

3. Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]

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9.

Penalties.

### 9. Penalties:-

1. Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to 5\*[ten thousand rupees], or with both.=
2. An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made thereunder shall be punishable with imprisonment for a term 5\*[which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both].
3. Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than 5\*[six months but which may extend to two years] unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

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10.

Exemption of employer from liability in certain cases.

10. Exemption of employer from liability in certain cases.- Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as -----1. Ins. by Act 25 of 1984, s. 4 (w.e.f. 1-7-1984).

2. Ins. by s. 5, *ibid.* (w.e.f. 1-7-1984).

3. Subs. by Act 22 of 1987, s. 8 (w.e.f. 1-10-1987). 4. Added by s. 8, *ibid.* (w.e.f. 1-10-1987).

5. Subs. by s. 9, *ibid.* (w.e.f. 1-10-1987).

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The actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court--

- (a) That he has used due diligence to enforce the execution of this Act; and

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(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 employer and the employer shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the employer 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 employer 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 offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

11.

Cognizance of offences.

**11. Cognizance of offences.-**

1. No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government: Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a magistrate having jurisdiction to try the offence.
2. No court inferior to that of a 1\*[Metropolitan magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

12.

Protection of action taken in good faith.

**12. Protection of action taken in good faith.-**

No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

13.

Protection of gratuity.

**13. Protection of gratuity.-**

No gratuity payable under this Act 2\*[and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

NOTES

1. Subs. by Act 34 of 1994, s. 4 (w.e.f. 24-5-1994). 2. Ins. by Act 25 of 1984, s. 6 (w.e.f. 1-7-1984).

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14.

Act to override other enactments, etc.

#### **14. Act to override other enactments, etc.-.**

The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act:

15.

Power to make rules.

#### **15. Power to make rules.-**

1. The appropriate Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.
2. 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 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.

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## **12.4- PAYMENT OF WAGES ACT 1936**

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### **INTRODUCTION**

With the growth of industries in India, problems relating to payment of wages to persons employed in industry took an ugly turn: The industrial units were not making payment of wages to their workers at regular intervals and wages were not uniform. The industrial workers were forced to raise their heads against their exploitation.

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In 1926, Government of India wrote to local governments to ascertain the position with regard to the delays which occurred in the payment of wages to the persons employed in Industry. Material so collected was placed before the Royal Commission on Labour which was appointed in 1929. On the report of the Commission, Government of India re-examined the subject and in February, 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and circulated for the purpose of-eliciting opinions. A motion for the reference of the Bill to a Select Committee was tabled but the motion could not be passed and the Bill lapsed. In 1935 the Payment of Wages Bill, based upon the same principles as the earlier Bill of 1933 but thoroughly revised was introduced in the Legislative Assembly on 15th February, 1935. The Bill was referred to the Select Committee. The Select Committee presented its report on 2nd September, 1935. Incorporating the recommendations of the Select Committee, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly.

### **STATEMENT OF OBJECTS AND REASONS**

In 1926 the Government of India addressed local governments with a view to ascertain the position with regard to the delays which occurred in the payment of wages to persons employed in industry, and the practice of imposing fines on them. The investigations revealed the existence of abuses in both directions and the material collected was placed before the Royal Commission on Labour which was appointed in 1929. The Commission collected further evidence on the subject and the results of their examination with their recommendations will be found on pages 216-221 and 236-241 of their Report. The Government of India re-examined the subject in the light of the Commission's Report and in February, 1933 a Bill embodying the conclusions then reached was introduced and

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circulated for the purpose of eliciting opinion. A motion for the reference of the Bill to a Select Committee was tabled during the Delhi session of 1933-34, but was not reached, and the Bill lapsed. The present Bill is based upon the same principles as the original but has been revised throughout in the light of the criticisms received when the original Bill was circulated.

### **ACT 4 OF 1936**

The Payment of Wages Bill, 1935 having been passed by the Legislative Assembly received its assent on 23rd April, 1936. It came on the Statute Book as THE PAYMENT OF WAGES ACT, 1936 (4 of 1936).

### **LIST OF AMENDING ACTS, ORDINANCE AND ADAPTATION ORDERS**

1. The Government of India (Adaptation of Indian Laws) Order, 1937.

2. The Repealing and Amending Act, 1937 (20 of 1937).
3. The Payment of Wages (Amendment) Act, 1937 (22 of 1937).
4. The Payment of Wages (Amendment) Ordinance, 1940 (3 of 1940).
5. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
6. The Adaptation of Laws Order, 1950.
7. The Part B States (Laws) Act, 1951 (3 of 1951).
8. The Payment of Wages (Amendment) Act, 1957 (68 of 1957).
9. The Payment of Wages (Amendment) Act, 1964 (53 of 1964).
10. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).
11. The Repealing and Amending Act, 1974 (56 of 1974).
12. The Payment of Wages (Amendment) Act, 1976 (29 of 1976).
13. The Payment of Wages (Amendment) Act, 1977 (19 of 1977).
14. The Payment of Wages (Amendment) Act, 1982 (38 of 1982).
15. The Payment of Wages (Amendment) Act, 2005 (41 of 2005).

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## STATEMENT OF OBJECTS AND REASONS RELATING TO THE AMENDMENT OF 2005

The Payment of Wages Act, 1936 was enacted with a view to ensuring that wages payable to employed persons covered by the Act were disbursed by the employers within the prescribed time limit and that no deductions other than those authorised by law were made by them. The last amendment was made in

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1982 and several provisions of the Act have become obsolete over the years. Many proposals have been received by the Government for amending various provisions which are creating practical difficulties in enforcement of this Act. In order to bring this law in uniformity with other labour laws as also to make it more effective and practicable, it is proposed to make, inter alia, the following changes:—

- i. Enhancing the wage ceiling of Rs. 1600 per month to Rs. 6500 per month: The then existing ceiling of Rs. 1000 per month was last revised to Rs. 1600 per month in 1982. Since then a large number of employed persons have gone out of the purview of the Act due to successive rise in wages levels resulting from rise in the cost of living. Thus, with a view to covering more employed persons, it is proposed to enhance the wage ceiling from Rs. 1600 per month to Rs. 6500 per month.
- ii. To substitute the expressions "the Central Government" or "a State Government" by the expression "appropriate Government": In Parliamentary enactments relating to labour, other than the Payment of Wages

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Act, 1936, the enforcing authorities are either the Central Government or the State Governments depending upon the nature of industry. However, for implementing the Payment of Wages Act, 1936, matters are referred to the State Governments and quite often action required to be taken by them is delayed. In order that this law is in conformity with the other labour laws, it is proposed to introduce the concept of "appropriate Government".

- iii. Removing the ambiguities/weakness from the extant provisions of the Act and prescribing more effective grievance redressal: Over the years, it has been noticed that certain provisions of the Act have been differently interpreted thus leading to administrative difficulties in implementing the same. In order to remove ambiguities, appropriate changes are being proposed in sections 3, 7, 8 and 15 of the Act which respectively deal with responsibility for payment of wages, deductions from wages fines and claims in certain cases.
- iv. Strengthening compensation and penal provisions of the Act: The penal provisions of the Act have become almost insignificant due to passage of time as well as decrease in money value since these provisions were last amended in 1982. It is, therefore, proposed to make the penal provisions

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more stringent by enhancing the quantum of penalties by amending section 20 of the Act.

2. The Bill seeks to achieve the above objects.

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### **THE PAYMENT OF WAGES ACT, 1936. (4 of 1936) [23rd April, 1936]**

An Act to regulate the payment of wages of certain classes of 2[employed persons], whereas it is expedient to regulate the payment of wages to certain classes of 2[employed persons].\*

It is hereby enacted as follows:—

#### **1. Short title, extent, commencement and application.—**

1. This Act may be called the Payment of Wages Act, 1936. 3[(2) It extends to the whole of India 4[\*\*\*]].
2. It shall come into force on such date<sup>5</sup> as the Central Government may, by notification in the Official Gazette, appoint.
3. It applies in the first instance to the payment of wages to persons employed in any 6[factory, to persons] employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-

contractor, by a person fulfilling a contract with a railway administration 7 [and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2].

4. 8[The Appropriate Government] may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of 9[this Act] or any of them to the payment of wages to an
5. 1 For Statement of Objects and Reasons see Gazette of India, 1935, Pt. V, p. 20; for Report of Select Committee see Gazette of India, Pt. V, p. 77.
6. 2 Subs. by Act 38 of 1982, sec. 2 for "persons employed in industry" (w.e.f. 15-10-1982). 3 Subs. by the Adaptation of Laws Order, 1950, for sub-section (2).
7. The words "except the State of Jammu and Kashmir" Subs. by Act 3 of 1951, sec. 3 and Sch. for the words "except Part B States" which were subsequently omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).
8. Came into force on 28-3-1937, see Gazette of India, 1937, Pt. I, p. 626.
9. Subs. by Act 38 of 1982, sec. 3, for "factory and to persons" (w.e.f. 15-10-1982), 7 Ins. by Act 38 of 1982, sec. 3 (w.e.f. 15-10-1982).
10. Subs. by Act 41 of 2005, sec. 3 for "The State Government" (w.e.f. 9-11-2005). 9 Subs. by Act 68 of 1957, sec. 2, for "the Act" (w.e.f. 1-4-1958).
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class of persons employed in 1 [any establishment or class of establishments specified by 2[the appropriate Government] under sub-clause (h) of clause (ii) of section 2]: 3[Provided that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government.]

4[(6) This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed six thousand five hundred rupees per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify.]

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### Comments

The Central Government [vide S.O. 1380(E), dated 8th August, 2007] specifies, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the wages referred to in sub-section (6) as ten thousand rupees per month.

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

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5[(i)“appropriate Government” means, in relation to railways, air transport services, mines and oilfields; the Central Government and, in relation to all other cases, the State Government;]

1[2[(ia) “employed person” includes the legal representative of a deceased employed person; (ib) “employer” includes the legal representative of a deceased employer;

1. Subs. by Act 38 of 1982, sec. 3, for “any industrial establishment or in any class or group of industrial establishments” (w.e.f. 15-10-1982).
2. Subs. by Act 41 of 2005, sec. 3, for “the Central Government or a State Government” (w.e.f. 9-11-2005).
3. Subs. by Act 38 of 1982, sec. 3, for proviso (w.e.f. 15-10-1982).
4. Subs. by Act 41 of 2005, sec. 2, for sub-section “(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which over such wage-period, average one thousand six hundred rupees a month or more” (w.e.f. 9-11-2005).
5. Ins. by Act 41 of 2005, sec. 4(a) (w.e.f. 9-11-2005).

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(ic) “factory” means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof;]

(ii) 3[“ Industrial or other establishment” means] any—

4[(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;]

(b) dock, wharf or jetty;

5[(c) inland vessel, mechanically propelled;] (d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

6 (g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;]

7 [(h) any other establishment or class of establishments which 8 [the appropriate Government] may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;]



1. 1 Clauses (i), (ia) and (ib) Subs. by Act 53 of 1964, sec. 3 for clause (i) (w.e.f. 1-2-1965).
2. Clauses (i), (iii) and (ib) renumbered as clauses (ia), (ib) and (ic) by Act 41 of 2005, sec. 4(a) (w.e.f. 9-11-2005).
3. Subs. by Act 38 of 1982, sec. 3, for "industrial establishment" means' (w.e.f. 15-10-1982). 4 Subs by Act 53 of 1964, sec. 3, for sub-clause (a) (w.e.f. 1-2-1965).
4. Subs. by Act 68 of 1957, sec. 3, for sub-clause (c) (w.e.f. 1-4-1958). 6 Ins. by Act 68 of 1957, sec. 3 (w.e.f. 1-4-1958).
5. Ins. by Act 38 of 1982, sec. 4 (w.e.f. 15-10-1982).
6. Subs. by Act 41 of 2005, sec. 3, for "the Central Government or a State Government" (w.e.f. 9-11-2005).

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1[(iia) "mine" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);]

2[(iii) "plantation" has the meaning assigned to it in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);]

(iv) "prescribed" means prescribed by rules made under this Act;

3[(v) "railway administration" has the meaning assigned to it in clause (32) of section 2 of the Railways Act, 1989 (24 of 1989);]

4[(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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—

- (a) Any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) Any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) Any sum which by reason of the termination of employment of the person employed is payable under any 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 is to be made;
- (e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include—

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(1) any 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;

1. Ins. by Act 53 of 1964, sec. 3 (w.e.f. 1-2-1965).
2. Subs. by Act 53 of 1964, sec. 3, for clause (iii) (w.e.f. 1-2-1965).
3. Subs. by Act 41 of 2005, sec. 4(b), for clause "(v) 'railway administration' has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890.(9 of 1890), and" (w.e.f. 9-11-2005).
4. Subs. by Act 68 of 1957, sec. 3, for clause (vi) (w.e.f. 1-4-1958).

