ...	6
37.	One phalanx ...	5
38.	Guillotine amputation of tip without loss of bone.	2
	<b>B--Toes of right or left foot Great toe</b>	
39.	Through metatarso-phalangeal joint .	14
40.	Part, with some loss of bone ....	3
	<b>Any other toe</b>	
41.	Through metatarso-phalangeal joint .	3
42.	Part, with some loss of bone ....	1
	<b>Two toes of one foot, excluding great toe</b>	
43.	Through metatarso-phalangeal joint .	5
44.	Part, with some loss of bone ....	2
	<b>Three toes of one foot, excluding great toe</b>	
45.	Through metatarso-phalangeal joint .	6
46.	Part, with some loss of bone ....	3
	<b>Four toes of one foot, excluding great toe</b>	
47.	Through metatarso-phalangeal joint . . . .	9
48.	Part-with some loss of bone ....	3

[Note.--Complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member.]



## **SCHEDULE II**

See section 2(1)(dd)

### **LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(DD), ARE INCLUDED IN THE DEFINITION OF EMPLOYEES**

The following persons are employees within the meaning of section 2(1)(dd) and subject to the provisions of that section, that is to say, any person who is--

(i) employed in railways, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) employed, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made whether or not employment in any such work is within such premises or precincts, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises

Explanation.--For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or

(iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

(v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952), in any mining operation or in any kind of work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(vi) employed as the master or as a seaman of.--

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) Omitted

(c) any sea going ship not included in sub-clause (a) provided with sufficient area for navigation under sails alone; or

(vii) employed for the purpose of --

(a) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to the Ports Act, 1908 (15 of 1908), or the Major Port Trusts Act, 1963 (38 of 1963)], of goods which have been discharged from or are to be loaded into any vessel; or

(b) warping a ship through the lock; or

(c) mooring and unmooring ships at harbour wall berths or in pier; or

(d) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or

(e) the docking or undocking of any vessel during an emergency; or

(f) preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or

replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature;or

(g) any work on jolly-boats for bringing a ship's line to the wharf;or

(viii) employed in the construction, maintenance, repair or demolition of --

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof;or

any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or any road, bridge, tunnel or canal;or

(c) any wharf, quay, sea-wall or other marine work including any moorings of ships;or

(ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same;or

(x) employed, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer;or

(xi) employed in the service of any fire brigade;or

(xii) employed upon a railway as defined in clause (31) of section 2 and subsection (1) of section 197 of the Railways Act, 1989 (24 of 1989), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration;or

(xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service or as a telegraphist or as a postal or railway signaller, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department;or

(xiv) employed, in connection with operation for winning natural petroleum or natural gas;or

(xv) employed in any occupation involving blasting operations;or

(xvi) employed in the making of any excavation or explosives have been used, or whose depth from its highest to its lowest point exceeds twelve feet;or

(xvii) employed in the operation of any ferry boat capable of carrying more than ten persons;or

ix) employed on any estate which is maintained for the purpose of growing cardamom , cinchona, coffee, rubber or tea;or;

(x) employed, , in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas;or

(xi) employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse, Act 1927 (17 of 1927);or

(xii) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures;or

(xiii) employed in the training, keeping or working of elephants or wild animals; or

(xiv) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forests fires;or

(xv) employed in operations for the catching or hunting of elephants or other wild animals;or

(xvi) employed as a diver;or employed in the handling or transport of goods in, or within the precincts of,--

(a) any warehouse or other place in which goods are stored, or,

(b) any market; or

(xvii) employed in any occupation involving the handling and manipulation of radium or X-rays

apparatus, or contact with radioactive substances; or

(xviii) employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934 (22 of 1934); or

(xix) employed in horticultural operations, forestry, bee-keeping or farming by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

(xx) employed, in the construction, working, repair or maintenance of a tube-well; or

(xxi) employed in the maintenance, repair or renewal of electric fittings in a building; or

(xxii) employed in circus.

(xxiii) employed as watchman in any factory or establishment; or

(xxiv) employed in any operation in the sea for catching fish; or

(xxv) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or

(xxvi) employed in handling animals like horses, mules and bulls; or

(xxvii) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or

(xxviii) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

(xxix) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration; or

(xl) employed in cleaning of jungles or reclaiming land or ponds; or

(xli) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing; or

(xlii) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams and the like; or

(xliii) employed in the construction, boring or deepening of an open well or dug well, bore well, bore- cum-dug well, filter point and the like; or

(xliv) employed in spraying and dusting or insecticides or pesticides in agricultural operations or plantations; or

(xlv) employed in mechanized harvesting and threshing operations; or

(xlvi) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or (xlvii) employed as artist for drawing pictures on advertisement boards at a height of 3.66 meters or more from the ground level; or

(xlviii) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work;

**SCHEDULE III**

(See section 3)

**LIST OF OCCUPATIONAL DISEASES**

<b>Serial No.</b>	<b>Occupational disease</b>	<b>Employment</b>
	<b>PART A</b>	
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.
	<b>PART B</b>	
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by Mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3.	Diseases caused by Benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by Chromium or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and	All work involving exposure to

	ionising radiations.	the action of radioactive substances or ionising radiations.
8.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk. Concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series),	All work involving exposure to the risk. Concerned.
10.	Diseases caused by carbon disulphide.	All work involving exposure to the risk. Concerned.
11.	Occupational cataract due to infra-red radiations.	All work involving exposure to the risk. Concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk. Concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk. Concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk. Concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk. Concerned.
16.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk. Concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk. Concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the workprocess.	All work involving exposure to the risk. Concerned.
19.	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk. Concerned.
20.	Diseases caused by nitroglycerin or other nitroacid esters.	All work involving exposure to the risk. Concerned.
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk. Concerned.
22.	Diseases caused by asphyxiants, carbon monoxide, and its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk. Concerned.
23.	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk. Concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk. Concerned.
25.	Snow blindness in snow bound areas.	All work involving exposure to the risk concerned.
26.	Disease due to effect of heat in extreme hot climate.	All work involving exposure to the risk concerned.

27.	Disease due to effect of cold in extreme cold climate.	All work involving exposure to the risk concerned.
	<b>PART C</b>	
1.	Pneumoconioses caused by sclerogenic mineral dust (silicoses, anthraoo-silicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssionsis),	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveelitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.
6.	Acute Pulmonary oedema of high altitude.	All work involving exposure to the risk concerned.