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5. The value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 1[the appropriate Government];
6. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
7. Any travelling allowance or the value of any travelling concession; (5) any sum paid to the employed person to defray special expenses
8. Entailed on him by the nature of his employment; or
9. Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).]

#### 10. 2[3.Responsibility for payment of wages.—

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,—

- (a) In factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);
- (b) In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment;

1 Subs. by Act 41 of 2005, sec- 3, for "the State Government" (w.e.f. 9-11-2005).

2 Subs. by Act 41 of 2005, sec. 5, for section "3. Responsibility for payment of wages.— Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)—

- (a) In factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);
- (b) In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;]
- (c) Upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person responsible to the employer, or the person so nominated, as the case may be shall also be responsible for such payment" (w.e.f. 9-11-2005).

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- (a) Upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;
  - (b) In the case of contractor, a person designated by such contractor who is directly under his charge; and
  - (c) In any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.
- (2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to, make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.]

**4. Fixation of wage-periods.—**

1. Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-period) in respect of which such wages shall be payable.
2. No wage-period shall exceed one month.

**5. Time of payment of wages.—**

(1) The wages of every person employed upon or in—

- (a) Any railway, factory or [industrial or other establishment] upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

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(b) Any other railway, factory or [industrial or other establishment], shall be paid before the expiry of the tenth day,

(c) After the last day of the wage-period in respect of which the wages are payable:

2[Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall

1 Subs. by Act 38 of 1982, sec. 6, for "industrial establishment" (w.e.f. 15-10-1982). 2 Ins. by Act 68 of 1957, sec. 5 (w.e.f. 1-4-1958).

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be paid before the expiry of the seventh day from the day of such completion.]

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated:

1[Provided that where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.]

(3) The 2 [3 [appropriate Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) 4[or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government] from the operation of this section in respect of the wages of any such persons or class of such persons:

5[Provided that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government.]

(4) 6[Save as otherwise provided in sub-section (2), all payments] of wages shall be made on a working day.

6. Wages to be paid in current coin or currency notes.—All wages shall be paid in current coin or currency notes or in both:

7[Provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.]

1 Added by Act 53 of 1964, sec. 5 (w.e.f. 1-2-1965).

2 Subs. by the A.O. 1937, for "Governor-General in Council".

3 Subs. by Act 41 of 2005, sec. 3, for "the State Government" (w.e.f. 9-11-2005).

4 Subs. by Act 38 of 1982, sec. 6, for "industrial establishment" (w.e.f. 15-10-1982). 5 Ins. by Act 53 of 1964, sec. 5 (w.e.f. 1-2-1965).

6 Subs. by Act 53 of 1964, sec. 5, for "All payments" (w.e.f. 1-2-1965). 7 Ins. by Act 29 of 1976, sec. 3 (w.e.f. 12-11-1975).

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7. Deductions which may be made from wages.—

(1) Notwithstanding the provisions of 1 [the Railways Act, 1989 (24 of 1989)] the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

2 [Explanation I].—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

Explanation II.—Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:—

- i. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
- ii. The reduction to a lower post or time scale or to a lower stage in a time scale; or
- iii. Suspension; shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.]

**(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—**

- (a) Fines;
- (b) Deductions for absence from duty;
- (c) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

3 [(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the

1. Subs. by Act 41 of 2005, sec. 6(a) for "sub-section (2) of section 47 of the Indian Railways Act, 1890 (9 of 1890)" (w.e.f. 9-11-2005).

2. 2 Explanation re-numbered as Explanation 1 by Act 68 of 1957, sec. 5 (w.e.f. 1-4-1958). 3 Subs. by Act 68 of 1957, sec. 5, for clause (d) (w.e.f. 1.4.1958).

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Employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;]

(e) deductions for such amenities and services supplied by the employer as the 1[\*\*\*] State Government 2[or any officer specified by it in this behalf] may, by general or special order, authorise;

Explanation.—The word “services” in 3 [this clause] does not include the supply of tools and raw materials required for the purposes of employment;

4 [(f)deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(fff)deductions for recovery of loans granted for house-building or other purposes approved by the State Government, and the interest due in respect thereof;]

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined 5[in clause (38) of section 2 of the Income-tax Act, 1961 (43 of 1961)] or any provident fund approved in this behalf by 6[the appropriate Government], during the continuance of such approval; 7[\*\*\*]

1. The words “Governor-General in Council or” omitted by the A.O. 1937.
2. Ins. by Act 53 of 1964, sec. 6 (w.e.f. 1-2-1965).
3. Subs. by Act 56 of 1974, sec. 3 and Sch. II, for “this sub-clause”.
4. Subs. by Act 53 of 1964, sec. 6, for clause (f) (w.e.f. 1-2-1965).
5. Subs. by Act 41 of 2005, sec. 6(b), for “in section 58A of the Indian Income-tax Act, 1922 (11 of 1922)” (w.e.f. 9-11-2005).
6. Subs. by Act 41 of 2005, sec. 3, for “the State Government” (w.e.f. 9-11-2005).
7. The word “and” omitted by Ordinance 3 of 1940, sec. 2.

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(j) deductions for payments to co-operative societies as approved by 6 [the appropriate Government] 1 [or any officer specified by it in this behalf] or to a scheme of insurance maintained by the Indian Post Office; 2 [and]

3 [4] (k) deductions, made with the written authorisation of the person employed employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), 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;]]

5 [(kk) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by 6 [the appropriate Government] or any officer specified by it in this behalf, during the continuance of such approval.

(kkk) deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

7 [(l) deductions, for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) 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, wharfage and carnage or

1. Ins. by Act 53 of 1964, sec. 6 (w.e.f. 1-2-1965).
2. Added by Ordinance 3 of 1940, sec. 2.
3. Added by Ordinance 3 of 1940, sec. 2.
4. Subs. by Act 68 of 1957, sec. 5, for clause (k) (w.e.f. 1-4-1958).
5. Ins. by Act 38 of 1982, sec. 7 (w.e.f. 15-10-1982).
6. Subs. by Act 41 of 2005, sec. 3, for "the State Government" (w.e.f. 9-11-2005).
7. Ins. by Act 53 of 1964, sec. 6 (w.e.f. 1-2-1965).

## 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

In respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

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(o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;]

1[(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;]

2[(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.]

3 [(3) Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed—

viii. In cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), seventy-five per cent, of such wages, and

ix. In any other case, fifty per cent, of such wages; Provided that where the total deductions authorised under sub-section (2) exceed seventy-five per cent, or, as the case may be, fifty per cent, of the wages, the excess may be recovered in such manner as may be prescribed.

(4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than 4 [the Railways Act, 1989 (24 of 1989)].

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### Case Law

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(i) The requirement of making deposit at the time of filing of appeal does not destroy the remedy of the appeal; Nagar Palika v. Prescribed Authority, (1992) 64 FLR 1005 (All).

1. Ins. by Act 29 of 1976, sec. 4 (w.e.f. 12-11-1976).
2. Ins. by Act 19 of 1977, sec. 2 (w.e.f. 30-6-1977).
3. Ins. by Act 53 of 1964, sec. 7 (w.e.f. 1-2-1965).
4. Subs. by Act 41 of 2005, sec. 6(c), for "the Indian Railways Act, 1890 (9 of 1890)" (w.e.f. 9-11-2005).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

- i. If the workman did not work, although the work was offered to him, he is not entitled to wages; Modi Industries v. State of Uttar Pradesh, (1992) 64 FLR 471 (All).
- ii. The prescribed Authority has been conferred power to entertain the application even beyond the period of 12 months; Rahat Hussain Khan v.



Third Addl. District Judge, (1992) 64 FLR 302 (All).

- iii. Compensation up to 10 times cannot be granted in case of back wages awarded by the Industrial Tribunal; *Municipal Council v. Khubilal*, (1992) 64 FLR 752 (Raj).
- iv. An employer can deduct the wages under section 7(2)(b) of the Act for absence from duty. Absence from duty by an employee must be on his own volition and it cannot cover his absence when he is forced by circumstances created by the employer from carrying out his duty- In the case in hand as the absence of the employees was not voluntary in as much as they were not allowed to resume their work without signing the guarantee bond no deduction can be made under the Act; *French Motor Car Co. Ltd. Workers Union v. French Motor Car Co. Ltd.*; (1990) LLR 366;
- v. It is well-settled that "go-slow" is a serious misconduct being a covert and a more damaging breach of the contract of employment; *Bank of India v. T.S. Kelawala*, (1990) LLR 313 (SC).
- vi. If the absence from duty is due to coercion and the workman is not a consenting party, then the management has no power to deduct wages; *Kothari (Madras) Ltd. v. Second Addl. District judge-cum-Appellate Authority*; (1990) 76 FJR 209 (AP).
- vii. The workman cannot be denied the wages when he reports himself on duty but the work is not taken from him by the employer; *J.D.A. v. Labour Centre*, (1990) 60 FLR 81 (Raj).
- viii. Appeal is not made to a personal designation but to a court. Revision lies against the appellate order to the High Court; *Bharatpur Central Co-op. Bank Ltd. v. Rattan Singh*, (1990) II CLR 516 (Raj).

#### 8. Fines.—

1. No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous

#### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

1. approval of 1 [the appropriate Government] or of the prescribed authority, may have specified by notice under sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

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3. No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise, than in accordance with such procedure as may be prescribed for the imposition of fines.
4. The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 2[three per cent, of the wages] payable to him in respect of that wage-period.
5. No fine shall be imposed on any employed person who is under the age of fifteen years.
6. No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of ninety days) from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
8. All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.— When the persons employed upon or in any railway, factory or 3[industrial or other establishment] are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

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### STATE AMENDMENT

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1. Subs. by Act 41 of 2005, sec. 3, for "the State Government" (w.e.f. 9-11-2005).
2. Subs. by Act 33 of 1982, sec.8, for "half-an-anna in the rupee" (w.e.f. 15-10-1982).
3. Subs. by Act 38 of 1982, sec.8, for "industrial establishment" (w.e.f. 15-10-1982).

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Punjab, Haryana.—See Proviso II to section 10(2) of the Punjab Labour Welfare Fund Act, 1965 (Punjab Act 17 of 1965) and Act 31 of 1966, sec. 88.

### 9. Deductions for absence from duty.—

1. Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

2. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a large proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by 1[the appropriate Government], if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

2[Explanation.—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.]

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## 10. Deductions for damage or loss.—

3[(1) A deduction under clause (c) or clause (o) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

(1A) A deduction shall not be made under clause (c) or clause (m) or clause (n) or clause (o) of sub-section (2) of section 7 until the employed person

1. Subs. by Act 41 of 2005, sec. 3, for "the State Government" (w.e.f. 9-11-2005).
2. Added by Act 22 of 1937, sec. 2.
3. Subs. by Act 53 of 1964, sec. 7, for sub-section (1) (w.e.f. 1-2-1965). 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.]

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.—A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as 1[\*\*\*] 2[the appropriate Government] may impose.

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12. Deductions for recovery of advances.—Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely:—

(a) Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;

3[(aa)recovery of an advance of money given after employment began shall be subject to such conditions as 4[the appropriate Government] may impose;]

(b) Recovery of advances of wages not already earned shall be subject to any rules made by 5[the appropriate Government] regulating the extent to which such advances may be given and the installments by which they may be recovered.

1. The words “the Governor-General in Council or” omitted by the A.O. 1937.
2. Subs. by Act 41 of 2005, sec. 3, for “the State Government” (w.e.f. 9-11-2005).
3. Ins. by Act 53 of 1964, sec. 8 (w.e.f. 1-2-1965).
4. Subs. by Act 41 of 2005, sec. 3, for “the State Government” (w.e.f. 9-11-2005). 5 Subs. by Act 41 of 2005, sec. 3, for “the State Government” (w.e.f. 9-11-2005).

#### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

1[12A. Deductions for recovery of loans.—Deductions for recovery of loans granted under clause (fff) of sub-section (2) of section 7 shall be subject to any rules made by 2[the appropriate Government] regulating the extent to which such loans may be granted and the rate of interest payable thereon.]

13. Deductions for payments to co-operative societies and insurance schemes.—Deductions under clause (j) 3[and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as 2[the appropriate Government] may impose.

#### 4[13A. Maintenance of registers and records.—

1. Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.
2. Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.]

#### 14. Inspectors.—

1. An Inspector of Factories appointed under 2 sub-section (1) of section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.
2. 5[The appropriate Government] may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.
3. 1[The appropriate Government] may, by notification in the Official Gazette, Gazette, appoint such other persons as it thinks fit to be Inspectors for the

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1. Ins. by Act 53 of 1964, sec. 9 (w.e.f. 1-2-1965).
2. Ins. by Act 53 of 1964, sec. 9 (w.e.f. 1-2-1965).
3. Ins. by Ordinance 3 of 1940, sec.
4. Ins. by Act 53 of 1964, sec. 10 (w.e.f. 1-2-1965).
5. Subs. by Act 68 of 1957, sec. 6, for "sub-section (1) of section 10 of the Factories Act, 1934 (25 of 1934)" (w.e.f. 1-4-1958).

#### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

purposes of this Act, and may define the local limits within which and the class of factories and 2[industrial or other establishments] in respect of which they shall exercise their functions.

#### 3[(4) An Inspector may,—

- (a) Make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed;
- (b) With such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or 4 [industrial or other establishment] at any reasonable time for the purpose of carrying out the object of this Act;
- (c) Supervise the payment of wages to persons employed upon any railway or in any factory or 5[industrial or other establishment;]
- (d) Require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;
- (e) Seize or take copies of such registers or documents 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 an employer;
- (f) Exercise such other powers as may be prescribed:

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- (g) Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(4A) The provisions of the 6[Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this sub-

1. Subs. by Act 41 of 2005, sec. 3, for "The State Government" (w.e.f. 9-11-2005).
2. Subs. by Act 38 of 1982, sec. 9, for "industrial establishments" (w.e.f. 15-10-1982). 3 Subs. by Act 53 of 1964, sec. 11, for sub-sec Hon (4) (w.e.f. 1-2-1965).
3. Subs. by Act 53 of 1964, sec. 11, for sub-sec Hon (4) (w.e.f. 1-2-1965).
4. Subs. by Act 38 of 1982, sec. 9, for "industrial establishments" (w.e.f. 15-10-1982).
5. Subs. by Act 38 of 1982, sec. 9, for "Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 15-10-1982).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

section as they apply to any search or seizure made under the authority of a warrant issued under 1[section 94] of the said Code.]

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

2[14A. Facilities to be afforded to Inspectors.—Every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.]

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—

3[(1) The appropriate Government may, by notification in the Official Gazette, appoint—

- (a) Any Commissioner for Workmen's Compensation; or
  - (b) Any officer of the Central Government exercising functions as,— (i) Regional Labour Commissioner; or
- (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) Any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
  - (d) A presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or

1. Subs. by Act 38 of 1982, sec. 9, for "section 98" (w.e.f. 15-10-1982).
2. Ins. by Act 53 of 1964, sec. 12 (w.e.f. 1-2-1965).

3. Subs. by Act 41 of 2005, sec. 8(i), for sub-section .

“(1) The State Government may, by notification in the Official Gazette, appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen’s Compensation or other officer with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be 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:

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Provided that where 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.” (w.e.f. 9-11-2005).

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under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

(e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate,

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:

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that where the appropriate 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.]

Provided that every such application shall be presented within 1. [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:

Provided further that any application may be admitted after the said period of 2 [twelve months] when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

3[(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for

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1. Subs. by Act 53 of 1964, sec. 13, for "six months" (w.e.f. 1-2-1965).

2. Subs. by Act 53 of 1964, sec. 13, for "six months" (w.e.f. 1-2-1965).

Subs. by Act 41 of 2005, sec. 8 (ii), for sub-section "(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, 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,

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The payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry, if any, as may be necessary, 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 deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority;

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner:

Provided also that 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 bona fide error or bona fide dispute as to the amount payable to the employed person; or

not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that 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, the person responsible for the payment of the wages was unable, though of exercising reasonable diligence, to make prompt payment, or
- (c) The failure of the employed person to apply for or accept payment." (w.e.f. 9-11-2005).

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(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.] 1[(4) If the authority hearing an application under this section is satisfied—

- (a) That the application was either malicious or vexatious, the authority may direct that a penalty 2[not exceeding three hundred seventy five rupees] be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or
- (b) That in any case in which compensation is directed to be paid under sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty 3[not exceeding three hundred seventy five rupees] be paid to 4[the appropriate Government] by the employer or other person responsible for the payment of wages.

(4A) 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.

(4B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).]

(5) Any amount directed to be paid under this section may be recovered—

- (a) If the authority is a Magistrate, by the authority as if it were a fine imposed by him as 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.

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### Case Law

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- i. The Authority has no jurisdiction to entertain and decide claims involving complicated questions of law and facts. Continuance of such proceeding will amount to be an abuse of the process of law; Abdul Waheed

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- v. Authority, Payment of Wages Act, (1995) II LLJ 1079.
1. Subs. by Act 53 of 1964, sec. 13, for sub-section (4) (w.e.f. 1-2-1965).
  2. Subs. by Act 41 of 2005, sec. 8(iii), for "not exceeding fifty rupees" (w.e.f. 9-11-2005).
  3. Subs. by Act 41 of 2005, sec. 8(iii), for "not exceeding fifty rupees" (w.e.f. 9-11-2005).
  4. Subs. by Act 41 of 2005, sec. 3, for "The State Government" (w.e.f. 9-11-2005).

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- i. Compensation upto 10 times cannot be granted in case of back wages awarded by the Industrial Tribunal; *Municipal Council v. Khubilal*, (1992) 64 FLR 752 (Raj).
- ii. The Wages Court is not at all competent to determine whether Variable D.A. under the agreement is payable to any workmen this being a subject-matter for the court constituted under Industrial Disputes Act. The jurisdiction of the Wages Court is to entertain application only in two items of cases, namely, of deductions and fine not authorised under sections 7 to 13 and of delay in payment of wages beyond the wage periods fixed under section 4 and the time of payment laid down in section. The question whether the employees are entitled to get Variable D.A. or not cannot be treated as deductions, and as such, the Wages Court has no jurisdiction to entertain this claim; *French Motor Car Co. Ltd. Workers' Union v. French Motor Car Co. Ltd.*, 1990 LLR 366.
- iii. The workman cannot be denied the wages when he reports himself on duty but the work is not taken from him by the employer; *J.D.A. v. Labour Court*, (1990) 60 FLR 81 (Raj).
- iv. Where the company was closed without any proper notice to the workmen and the workmen claimed wages for the period they were kept out of employment, section 25FFF of the Industrial Disputes Act was not applicable and the claim amounted to wages and not compensation and the authority under the Payment of Wages Act had jurisdiction to determine the same; *Banjarwala Tea Estate v. District Judge*, 1981 Lab 1C 370: (42) FLR 165: (1981) I Lab LN 371.

**16. Single application in respect of claims from unpaid group.—**

(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if 1[deductions, have been made from their wages in contravention of this Act for the same cause and during the same wage-period or

periods or if] their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

1 Ins. by Act 53 of 1964, sec. 14 (w.e.f. 1-2-1965)

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

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1. A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case 1[every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in sub-section (3) of section 15].
2. 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 a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly

### 17. Appeal.—

(1) 2 [An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section] may be preferred, within thirty days of the date on which 3 [the order or direction] was made, in a Presidency-town 4 [\*\*\*] before the Court of Small Causes and elsewhere before the District Court—

- (a) By the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees 5 [or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees], or
- (b) By an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to

1. Subs. by Act 53 of 1964, sec. 14, for certain words (w.e.f. 1-2-1965).
2. Subs. by Act 68 of 1957, sec. 7, for "An appeal against a direction made under subsection (3) or sub-section (4) of section 15" (w.e.f. 1-4-1958).
3. Subs. by Act 68 of 1957, sec. 7, for "the direction" (w.e.f. 1-4-1958).
4. The words "or in Rangoon" omitted by the A.O. 1937.
5. Ins. by Act 53 of 1964, sec. 15 (w.e.f. 1-2-1965).
6. Subs. by Act 53 of 1964, sec. 15, for clause (b) (w.e.f. 1-2-1965).

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**10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965**

which the employed person belongs or belonged exceeds fifty rupees, or]

(c) by any person directed to pay a penalty under 1[sub-section (4)] of section 15.

2[(1A) No appeal under clause (a) of sub-section (1)] shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.]

3[(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.]

4[(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the court referred to in sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The court referred to in sub-section (1) 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.]

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**Case Law**

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- i. Jurisdiction of Authority under this Act is not affected by establishment of Administrative Tribunals Act. Appeal pending under this section before District Judge cannot be transferred to Administrative Tribunals under section 29 of the Administrative Tribunals Act. However, a service matter decided by a civil court and pending an appeal before District Judge under the Code of Civil Procedure would be transferred to Administrative Tribunal; *Krishan Prasad Gupta v. Controller, Printing and Stationary*, (1996) I LLJ 296 (SC).
- ii. The appeal and deposit and information of deposit to court have to be within limitation of 30 days from the date of receipt of the certified copy of the impugned order; *Murudhar Kshethriya Gramin Bank v. Bhagwan Ram*, (1995) II LLJ 1076.

1. Subs. by Act 20 of 1937, sec. 2 and Sch. I, for "sub-section (5)".
2. Ins. by Act 53 of 1964, sec. 15 (w.e.f. 1-2-1965).
3. Subs. by Act 68 of 1957, sec. 7, for sub-section (2) (w.e.f. 1-4-1958). 4 Ins. by Act 53 of 1964, sec. 15 (w.e.f. 1-2-1965).

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- i. Where an authority concerned passed an ex parte order against the management, the management ought to have availed of the remedy available

- under this section before filing a writ petition; *Laxmi Industrial Corp. v. K.K. Tewari*, (1995) II LLJ 276.
- ii. The requirement of making deposit at the time of filing of appeal does not destroy the remedy of the appeal; *Nagar Palika v. Prescribed Authority*, (1992) 64 FLR 1005 (All).
  - iii. The Appellate Court under section 17 of the Act is amenable to revisional jurisdiction of the High Court. According to section 17 of the Act, Small Causes Court in a Presidency town and elsewhere the District Courts, are the Appellate Authority. Both the Courts are subordinate to the High Court and as such, High Court by exercising revisional powers under section 115, C.P.C. can correct any error of jurisdiction committed by the said Appellate Court; *French Motor Car Co. Ltd. Workers' Union v. French Motor Car Co. Ltd.*, 1990 LLR 366.
  - iv. Appeal is not made to a persona designata but to a court. Revision lies against the appellate order to the High Court; *Bharatpur Central Co-op. Bank Ltd. v. Rattan Singh*, (1990) II CLR 516 (Raj).

NOTES

### **1[17A. Conditional attachment of property of employer or other person responsible for payment of wages.—**

(1) Where at any time after an application has been made under sub-section (2) of section 15 the authority, or where at any time after an appeal has been filed under section 17 by an employed person or 2 [any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under sub-section (2) of section 15] the Court referred to in that section, is satisfied that the employer or other person responsible for the payment of wages under section 3 is likely to evade payment of any amount that may be directed to be paid under section 15 or section 17, the authority or the Court, as the case may be, except in cases where the authority or Court is of opinion that the ends of justice would be defeated by the delay, after

1. 1 Ins. by Act 68 of 1957, sec. 8 (w.e.f. 1-4-1958).
2. 2 Subs. by Act 53 of 1964, sec. 16, for certain words (w.e.f. 1-2-1965).

### **10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965**

Giving the employer or other person an opportunity of being heard, 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.

NOTES

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment before judgment under that Code shall, so far as may be, apply to any order for attachment under sub-section (1).]

18. Powers of authorities appointed under section 15.—Every authority appointed under sub-section (1) of section 15 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 and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of 1[Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

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### Case Law

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Where an authority passed an order directing a party to produce the documents asked for by another party, the order would be liable to be quashed when the order was in the form of a bold directive to the party to produce the documents asked for by another party and it did not contain any recital about the documents which was to be produced and about their relevancy to the controversy which the authority was called upon to decide; Newspapers Ltd, Allahabad v. State of Uttar Pradesh, 1982 Lab I C 776.

19. Power to recover from employer in certain cases.—[Rep. by the Payment of Wages (Amendment) Act, 1964 (53 of 1964), sec. 17 (w.e.f. 1-2-1965).]

20. Penalty for offences under the Act.—

(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, 2[section 5 except sub-section (4) thereof, section 7, section 8 except sub-section (8) thereof, section 9, section 10 except sub-section

1 Subs. by Act 38 of 1982, sec. 10, for “Chapter XXV of the Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 15-10-1982).

2 Subs. by Act 53 of 1964, sec. 18, for “section 5 and sections 7 to 13” (w.e.f. 1-2-1965).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

(2) thereof; and sections 11 to 13], both inclusive, shall be punishable 1[with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees].

(2) Whoever contravenes the provisions of section 4, 2[sub-section (4) of section 5, section 6, sub-section (8) of section 8, sub-section (2) of section 10] or section 25 shall be punishable 3[with fine which may extend to three thousand seven hundred fifty rupees].

4[(2A) Whoever being required to nominate or designate a person under section 3 fails to do so, such person shall be punishable with fine which may extend to three thousand rupees.]

5[(3) Whoever being required under this Act to maintain any records or registers or to furnish any information or return—

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- (a) Fails to maintain such register or record; or
- (b) Wilfully refuses or without lawful excuse neglects to furnish such information or return; or
- (c) Wilfully 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 6[with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees].

**(4) Whoever—**

- (a) Wilfully obstructs an Inspector in the discharge of his duties under this Act; or
  - (b) Refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or
1. Subs. by Act 41 of 2005, sec. 9(a), for “with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees” (w.e.f. 9-11-2005).
  2. Subs. by Act 53 of 1964, sec. 18, for “section 6” (w.e.f. 1-2-1965).
  3. Subs. by Act 41 of 2005, sec. 9(b), for “with fine which may extend to five hundred rupees (w.e.f. 9-11-2005).
  4. Ins. by Act 41 of 2005, sec. 9(c) (w.e.f. 9-11-2005).
  5. 5 Ins. by Act 53 of 1964, sec. 18 (w.e.f. 1-2-1965).
  6. Subs. by Act 41 of 2005, sec. 9(d), /or “with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees” (w.e.f. 9-11-2005).

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Inquiry authorised by or under this Act in relation to any railway, factory or 1[industrial or other establishment]; or

- (a) Wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or
- (b) Prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being

NOTES

examined by an Inspector acting in pursuance of his duties under this Act, shall be punishable with fine 2 [with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees],

(5) If any person who has been convicted of any offence punishable under this 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 3 [which shall not be less than one month but which may extend to six months and 4 [with fine which shall not be less than three thousand seven hundred fifty rupees but which may extend to twenty two thousand five hundred rupees] or with both:

Provided that for the purpose of this sub-section, no cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector.

(6) If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to 5 [seven hundred fifty rupees] for each day for which such failure or neglect continues.]

### 21. Procedure in trial of offences.

(1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20 unless an application in

7. Subs. by Act 38 of 1982, sec. 11, for "industrial establishment" (w.e.f. 15-10-1982).
8. Subs. by Act 41 of 2005, sec. 9(e), for "with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees" (w.e.f. 9-11-2005).
9. Subs. by Act 38 of 1982, sec. 11, for "which may extend to three months or with fine which may extend to one thousand rupees, or with both" (w.e.f. 15-10-1982).
10. Subs. by Act 41 of 2005, sec. 9(f), for "with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees" (w.e.f. 9-11-2005).
11. Subs. by Act 41 of 2005, sec. 9(g), for "one hundred rupees" (w.e.f. 9-11-2005).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter



section or the Appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the Appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

- (a) A bona fide error or bona fide 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
- (c) The failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rules made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

[ (3A) No Court shall take cognizance of any offence punishable under sub-section (3) or sub-section (4) of section 20 except on a complaint made by or with the sanction of an Inspector under this Act.]

(4) In imposing any fine for an offence under sub-section (1) of section 20 the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

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### Case Law

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The executing court cannot go beyond the order as passed. The High Court would not interfere in such a matter where the petitioner is not complying with the mandatory directions issued by competent authority; *Union of India v. Competent Authority*, 1998 LLR 189.

1 Ins. by Act 53 of 1964, sec. 19 (w.e.f. 1-2-1965).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

22. Bar of suits.—No Court shall entertain any suit for the recovery of wages or of any deduction from wages insofar as the sum so claimed—

- (a) Forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section 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

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(c). Has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) . Could have been recovered by an application under section 15.

1[22A. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done under this Act.]=

23. Contracting out.—Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

2[24. Delegation of powers.—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it tinder this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be also exercisable—

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;

1. Ins. by Act 53 of 1964, sec. 20 (w.e.f. 1-2-1965).

2. Subs. by Act 41 of 2005, sec. 10, for section "24. Application of Act in railways, air transport services, minified oil-fields.—The powers by this Act conferred upon the State Government shall, in relation to railways, air transport services, mines and oilfields; be powers of the Central Government" (w.e.f. 9-11-2005).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

25. Display by notice of abstracts of the Act.—The person responsible for the payment of wages to persons 1[employed in a factory or an industrial or other establishment] shall cause to be 2[displayed in such factory or industrial or other establishment] a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed 3[in the factory, or industrial or other estabiishment], as may be prescribed.

4[25A. Payment of undisbursed wages in cases of death of employed person.—

(1) Subject to the other provisions of the Act, all amounts payable to an employed person as wages shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,—

- (a) Be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
  - (b) Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.
- (2) Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages—
- (a) Are paid by the employer to the person nominated by the employed person, or
  - (b) Are deposited by the employer with the prescribed authority, or the employer shall be discharged of his liability to pay those wages.]

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## 26. Rule-making power.—

1. Subs. by Act 38 of 1982, sec. 12, for “employed in a factory” (w.e.f. 15-10-1982).
2. Subs. by Act 38 of 1982, sec. 12, for “displayed in such factory” (w.e.f. 15-10-1982).
3. Subs. by Act 38 of 1982, sec. 12, for “in the factory” (w.e.f. 15-10-1982).
4. Ins. by Act 38 of 1982, sec. 13 (w.e.f. 1-3-1994).

## 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

1. 1 [ 2 [The appropriate Government] may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.
2. 3[4[The appropriate Government] may, 5[\*\*\*] by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
3. In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—
  - (a) Require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act 6[prescribe the form thereof and the particulars to be entered in such registers or records];
  - (b) Require the display in a conspicuous place or premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
  - (c) Provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

NOTES.

- (d) Prescribe the manner of giving notice of the days on which wages will be paid;
  - (e) Prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;
  - (f) Prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;
  - (g) Prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;
  - (h) Prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended; (i) prescribe the extent to
1. Subs. by the A.O. 1937, for "Governor-General in Council".
  2. Subs. by Act 41 of 2005, sec. 3, for "The State Government" (w.e.f. 9-11-2005).
  3. Subs. by the A.O. 1937, for "Governor-General in Council".
  4. Subs. by Act 41 of 2005, sec. 3, for "The State Government" (w.e.f. 9-11-2005).
  5. The words "subject to the control of (he Governor-General in Council" omitted by the A.O. 1937.
  6. Subs. by Act 53 of 1964, sec. 22, for "and prescribe the form thereof" (w.e.f. 1-2-1965).

#### **10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965**

which advances may be made and the installments by which they may be recovered with reference to clause (b) of section 12;

1[(ia)prescribe the extent to which loans may be granted and the rate of interest payable thereon with reference to section 12A;

(ib)prescribe the powers of Inspectors for the purposes of this Act;]

(j) regulate the scales of costs which may be allowed in proceedings under this Act;

(k) prescribe the amount of court-fees payable in respect of any proceedings under this Act; 2[\*\*\*]

(l) prescribe the abstracts to be contained in the notices required by section 25;

3[\*\*\*]

4[(la) prescribe the form and manner in which nominations may be made for the purposes of sub-section (1) of section 25A, the cancellation or variation of any such nomination, or the making of any fresh nomination in the event of the nominee predeceasing the person making nomination, and other matters connected with such nominations;

(lb) specify the authority with whom amounts required to be deposited under clause (b) of sub-section (1) of section 25A shall be deposited, and the manner in which such authority shall deal with the amounts deposited with it under that clause;]

5[(m) provide for any other matter which is to be or may be prescribed.] (4) In making any rule under this section the State Government may provide that a contravention of the rule shall be punishable with fine 6[which shall not be less than seven hundred fifty rupees but which may extend to one thousand and five hundred rupees].

NOTES

1. Ins. by Act 53 of 1964, sec. 22 (w.e.f. 1-2-1965).
2. The word "and" omitted by Act 53 of 1964, sec. 22 (w.e.f. 1-2-1965).
3. The word "and" ins. by Act 53 of 1964, sec. 22 (w.e.f. 1-2-1965) and omitted by Act 38 of 1982, sec. 14 (w.e.f. 15-10-1982).
4. Ins. by Act 38 of 1982, sec. 14 (w.e.f. 15-10-1982).
5. Ins. by Act 53 of 1964, sec. 22 (w.e.f. 1-2-1965).
6. Subs. by Act 41 of 2005, sec. 11 (a), for "which may extend to two hundred rupees" (w.e.f. 9-11-2005).

### 10 (4) The Punjab Payment of Wages (Procedure) Rules, 1965

(5) All rules made under this section 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 not be less than three months from the date on which the draft of the proposed rules was published.

1[(6) Every rule made by the Central Government under this section 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 2[two or more successive sessions,] and if, before the expiry of the session 3[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.]

4[(7) All rules made under this section by the State Government shall, as soon as possible after they are made, be laid before the State Legislature.]

1. Ins. by Act 53 of 1964, sec. 22 (w.e.f. 1-2-1965).
2. Subs. by Act 38 of 1982, sec. 14, for "two successive sessions" (w.e.f. 15-10-1982).
3. Subs. by Act 38 of 1982, sec. 14, for "in which it is so laid or session immediately following" (w.e.f. 15-10-1982).
4. Ins. by Act 41 of 2005, sec. 11 (b) (w.e.f. 9-11-2005).

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## 12.5- MINIMUM WAGES ACT 1948

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An Act to provide for fixing minimum rates of wages in certain employments.  
WHEREAS it is expedient to provide for fixing minimum rates of wages  
in certain employments;

It is hereby enacted as follows:--

1.

Short title and extent.

1. Short title and extent.-(1) This Act may be called the Minimum Wages Act, 1948.

(2) It extends to the whole of India 2\*\*\*.

2.

Interpretation.

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

3\*[(a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) "adult" means a person who has completed his eighteenth year of age;]

(b) "appropriate Government" means,--

i. In relation to any scheduled employment carried on by or under the authority of the 4\*[Central Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by 5\*[a Central Act], the Central Government, and

ii. In relation to any other scheduled employment, the State Government;

6\*[(bb) "child" means a person who has not completed his fourteenth year of age;]

(c) "competent authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

-----1. This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I; Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I; Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, s. 3 and Sch. and Union Territory of Goa, Daman and Diu by Notification No. G.S.R. 436, dated 16-4-1973, Gazette of India, Pt. II, Sec. 3(i), p. 875.

2 This Act has been amended in Uttar Pradesh by Uttar Pradesh Act 20 of 1960 (w.e.f. 1-1-1960). Bihar by Bihar Act 3 of 1961, Maharashtra by Maharashtra Act 10 of 1961, Andhra Pradesh by Andhra Pradesh Act 19 of 1961, Gujarat by Gujarat Act 22 of 1961, Madhya Pradesh by Madhya Pradesh Act 11 of 1959, Kerala by Kerala Act 18 of 1960, Rajasthan by Rajasthan Act 4 of 1969, Madhya Pradesh by Madhya Pradesh Act 36 of 1976 and Maharashtra by Maharashtra Act 25 of 1976.

2. The words "except the State of Jammu and Kashmir", omitted by Act 51 of 1970, s. 2 and Sch. (w.e.f. 1-9-1971).

3. Subs. by Act 61 of 1986, s. 23.

4. Subs. by Act 30 of 1957, s. 2, for "Central Government, by a railway administration".

5. Subs. by the A. O. 1950, for "an Act of the Central Legislature". 6. Ins. by Act 61 of 1986, s. 23.

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(d) "cost of living index number", in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;

(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,--

- i. In a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under 1\*[clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;
- ii. In any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
- iii. In any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
- iv. In any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

(f) "prescribed" means prescribed by rules made under this Act;

-----1. Subs. by Act  
26 of 1954, s. 2, for "clause (e) of sub-section (1)  
of section 9 of the Factories Act, 1934".

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(g) "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment;

(h) "wages" means all remuneration, 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

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done in such employment, 1\*[and includes house rent allowance], but does not include--

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- i. The value of--
  - (a) Any house-accommodation, supply of light, water, medical attendance, or
  - (b) Any other amenity or any service excluded by general or special order of the appropriate Government;
- ii. Any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- iii. Any travelling allowance or the value of any travelling concession;
- iv. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- v. Any gratuity payable on discharge;

(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; and 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 for the purposes 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 not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the 2\*[Union].

-----1. Ins. by Act 30 of 1957,

s. 2.

2. Subs. by the A. O. 1950 for "Crown".

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### **3. Fixing of minimum rates of wages.**

3. Fixing of minimum rates of wages.- 1\*[(1) The appropriate Government shall, in the manner hereinafter provided,--

2\*[(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing

4minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;]



(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary:

3\*[Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.]

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, 4\*\*\* the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment 5\*[as soon as may be after such finding].]

(2) The appropriate Government may fix,--

(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

-----1. Subs. by Act 26 of 1954, s. 3; for sub-section (1).

2. Subs. by Act 31 of 1961, s. 2, for cl. (a). 3. Added by Act 30 of 1957, s. 3.

4. Certain words, brackets and figure omitted by Act 31 of 1961, s. 2.

5. Subs. by s. 2, *ibid.*, for certain words.

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(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

1\*[(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947.) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in

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operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the

5 Notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.]

**(3) In fixing or revising minimum rates of wages under this section,—**

(a) Different minimum rates of wages may be fixed for—

- i. Different scheduled employments;
- ii. Different classes of work in the same scheduled employment;
- iii. Adults, adolescents, children and apprentices;
- iv. Different localities;

2\*[(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely:—

- i. By the hour,-----1.  
Ins. by Act 31 of 1961, s. 2.2. Subs. by Act 30 of 1957, s. 3, for the original clause, excluding the proviso.206
- ii. By the day,
- iii. By the month, or
- iv. By such other larger wage-period as may be prescribed;and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated.]

Provided that where any wage-periods have section 4 of the Payment of Wages Act, 1936 (4 wages shall be fixed in accordance therewith.been fixed under of 1936), minimum

**4.Minimum rate of wages.**

4. Minimum rate of wages.—(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of—

- i. A basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as

- the "cost of living allowance"); or
- ii. A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized; or
  - iii. An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

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6(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

**5. Procedure for fixing and revising minimum wages.**

1\*[5. Procedure for fixing and revising minimum wages.- (1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either--

(a) (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or-----  
-----1. Subs. by Act 30 of 1957, s. 4, for the original section.206A

(b) (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise

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provides, it shall come into force on the expiry of three months from the date of its issue:Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also.]

**6.[Repealed.]**

6. [Advisory committees and sub-committees.]-Rep. by the Minimum Wages (Amendment) Act, 1957 (30 of 1957), s. 5.

**7.Advisory Board.**

7. Advisory Board.- For the purpose of co-ordinating the work of 1\*[committees and sub-committees appointed under section 5] and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

## 8. Central Advisory Board.

8. Central Advisory Board.- (1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

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## 9. Composition of committees, etc.

9. Composition of committees, etc.- Each of the committees, sub-committees 2\*\*\* and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

## 10. Correction of errors.

3\*[10. Correction of errors.- (1) The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical

-----1. Subs. by Act 30 of 1957,  
s. 6, for "committees, sub-committees,

advisory committees and advisory sub-committees appointed under sections 5 and 6".

2. The words "advisory committees, advisory sub-committees" omitted by s. 7, ibid.

3. Subs. by s. 8, ibid., for the original section.

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mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.

(2) Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.]

## 11. Wages in kind.

11. Wages in kind.- (1) Minimum wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

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8(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates. (4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

**12. Payment of minimum rates of wages.**

12. Payment of minimum rates of wages.- (1) Where in respect of any scheduled employment a notification under section 5 <sup>1\*\*\*</sup> is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (4 of 1936).

**13. Fixing hours for a normal working day, etc.**

13. Fixing hours for a normal working day, etc.-2\*[(1)] In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may--

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

-----1. The words and figures "or section 10" omitted by Act 30 of 1957, s. 9.

2. S. 13 re-numbered as sub-section (1) of that section by s. 10, *ibid.*

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(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

1\*[(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed :--

(a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) employees 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 in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over;

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.]

#### 14. Overtime.

14. Overtime. - (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

----- 1. Added by Act 30 of  
1957, s. 10.

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(2) Nothing in this Act shall prejudice the operation of the provisions of 1\*[section 59 of the Factories Act, 1948 (63 of 1948) ] in any case where those provisions are applicable.

#### 15. Wages of worker who works for less than normal working day.

15. Wages of worker who works for less than normal working day. - If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

Provided, however, that he shall not be entitled to receive wages for a full normal working day--

- i. In any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work,

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and

- ii. In such other cases and circumstances as may be prescribed.

**16. Wages for two or more classes of work.**

16. Wages for two or more classes of work.- Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

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**17. Minimum time rate wages for piece work.**

17. Minimum time rate wages for piece work.- Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

**18. Maintenance of registers and records.**

18. Maintenance of registers and records.- (1) Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing prescribed particulars.

-----1. Subs. by Act 26 of 1954,  
s. 4, for "section 47 of the Factories  
Act, 1934".

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(3) The appropriate Government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

**19. Inspectors.**

19. Inspectors.- (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 functions.

(2) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed--

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- (a) Enter, at all reasonable hours, with such assistants (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 employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record of wages 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 an employee employed therein or an employee to whom work is given out therein;

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- (c) require any person giving out-work and any out-workers, 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;

1\*[(d) seize or 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 an employer; and]

- (d) exercise such other powers as may be prescribed.-----1.

Subs. by Act 30 of 1957, s. 11, for the original clause.

212(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

1\*[(4) Any person required to produce any document or thing or to give any information 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 (45 of 1860).]

## 20. Claims.

20. Claims.- (1) The appropriate Government may, by notification in the Official Gazette, appoint 2\*[any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages 3\*[or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14.] to employees employed or paid in that area.

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(2) 4\*[Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall six months from the date on which the minimum amount] became payable:

be presented within wages 3\*[or other

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

5\*[(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, -----

-----1. Ins. by Act 30 of 1957, s. 11.

2. Subs. by s. 12, *ibid.*, for "any Commissioner for Workmen's Compensation or".

3. Ins. by s. 12, *ibid.*

4. Subs. by s. 12, *ibid.*, for "Where an employee is paid less than the minimum rates of wages fixed for his class of work under

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this Act".

5. Subs. by s. 12, *ibid.*, for the original sub-section.

213as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct--

- i. In the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;
- ii. In any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered--

- (a) If the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or
- (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.

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(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) 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 and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

## 21. Single application in respect of a number of employees.

21. Single application in respect of a number of employees.- (1) 1\*[Subject to such rules as may be prescribed, a single application] may be presented under section 20 on behalf or in respect -----1.

Subs. by Act 30 of 1957, s. 13, for "A single application".

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Of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of section 20 shall not exceed ten times the aggregate amount of such excess 1\*[or ten rupees per head, as the case may be].

(2) The Authority may deal with any number of separate pending

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applications presented under section 20 in respect of employees in the scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provisions of that sub-section shall apply accordingly.

## 22. Penalties for certain offences.

2\*[22. Penalties for certain offences.- Any employer who--

- (a) Pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or
- (b) Contravenes any rule or order made under section 13,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

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**22A. General provision for punishment of other offences.**

22A. General provision for punishment of other offences.- Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees.

**22B. Cognizance of offences.**

22B. Cognizance of offences.- (1) No Court shall take cognizance of a complaint against any person for an offence--

- (a) Under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer

-----1. Added by Act 30 of  
1957. s: 13.

2. Ss. 22 to 22F subs. by s. 14, *ibid.*, for the original s. 22.  
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authorised by it in this behalf has sanctioned the making of the complaint;

(b) under clause (b) of section 22 or under section 22A except on a complaint made by, or with the sanction of, an Inspector.

(2) No Court shall take cognizance of an offence--

(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant

14 of sanction under this section;

(b) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

**22C. Offences by companies.**

22C. Offences by companies.- (1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company 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 provided in this Act 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 is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Explanation.--For the purposes 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.

### **22D. Payment of undisbursed amounts due to employees.**

22D. Payment of undisbursed amounts due to employees.- All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the

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employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

### **22E. Protection against attachment of assets of employer with Government.**

22E. Protection against attachment of assets of employer with Government.- Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the employer other than any debt or

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liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

### **22F. Application of Payment of Wages Act, 1936, to scheduled employments.**

22F. Application of Payment of Wages Act, 1936, to scheduled employments.- (1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (4 of 1936), the appropriate Government may, by notification in the Official Gazette, direct that, subject to the provisions of sub-section (2), all or any of the provisions of the said Act

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shall with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

(2) Where all or any of the provisions of the said Act are applied to wages payable to employees in any scheduled employment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction.]

### **23. Exemption of employer from liability in certain cases.**

23. Exemption of employer from liability in certain cases.- Where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer 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 employer and the employer shall be discharged:

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf

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of the person whom the employer charges as the actual offender and by the prosecution.

### **24. Bar of suits.**

24. Bar of suits.- No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed--

- (a) forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff, or
- (b) has formed the subject of a direction under that section in favour of the plaintiff, or
- (c) 16(c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or
- (d) (d) could have been recovered by an application under that section.

## 25. Contracting

25. Contracting out.- Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

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## 26. Exemptions and exceptions.

26. Exemptions and exceptions.- (1) The appropriate Government may, subject to such conditions if any as it may think fit to impose, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

(2) The appropriate Government may, if for special reasons it thinks so fit, by notification in the Official Gazette, direct that 1\*[subject to such conditions and] for such period as it may specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

2\*[(2A) The appropriate Government may, if it is of opinion that, having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area 1\*[or to any establishment or a part of any establishment in a scheduled employment]; it is not necessary to fix minimum wages in respect of such employees of that class 1\*[or in respect of employees in such establishment or such part of any establishment] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the Official Gazette and subject to such conditions, if any, as it may -----1. Ins. by Act 30 of 1957, s. 15.

2. Ins. by Act 26 of 1954, s. 5.  
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think fit to impose, that the provisions of this Act or any of them shall not apply in relation to such employees.]

(3) Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

Explanation.--In this sub-section a member of the employer's family shall be deemed to include his or her spouse or child or parent or brother or sister.

## 27. Power of State Government to add to Schedule.

27. Power of State Government to add to Schedule.- The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like

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17notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly.

**28. Power of Central Government to give directions.**

28. Power of Central Government to give directions.- The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

**29. Power of the Central Government to make rules.**

29. Power of the Central Government to make rules.- The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules<sup>1</sup> prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

**30. Power of appropriate Government to make rules.**

30. Power of appropriate Government to make rules.- (1) The appropriate Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may--

(a) prescribe the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees, sub-committees, 2\*\*\* and the Advisory Board;

-----1. For the Minimum Wages (Central) Rules, 1950, see Gazette of India, 1950, Pt. II, Sec. 3, p. 781.

2. The words "advisory committees, advisory sub-committees" omitted by Act 30 of 1957, s. 16.

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(b) prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the enquiry before the committees, sub-committees, 1\*\*\* and the Advisory Board;

(c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates;



- (d) prescribe the time and conditions of payment of, and the deductions permissible from, wages;
- (e) provide for giving adequate publicity to the minimum rates of wages fixed under this Act;
- (f) provide for a day of rest in every period of seven days  
and for the payment of remuneration in respect of such day;
- (g) prescribe the number of hours of work which shall constitute a normal working day;
- (h) prescribe the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day;
- (i) prescribe the form of registers and maintained and the particulars to be registers and records;  
records to be entered in such
- (j) provide for the issue of wage books and wage slips and prescribe the manner of making and authenticating entries in wage books and wage slips;
- (k) prescribe the powers of Inspectors for purposes of this Act;
- (l) regulate the scale of costs that may be allowed in proceedings under section 20;
- (m) prescribe the amount of court-fees payable in respect of proceedings under section 20; and
- (n) provide for any other matter which is to be or may be prescribed.

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-----1. The words "advisory committees, advisory sub-committees" omitted

by Act 30 of 1957, s. 16.

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### **30A. Rules made by Central Government to be laid before Parliament.**

1\*[30A. Rules made by Central Government to be laid before Parliament.- 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 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.]

### **31. Validation of fixation of certain minimum rates of wages.**

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2\*[31. Validation of fixation of certain minimum rates of wages.-Where during the period--

(a) commencing on the 1st day of April, 1952, and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1954 (26 of 1954); or  
(b) commencing on the 31st day of December, 1954, and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1957 (30 of 1957); or  
19(c) commencing on the 31st day of December, 1959, and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1961 (31 of 1961), minimum rates of wages have been fixed by an appropriate Government as being payable to employees employed in any employment specified in the Schedule in the belief or purported belief that such rates were being fixed under clause (a) of sub-section (1) of section 3, as in force immediately before the commencement of the Minimum Wages (Amendment) Act, 1954 (26 of 1954), or the Minimum Wages (Amendment) Act, 1957, (30 of 1957) or the Minimum Wages (Amendment) Act, 1961, (31 of 1961) as the case may be, such rates shall be deemed to have been fixed in accordance with law and shall not be called in question in any court on the ground merely that the relevant date specified for the purpose in that clause had expired at the time the rates were fixed:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the payment by him by way of wages to any of his employees during any period specified in this section of an amount which is less than the minimum rates of wages referred to in this section or by reason of non-compliance during the period aforesaid with any order or rule issued under section 13:]

-----1. Ins. by Act 31 of 1961,  
s. 3.

2. Subs. by s. 4, *ibid.*, for s. 31.

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## 12.6- ESI ACT 1948

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An Act to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto;

It is hereby enacted as follows :—

### CHAPTER I PRELIMINARY

1. Short title, extent, commencement and application. — (1) This Act may be called the Employees' State Insurance Act, 1948.
2. It extends to 2[the whole of India 3[\*\*\*]].
3. It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and 1[for different States or for different parts thereof].
4. It shall apply, in the first instance, to all factories (including factories belonging to the 2[Government]) other than seasonal factories.
5. 3[Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.]
6. The appropriate Government may, in consultation with the Corporation and 4[where the appropriate Government is a State Government, with the approval of the Central Government], after giving 5[one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise.
7. 6[Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.]

1[(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.]

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

(1) "appropriate Government" means, in respect of establishments under the control of the Central Government or 2[a railway administration] or a major port or a mine or oil-field, the Central Government, and in all other cases, the 3[State] Government ;

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4[(2) \* \* \*]

(3) "confinement" means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead ;

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(4) " contribution " means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act ;

5[(5) \* \* \*]

(6) " Corporation " means the Employees' State Insurance Corporation set up under this Act ;

1[(6-A) " dependant " means any of the following relatives of a deceased insured person, namely : —

- i. [a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter ; ]
- ii. [ a widowed mother ;]
- iii. if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 4[twenty-five] and who is infirm ;
- iv. if wholly or in part dependent on the earnings of the insured person at the time of his death, —
  - (a) A parent other than a widowed mother,
  - (b) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,
  - (c) A minor brother or an unmarried sister or a widowed sister if a minor,
  - (d) A widowed daughter-in-law,
  - (e) A minor child of a pre-deceased son,
  - (f) A minor child of a pre-deceased daughter where no parent of the child is alive, or
  - (g) A paternal grand-parent if no parent of the insured person is alive ;]

(7) " duly appointed " means appointed in accordance with the provisions of this Act or with the rules or regulations made there-under ;

1[(8) " employment injury " means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India ;]

(9) " employee " means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and —

- i. who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or

- ii. Who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or

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3 establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ; 2[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ;

1[or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), 2[and includes such person engaged as apprentice whose training period is extended to any length of time] but does not include] — ]

(a) any member of 3[the Indian] naval, military or air forces ; or

4[(b) any person so employed whose wages (excluding remuneration for overtime work) exceed 5[such wages as may be prescribed by the Central Government] :

Provided that an employee whose wages (excluding remuneration for overtime work) exceed 5[such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period ;]

(10) " exempted employee " means an employee who is not liable under this Act to pay the employee's contribution ;

6[(11) " family " means all or any of the following relatives of an insured person, namely : —

(i) a spouse ;

(ii) a minor legitimate or adopted child dependent upon the insured person ;

(iii) a child who is wholly dependent on the earnings of the insured person and who is —

(a) receiving education, till he or she attains the age of twenty-one years, (b) an unmarried daughter ;

(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues ;

1[(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government ;

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(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person ;]]

2[(12) “ factory ” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed ;]

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(13) “ immediate employer ” in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer ! [and includes a contractor].

2[(13-A) “ insurable employment ” means an employment in a factory or establishment to which this Act applies ;]

(14) “ insured person ” means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act ;

3[(14A) “ 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 ;

4[(14AA) “ manufacturing process ” shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948) ;]

(14-B) “ mis-carriage ” means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (45 of 1860) ;]

(15) “ occupier ” of the factory shall have the meaning assigned to it in the Factories Act, 5[1948 (63 of 1948)] ;

1[(15A) “ permanent partial disablement ” means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement :

Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement ;

(15B) "permanent total disablement" means such disablement of a permanent nature as incapacitates an 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 the Second Schedule 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 percent. or more ;]

2[(15C) 1948] ;]

(16)

(17)

"power" shall have the meaning assigned to it in the Factories Act, 1948 (63 of

"prescribed" means prescribed by rules made under this Act ;

"principal employer" means —

- i. In a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under 3[the Factories Act, 1948] (63 of 1948), the person so named ;
- ii. In any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department ;
- iii. In any other establishment, any person responsible for the supervision and control of the establishment ;

(18) "regulation" means a regulation made by the Corporation ; (19) "Schedule" means a schedule to this Act ;

1[(19A) "seasonal factory", means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of ground-nuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year —

- (a) In any process of blending, packing or repacking of tea or coffee ; or
- (b) In such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify ;]

(20) "sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds ;

(21) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such

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injury temporarily incapable of 2[doing the work which he was doing prior to or at the time of the injury] ;

(22) " wages " means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes 1[any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff and] other additional remuneration, if any, 2[paid at intervals not exceeding two months], but

does not include —

- (a) Any contribution paid by the employer to any pension fund or provident fund, or under this Act ;
- (b) Any travelling allowance or the value of any travelling concession ;
- (c) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or
- (d) Any gratuity payable on discharge ;

3[(23) " wage period " in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise;]

4[(24) all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.]

5[2-A. Registration of factories and establishments. — Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.]

## CHAPTER II

### CORPORATION, STANDING COMMITTEE AND MEDICAL BENEFIT COUNCIL

3. Establishment of Employees' State Insurance Corporation. — (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of Employees' State Insur-

6ance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

(2) The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

4. Constitution of Corporation. — The Corporation shall consist of the following members, namely : —



- (e) A Chairman to be 2[appointed] by the Central Government ;
- (f) A Vice-Chairman to be 2[appointed] by the Central Government ;]
- (g) Not more than five persons to be 2[appointed] by the Central Government 3[\* \* \*];
- (h) One person each representing each of the 1[2[States] in which this Act is in force] to be 3[appointed] by the State Government concerned ;
- (i) One person to be 3[appointed] by the Central Government to represent the 4[Union territories] ;
- (j) 5[ten] persons representing employers to be 3[appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;
- (k) 5[ten] persons representing employees to be 3[appointed] by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ;
- (l) Two persons representing the medical profession to be 3[appointed] by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government ; 6[\*\*\*]

7[(i) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States ; and

(j) the Director-General of the Corporation, ex-officio.]

5. Term of office of the members of the Corporation. — (1) Save as otherwise expressly provided in this Act, the term of office of members of the Corporation, other than 1[the members referred to in clauses (a), (b), (c), (d) and (e) of section 4 and the ex-officio member,] shall be four years commencing from the date on which their 2[appointment] or election is notified.

Provided that a member of the Corporation shall notwithstanding the expiry of the said period of four years, continue to hold office until the 2[appointment] or election of his successor is notified.

(2) The member of the Corporation referred to in clauses 3[(a), (b), (c), (d) and (e)] of section 4 shall hold office during the pleasure of the Government 4[appointing] them.

6. Eligibility for 5[re-appointment] or re-election. — An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for 5[re-appointment] or re-election as the case may be.

6[7. Authentication of orders, decisions, etc. — All orders and decisions of the Corporation shall be authenticated by the signature of the Director-General of the Corporation and all other instruments issued by the Corporation shall be authenticated

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by the signature of the Director-General or such other officer of the Corporation as may be authorised by him.]

8. Constitution of Standing Committee. — A Standing Committee of the Corporation shall be constituted from among its members, consisting of —

- (a) A Chairman 1[appointed] by the Central Government ;
- (b) Three members of the Corporation, 2[1[appointed] by the Central Government]

3[(bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ;]

(c) 4[eight] members elected by the Corporation as follows : —

- i. 5[\* \* \*]
- ii. 6[three] members from among the members of the Corporation representing employers ;
- iii. 6[three] members from among the members of the Corporation representing employees ;
- iv. One member from among the members of the Corporation representing the medical profession ; and
- v. One member from among the members of the Corporation elected by 1[Parliament] ;

2[(d) the Director-General of the Corporation, ex-officio.]

9. Term of office of members of Standing Committee. — (1) Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (a) or 3[clause (b) or clause (bb)] of section 8, shall be two years from the date on which his election is notified : Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified :

Provided further that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

(2) A member of the Standing Committee referred to in clause (a) or 3[clause (b) or clause (bb)] of section 8 shall hold office during the pleasure of the Central Government.

10. Medical Benefit Council. — (1) The Central Government shall constitute a Medical Benefit Council consisting of —

- (a) The Director General, the Employees' State Insurance Corporation, ex-officio as Chairman ;
- (b) The Director General, Health Services, ex-officio as Co-Chairman ; ](
- (c) the Medical Commissioner of the Corporation, ex-officio ;

- (d) One member each representing each of the 1[States (other than Union territories)] in which this Act is in force to be 2[appointed] by the State Government concerned ;
- (e) Three members representing employers to be 2[appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;
- (f) Three members representing employees to be 2[appointed] by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ; and
- (g) Three members, of whom not less than one shall be a woman, representing the medical profession, to be 2[appointed] by the Central Government in consul-

8station with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

(2) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (a) to (d) of sub-section (1), shall be four years from the date on which his 3[appointment] is notified:

4[Provided that a member of the Medical Benefit Council shall, notwithstanding the expiry of the said period of four years continue to hold office until the 3[appointment] of his successor is notified.]

(3) A member of the Medical Benefit Council referred to in clauses (b) and (d) of sub-section (1) shall hold office during the pleasure of the Government 1[appointing] him.

11. Resignation of membership. — A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that Government.

12. Cessation of membership. — 2[(1)] A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof :

Provided that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

3[(2) Where in the opinion of the Central Government any person 4[appointed] or elected to represent employers, employees or the medical profession on (sic.) the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified therein such person shall cease to

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be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be.]

5[(3) A person referred to in clause (i) of section 4 shall cease to be a member of the Corporation when he ceases to be a Member of Parliament.]

13. Disqualification. — A person shall be disqualified for being chosen as or for being a member of the Corporation, the Standing Committee or the Medical Benefit Council —

(a) if he is declared to be of unsound mind by a competent Court ; or (b) if he is an undischarged insolvent ; or

(c) if he has directly or indirectly by himself or by his partner any interest in subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a share-holder (not being a Director) of a company ; or

(d) if before or after the commencement of this Act, he has been convicted of an offence involving moral turpitude.

14. Filling of vacancies. — (1) Vacancies in the office of 1[appointed] or elected members of the Corporation, the Standing Committee Medical Benefit Council shall be filled by 2[appointment] or election, as the case may be.

(2) A member of the Corporation, the Standing Committee or the Medical Benefit Council 1[appointed] or elected to fill a casual vacancy shall hold office only so long as the member in whose place he is 1[appointed] or elected would have been entitled to hold office if the vacancy had not occurred.

15. Fees and allowances. — Members of the Corporation, the Standing Committee and the Medical Benefit Council shall receive such fees and allowances as may from time to time be prescribed by the Central Government.

16. Principal officers. — 3[(1) The Central Government may, in consultation with the Corporation, appoint a Director-General and a Financial Commissioner.]

(2) The Director-General shall be the Chief Executive Officer of the Corporation.

(3) 1[The Director-General and the Financial Commissioner] shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of the Central Government 2[and of the Corporation].

(4) 3[The Director-General or the Financial Commissioner] shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing 4[Director-General or Financial Commissioner] shall be eligible for re-appointment if he is otherwise qualified.

(5) 5[The Director-General or the Financial Commissioner] shall receive such salary and allowances as may be prescribed by the Central Government.

(6) A person shall be disqualified from being appointed as or for being 6[the Director-General or the Financial Commissioner] if he is subject to any of the disqualifications specified in section 13.

(7) The Central Government may at any time remove 6[the Director-General or the Financial Commissioner] from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-third is of the total strength of the Corporation.

17. Staff. — (1) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post 1[the maximum monthly salary of which 2[exceeds such salary as may be prescribed by the Central Government]].

3[(2) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay :

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

4[Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis.]

(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.]

(3) Every appointment to 1[posts 2[(other than medical posts)] corresponding to 3[group A and group B] posts under the Central Government] shall be made in consultation with the Union Public Service Commission :

Provided that this sub-section shall not apply to an officiating or temporary appointment for 4[a period] not exceeding one year.

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5[Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.]

6[(4) If any question arises whether a post corresponds to a 3[group A and group B] post under the Central Government, the question shall be referred to that Government whose decision thereon shall be final.]

18. Powers of the Standing Committee. — (1) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs

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of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(2) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(3) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

19. Corporation's power to promote measures for health, etc., of insured persons. — The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

20. Meetings of Corporation, Standing Committee and Medical Benefit Council. — Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

21. Supersession of the Corporation and Standing Committee. — (1) If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that Government may, by notification in the official Gazette, supersede the Corporation, or in the case of the Standing Committee, supersede in consultation with the Corporation, the Standing Committee :

Provided that therefore issuing a notification under this sub-section the Central Government shall give a reasonable opportunity to the Corporation or the Standing Committee, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation or the Standing Committee, as the case may be.

(2) Upon the publication of a notification under sub-section (1) superseding the Corporation or the Standing Committee, all the members of the Corporation or the Standing Committee, as the case may be, shall, as from the date of such publication, be deemed to have vacated their offices.

(3) When the Standing Committee has been superseded, a new Standing Committee shall be immediately constituted in accordance with section 8.

(4) When the Corporation has been superseded, the Central Government may —

(a) immediately 1[appoint] or cause to be 2[appointed] or elected new members to the Corporation in accordance with section 4 and may constitute a new Standing Committee under section 8 ;

(b) In its discretion, appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the Corporation and such 1 agency shall be competent to exercise all the powers and perform all the functions of the Corporation.

(5) The Central Government shall cause its full report of any action taken under this section and the circumstances leading to such action to be laid before 3 [Parliament] at the earliest opportunity and in any case not later than three months from the date of the notification superseding the Corporation or the Standing Committee, as the case may be.

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22. Duties of Medical Benefit Council: — The Medical Benefit Council shall —

- (a) advise 4 [the Corporation and the Standing Committee] on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters ;
- (b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and
- (c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

23. Duties of 1 [Director-General and the Financial Commissioner]. — The 1 [Director-General and the Financial Commissioner] shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

24. Acts of Corporation, etc., not invalid by reason of defect in constitution, etc. — No act of the Corporation, the Standing Committee or the Medical Benefit Council shall be deemed to be invalid by reason of any defect in the constitution of the Corporation, the Standing Committee or the Medical Benefit Council, or on the ground that any member thereof was not entitled to hold or continue in office by reason of any disqualification or of any irregularity in his 2 [appointment] or election, or by reason of such act having been done during the period of any vacancy in the office of any member of the Corporation, the Standing Committee or the Medical Benefit Council.

25. Regional Board, Local Committees, Regional and Local Medical Benefit Councils. — The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations.

### CHAPTER III

#### FINANCE AND AUDIT

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26. Employees' State Insurance Fund. — (1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.

(2) The Corporation may accept grants, donations and gifts from the Central or any 1[State] Government, 2[\* \* \*] Local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

3[(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the Account of the Employees' State Insurance Fund.]

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(4) Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

4[27. Grant by the Central Government. — \* \* \* ]

28: Purposes for which the Fund may be expended. — Subject to the provisions of this Act and of rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely —

- i. payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith ;
- ii. Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils ;
- iii. Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act ;
- iv. Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families, their families ;
- v. payment of contributions to any 1[State] Government 2[\*\*\*] local authority or any private body or individual, towards the cost of medi-



cal treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation ;

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- vi. defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities ;
- vii. defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act ;
- viii. payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf ;
- ix. payment of sums under any decree, order or award of and Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation ;
- x. defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act ;
- xi. defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured ; and
- xii. such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

131[28-A. Administrative expenses. — The types of expenses which may be termed as administrative expenses and the percentage of the income of the Corporation which may be spent for such expenses shall be such as may be prescribed by the Central Government and the Corporation shall keep its administrative expenses within the limit so prescribed by the Central Government.]

29. Holding of property etc. — (1) The Corporation may, subject to such conditions as may be prescribed by the Central Government, acquire and hold property, both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.

(2) Subject to such conditions as may be prescribed by the Central Government, the Corporation may from time to time invest any moneys which are not immediately required for expenses properly defrayable under this Act and may, subject to as aforesaid, from time to time re-invest or realise such investments.

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(3) The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.

(4) The Corporation may constitute for the benefit of its staff or any class of them, such provident or other benefit fund as it may think fit.

30. Vesting of the property in the Corporation. — All property acquired before the establishment of the Corporation shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.

1[31. Expenditure by Central Government to be treated as a loan. — \* \* \* ]

32. Budget estimates. — The Corporation shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. The budget shall contain provisions adequate in the opinion of the Central Government for the discharge of the liabilities incurred by the Corporation and for the main-tenance of a working balance.

33. Accounts. — The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

2[34. Audit. — (1) The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.

(3) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Corporation which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor General.]

35. Annual Report. — The Corporation shall submit to the Central Government an annual report of its work and activities.

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36. Budget, audited accounts and the annual report to be placed before 1[Parliament]. — The annual report, the audited accounts of the Corporation, 2[together with the 3[report of the Comptroller and Auditor-General of India thereon and the comments of the Corporation on such report] under section 34] and the budget as finally adopted by the Corporation shall be placed before 1[Parliament] 4[\*\*\*].

37. Valuation of assets and liabilities. — The Corporation shall, at intervals of 5[three years], have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government :

Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

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## CHAPTER IV CONTRIBUTIONS

38. All employees to be insured. — Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

39. Contributions. — (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

1[(2) The contributions shall be paid at such rates as may be prescribed by the Central Government :

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989 (29 of 1989).]

2[(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.]

(4) The contributions payable in respect of each 3[wage period] shall ordinarily fall due on the last day of the 3[wage period], and where an employee is employed for part of the 3[wage period], or is employed under two or more employers during the same 3[wage period] the contributions shall fall due on such days as may be specified in the regulations.

4[(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the regulations till the date of its actual payment :

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45-C to section 45-I.

Explanation. — In 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).]

40. Principal employer to pay contributions in the first instance. — (1) The principal employer shall pay in respect of every employee, whether directly employed by him

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or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall,

15 in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise :

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable] or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

41. Recovery of contributions from immediate employer. — (1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

1[Explanation. — \* \* \*]

2[(1-A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).](2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

42. General provisions as to payment of contributions. — (1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages 3[during a wage period are below 4[such wages as may be prescribed by the Central Government.]]

Explanation. — The average daily wages of an employee shall be calculated 1[in such manner as may be prescribed by the Central Government].

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each 2[wage period]. 3[in respect of the whole or part of which wages are payable to the employee and not otherwise]

4[(3) \*\*\*] 5[(4) \*\*\*] 6[(5) \*\*\*]

43. Method of payment of contribution. — Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for —

(a) the manner and time of payment of contributions ;

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(b) the payment of contributions by means of adhesive or other stamp affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed ;

1[(bb) the date by which evidence of contributions having been paid is to be received by the Corporation ;]

(c) the entry in or upon books or cards of particular of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate ; and

(d) the issue, sale custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been lost, destroyed or defaced.

2[44. Employers to furnish returns and maintain registers, in certain cases. — (1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.]

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45. 3[Social Security Officers], their functions and duties. — (1) The Corporation may appoint such persons as 3[Social Security Officers], as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any 1[Social Security Officer] appointed by the Corporation under sub-section (1) (hereinafter referred to as 1[Social Security Officer]), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with —

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act ; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such 1[Social Security Officer] or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary ; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said 1[Social Security Officer] or other official has reasonable cause to believe to be or to have been an employee ;

2[(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises ;

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

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(3) 1[A Social Security Officer] shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

2[(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer.]

3[45-A. Determination of contributions in certain cases. — (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any 4[Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is 5[prevented in any manner] by the principal or immediate

employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.]

6[Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.]

1[Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.]

(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45-B 2[or the recovery under section 45-C to section 45-I].

3[45-AA. Appellate Authority. — If an employer is not satisfied with the order referred in section 45-A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation :

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation.]

45-B. Recovery of contributions. — Any contribution payable under this Act may be recovered as an arrear of land revenue.]

4[45-C. Issue of certificate to the Recovery Officer. — (1) Where any amount is in arrear under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below : —

(a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer ;

(b) arrest of the employer and his detention in prison ;

(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment, or, as the case may be, the employer :

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the

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certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

45-D. Recovery officer to whom certificate is to be forwarded. — (1) The authorised officer may forward the certificate referred to in section 45-C to the Recovery Officer within whose jurisdiction the employer —

(a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate ; or

(b) resides or any movable or immovable property of the factory or establishment or the principal or immediate employer is situate.

(2) Where a factory or an establishment or the principal or immediate employer has property within the jurisdiction of more than one Recovery Officer and the Recovery Officer to whom a certificate is sent by the authorised officer —

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction ; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

45-E. Validity of certificate and amendment thereof. — (1) When the authorised officer issues a certificate to a Recovery Officer under section 45-C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any orders withdrawing or canceling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 45-F.



45-F. Stay of proceedings under certificate and amendment or withdrawal thereof. — (1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of a further

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proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceedings under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

45-G. Other modes of recovery. — (1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45-C, the Director-General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section:

(2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director-General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation :

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Director-General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any

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person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or as the case may be, the principal or immediate employer, to pay to the Director-General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved to be equal.

(iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director-General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director-General or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

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(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particulars, such person shall be personally liable to the Director-General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(vii) The Director-General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Director-General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director-General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director-General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 45-C to 45-F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45-C.

(4) The Director-General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director-General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961).

45-H. Application of certain provisions of the Income-Tax Act. — The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the income-tax :

Provided that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

45-I. Definitions. — For the purposes of sections 45-C to 45-H, —

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(a) " authorised officer " means the Director-General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorised by the Central Government, by notification in the Official Gazette ;

(b) " Recovery Officer " means any officer of the Central Government, State Government or the Corporation, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act.]

CHAPTER V

BENEFITS

46. Benefits.— (1) Subject to the provisions of this Act, the insured persons, 1[their dependants or the persons hereinaftermentioned, as the case may be,] shall be entitled to the following benefits, namely : —

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner 2[or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit) ;

3[(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit) ;]

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit) ;

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit) ; 1[\*\*\*]

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit) ; 2[and]

3[(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as 4[funeral expenses].

Provided that the amount of such payment shall not exceed 5[such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.]

(2) The Corporation may, at the request of the appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.

6[47. When person eligible for sickness benefit. — \*\*\*]

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1[48. When person deemed available for sickness benefit. — \*\*\*]

2[49. Sickness benefit. — The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

50. Maternity Benefit. — The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.]

3[51. Disablement benefit. — Subject to the provisions of this Act 4[\* \* \*] —

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment 5[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government];

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment 6[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government].

1[\* \* \*]

\*51-A. Presumption as to accident arising in course of employment. — For the purposes of this Act, an accident arising in the course of 2[an employee's] employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

\*51-B. Accidents happening while acting in breach of regulations, etc. — An accident shall be deemed to arise out of and in the course of 2[an employee's] employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if —

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(a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be ; and

(b) the act is done for the purpose of and in connection with the employer's trade or business.

\*51-C. Accidents happening while travelling in employer's transport: — (1)

An accident happening while an 3[employee] is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if —

(a) the accident would have been deemed so to have arisen had he been under such obligation ; and

(b) at the time of the accident, the vehicle —

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer ; and

(ii) is not being operated in the ordinary course of public transport service. (2)  
In this section " vehicle " includes a vessel and an aircraft.

\*51-D. Accidents happening while meeting emergency. — An accident happening to an 1[employee] in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those

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premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimize serious damage to property.]

2[51-E. Accidents happening while commuting to the place of work and vice versa. — An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.]

3[52: Dependents' benefit. — (1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the

injury) dependants' benefit shall be payable 1[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government] to his dependants specified in 2[sub-clause (i), sub-clause (i-a) and] sub-clause (ii) of clause (6-A) of section 2.

(2) In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased 3[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.]

\*52-A. Occupational disease. — (1) If an employee employed in any establishment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation 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, unless the contrary is proved, be deemed to be an "employment injury" arising out of and in the course of employment.

(2) (i) Where the Central Government or a State Government, as the case may be, adds any description of employment to the employment specified in Schedule III to the Workmen's Compensation Act, 1923\* (8 of 1923) by virtue of the powers vested in it under sub-section (3) of Sec. 3 of the said Act, the said description of employment and the occupational diseases specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.

(ii) Without prejudice to the provisions of clause (i), the Corporation 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 the Third Schedule 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 this Act shall apply, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(3) Save as provided by sub-sections (1) and (2), no benefit shall be payable to an 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.

(4) The provisions of section 51-A shall not apply to the cases to which this section apply.]

1[53. Bar against receiving or recovery of compensation or damages under any other law. — An insured person or his dependants shall not be entitled to receive or

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recover, whether from the employer of the insured person or from any other person, any compensation or damages under

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the Workmen's Compensation Act, 1923\* (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.]

1[54. Determination of question of disablement. — Any question,—

- (a) whether the relevant accident has resulted in permanent disablement ; or
- (b) whether the extent of loss of earning capacity can be assessed provisionally or finally ; or
- (c) whether the assessment of the proportion of the loss of earning capacity is provisional or final ; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good, shall be determined by a medical board constituted in accordance with the provisions of the regulations and any such question shall hereafter be referred to as the " disablement question ".

54-A. References to medical boards and appeals to medical appeal tribunals and Employees' Insurance Courts. — (1) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(2) If the insured person or the Corporation is not satisfied with the decision of the medical board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to —

- (i) the medical appeal tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court; or
- (ii) the Employees' Insurance Court directly 1[

Provided that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefit :



Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.].]

2[55. Review of decisions by medical board or medical appeal tribunal. — (1) Any decision under this Act of a medical board or a medical appeal tribunal may be reviewed at any time by the medical board or the medical appeal tribunal, as the case may be, if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).

(2) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the result of the relevant injury :

Provided that an assessment shall not be reviewed under this sub-section unless the medical board is of opinion that having regard to the period taken into account by the assessment and the

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probable duration of the aggravation aforesaid, substantial injustice will be done by not reviewing it.

(3) Except with the leave of a medical appeal tribunal, an assessment shall not be reviewed under sub-section (2) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(4) Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final ; and the provisions of section 54-A shall apply to an application for review under this section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that section and to a decision of the medical board in connection with such case.

\*55-A. Review of dependants' benefit. — (1) Any decision awarding dependants' benefit under this Act may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Act due to any birth or death.

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or due to the marriage, re-marriage, or cesser or infirmity of, or attainment of the age of eighteen years by, a claimant.

(2) Subject to the provisions of this Act, the Corporation may, on such review as aforesaid, direct that the dependants' benefit be continued, increased, reduced or discontinued.]

56. Medical Benefit. — (1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any 1[period] for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit 2[or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations] :

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations :

3[Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement :

4[Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government.]

Explanation. — In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the

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age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment].

57. Scale of medical benefit. — (1) An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only.

of such kind and on such scale as may be provided by the 1[State] Government or by the Corporation, and an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations.

(2) Nothing in this Act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

58. Provision of medical treatment by 1[State] Government. — (1) The 1[State] Government shall provide for insured persons and (where such benefit is extended to their families) their families in the 2[State], reasonable medical, surgical and obstetric treatment :

Provided that the 1[State] Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(2) Where the incidence of sickness benefit payment to insured persons in any 2[State] is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the 1[State] Government in such proportion as may be fixed by agreement between them :

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the 1[State] Government.

(3) The Corporation may enter into an agreement with a 1[State] Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines, and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the 1[State] Government.

(4) In default of agreement between the Corporation and any 1[State] Government as aforesaid, the nature and extent of the medical treatment to be provided by the 1[State] Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the 2[High Court 3[of a State]]) appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the 1[State] Government.

4[(5) The State Government may, in addition to the Corporation under this Act, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury :

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Provided that any reference to the State Government in the Act shall also include reference to the organisation as and when such organisation is established by the State Government.

(6) The organisation referred to in sub-section (5) shall have such structure and discharge functions, exercise powers and undertake such activities as may be prescribed.]

59. Establishment and maintenance of hospitals, etc., in Corporation. — (1) The Corporation may, with the approval of the 1[State] Government establish and maintain in a

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2[State] such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families) their families:

(2) The Corporation may enter into agreement with any 3[\*\*\*] local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

4(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families.]

5[59-A. Provision of medical benefit by the Corporation in lieu of State Government. — (1) Notwithstanding anything contained in any other provision of this Act, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to insured persons and where such medical benefit is extended to their families, to the families of such insured persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation.

(2) In the event of the Corporation exercising its power under sub-section (1), the provisions relating to medical benefit under this Act shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.]

1[59-B. Medical and para-medical education. — The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme.]

60. Benefit not assignable or attachable. — (1) The right to receive any payment of any benefit under this Act shall not be transferable or assignable.

(2) No cash benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court.

61. Bar of benefits under other enactments. — When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

62. Persons not to commute cash benefits. — Save as may be provided in the regulations, no person shall be entitled to commute for a lump sum any 2[disablement benefit] admissible under this Act.

3[63. Persons not entitled to receive benefits in certain cases. — Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.]

64. Recipients of sickness or disablement benefit to observe conditions. — A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement) —

(a) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Act, and shall carry out the instructions given by the medical officer or medical attendant in-charge thereof;

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(b) shall not while under treatment do anything which might retard or prejudice his chances of recovery ;

(c) shall not leave the area in which medical treatment provided by this Act is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations ; and

(d) shall allow himself to be examined by any duly appointed medical officer 1[\* \* \*] or other person authorised by the Corporation in this behalf.

65. Benefits not to be combined. — (1) An insured person shall not be entitled to receive for the same period —

(a) both sickness benefit and maternity benefit ; or

(b) both sickness benefit and disablement benefit for temporary disablement.

(c) both maternity benefit and disablement benefit for temporary disablement.

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(2) Where a person is entitled to more than one of the benefits mentioned in subsection (1), he shall be entitled to choose which benefit he shall receive.

2[66. Corporation's right to recover damages from employer in certain cases. — \* \* \*] 1[67. Corporation's right to indemnified in certain cases. — \* \* \*]

68. Corporation's rights where a principal employer fails or neglects to pay any contribution. — (1) If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either —

2[(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer ; or]

(ii) twice the amount of the contribution which the employer failed or neglected to pay ;

whichever is greater.

(2) The amount recoverable under this section may be recovered as if it were an arrear of land revenue 3[or under section 45-C to section 45-I].

69. Liability of owner or occupier of factories, etc., for excessive sickness benefit. — (1) Where the Corporation considers that the incidence of sickness among insured persons is excessive by reasons of —

(i) in sanitary working conditions in a factory or establishment or the neglect of the owner or occupier of the factory or establishment to observe any health regulations enjoined on him by or under any enactment, or

(ii) insanitary conditions of any tenements or lodgings occupied by insured persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactments,

the Corporation may send to the owner or occupier of the factory or establishment or to the owner of the tenement or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit ; and if the claim is not settled

by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate Government.

(2) If the appropriate Government is of opinion that a prima facie case for inquiry is disclosed, it may appoint a competent person or persons to hold an inquiry into the matter.

(3) If upon such inquiry it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the insured persons is due to the default or neglect of the owner or occupier of the factory or establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine the amount of the extra expenditure incurred as sickness benefit, and the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

(4) A determination under sub-section (3) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.

(5) For the purposes of this section, "owner" of tenements or lodging shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

70. Repayment of benefit improperly received. — (1) Where any person has received any benefit or payment under this Act when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands.

(2) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.

(3) The amount recoverable under this section may be recovered as if it were an arrear of land revenue [or under section 45-C to section 45-1].

71. Benefit payable up to and including day of death. — 2[If a person dies] during any period for which he is entitled to a cash benefit under this Act, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.

72. Employer not to reduce wages, etc. — No employer by reason only of his liability for any contributions payable under this Act shall, directly, or indirectly, reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by this Act.

73. Employer not to dismiss or punish employee during period of sickness, etc. — (1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit,

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nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative.

1[CHAPTER V-A

**SCHEME FOR OTHER BENEFICIARIES**

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**73-A. Definitions.** — In this Chapter, —

(a) “ other beneficiaries ” means persons other than the person insured under this Act ;

(b) “ Scheme ” means any Scheme framed by the Central Government from time to time under section 73-B for the medical facility for other beneficiaries ;

(c) “ underutilised hospital ” means any hospital not fully utilised by the persons insured under this Act ;

(d) “ user charges ” means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

**73-B. Power to frame Schemes.** — Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges.

**73-C. Collection of user charges.** — The user charges collected from the other beneficiaries shall be deemed to be the contribution and shall form part of the Employees’ State Insurance Fund.

**73-D. Scheme for other beneficiaries.** — The Scheme may provide for all or any of the following matters, namely : —

(i) the other beneficiaries who may be covered under this Scheme ;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries ;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation ;



(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73-E. Power to amend Scheme. — The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73-F. Laying of Scheme framed under this Chapter. — Every Scheme framed under this Chapter 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 Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or to 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 Scheme.]

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## CHAPTER VI

### ADJUDICATION OF DISPUTE AND CLAIMS

74. Constitution of Employees' Insurance Court. — (1) The 1[State] Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of judges as the 1[State] Government may think fit.

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(3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The 1[State] Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the 1[State] Government may by general or special order regulate the distribution of business between them.

75. Matters to be decided by the Employees' Insurance Court. — (1) If any question or dispute arises as to —

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

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(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

1[(e) any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits, or]

2[(f) \* \* \*]

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 3[or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act],

such question or dispute 4[subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) 5[Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely : —

(a) claim for the recovery of contribution from the principal employer ;

(b) claim by a principal employer to recover contributions from any immediate employer ;

1[(c) \* \* \*]

(d) claim against a principal employer under section 68 ;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto ; and

(f) If any claim for the recovery of any benefit admissible under this Act.

2[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical

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appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

3[(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation : Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by 1[a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court].

76. Institution of proceedings, etc. — (1) Subject to the provisions of this Act and any rules made by the 2[State] Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceedings pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same 3[State], it may, subject to any rules made by the 2[State] Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

(3) The 2[State] Government may transfer any matter pending before any Employees' Insurance Court in the 3[State] to any such Court in another 3[State] with the consent of the 2[State] Government of that State.

(4) The Court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

77. Commencement of proceedings. — (1) The proceeding before an Employees' Insurance Court shall be commenced by application.

4[1-A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation. — For the purpose of this sub-section, —

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or

NOTES

within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable ;

1[(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time :

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates ;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to

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arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.].]

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

78. Powers of Employees' Insurance Court. — (1) The Employees' Insurance Court shall have all the powers of a civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a civil Court within the meaning of 1[section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the 2[State] Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the 2[State] Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a civil Court.

79. Appearance by legal practitioners, etc. — Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of this examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or, with the permission of the Court, by any other person so authorised.

3[80. Benefit not admissible unless claimed in time. — \* \* \*]

81. Reference to High Court. — An Employees' Insurance Court may submit any question of law for the decision of the High Court and if does so shall decide the question pending before it in accordance with such decision.

82. Appeal. — (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the 1[Limitation Act, 1963 (36 of 1963)] shall apply to appeals under this section.

83. Stay of payment pending appeal. — Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

#### CHAPTER VII PENALTIES

84. Punishment for false statement.— Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorised by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enabling any other person to avoid any such payment, knowingly makes or causes to be made any false statement or false

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representation, shall be punishable with imprisonment for a term which may extend to 1[six months] or with fine not exceeding 2[two thousand] rupees, or with both.

3[Provided that where an insured person is convicted under this section, he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government.]

85. Punishment for failure to pay contributions, etc. — If any person —

(a) fails to pay any contribution which under this Act he is liable to pay, or

(b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

(c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

(d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

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(e) fails or refuses to submit any return required by the regulations or makes a false return, or

(f) obstructs any Inspector or other official of the corporation in the discharge of his duties, or

(g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

1[he shall be punishable —

2[(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but —

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees ;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees :

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term ;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.]

3[85-A. Enhanced punishment in certain cases after previous conviction. — Whoever, having been convicted by a Court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to 1[two years and with fine of five thousand rupees]:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act, he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to 2[five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees].

\*85-B. Power to recover damages. — (1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover 3[from the employer by way of penalty such damages, not exceeding the amount of arrears as may be specified in the regulations] :

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Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard :

4[Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.]

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue 1[or under section 45-C to section 45-I].

\*85-C. Power of Court to make orders. — (1) Where an employer is convicted of an offence for failure to pay any contribution payable 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 that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed 2[and to furnish the return relating to such contributions].

(2) Where an order is made under sub-section (1), the employer 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 of the Court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under section 85 and shall also be liable to pay fine which may extend to 3[one thousand] rupees for every day after such expiry on which the order has not been complied with.]

86. Prosecutions. — (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner 4[or of such other officer of the Corporation as may be authorised in this behalf by the 5[Director-General of the Corporation]].

1[(2) No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.]

(3) No Court shall take cognizance of any offence under this Act, except on a complaint made in writing in respect thereof 2[\*\*\*].

3[86-A. Offences by companies. — (1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, 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 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.

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable

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to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section, —

- (i) “ company ” means any body corporate and includes a firm and other associations of individuals ; and
- (ii) “ director ” in relation to —

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(a) a company, other than a firm, means the managing director or a whole-time director ;

(b) a firm means a partner in the firm.]

CHAPTER VIII

MISCELLANEOUS

87. Exemption of a factory or establishment or class of factories or establishments. — The appropriate Government may by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

1[Provided that such exemptions may be granted only if the employees' in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act :

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.]

88. Exemption of persons or class of persons. — The appropriate Government may, by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any person or class of persons employed in any factory or establishment or class of factories or establishments to which this Act applies from the operation of the Act.

89. Corporation to make representation. — No exemption shall be granted or renewed under section 87 or Section 88, unless a reasonable opportunity has been given to



the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate Government.

90. Exemption of factories or establishments belonging to Government or any local authority. — The appropriate Government may, 1[after consultation with the Corporation], by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to 2[\*\*\*] any local authority, 3[from the operation of this Act] if the employees in any such factory, or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

91. Exemption from one or more provisions of the Act. — The appropriate Government may, with the consent of the Corporation, by notification in the Official Gazette, exempt any employees or class of employees in any factory or establishment or class of factories or establishments from one or more of the provisions relating to the benefits provided under this Act.

4[91-A. Exemptions to be either prospective or retrospective\*. — Any notification granting exemption under section 87, section 88, section 90 or section 91 may be issued so as to take effect 5[prospectively] on such date as may be specified therein.]

6[91-AA. Central Government to be appropriate Government. — Notwithstanding anything contained in this Act, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government.]

1[91-B. Misuse of benefits. — If the Central Government is satisfied that the benefits under this Act are being misused by insured persons in a factory or establishment, that Government may, by order, published in the Official Gazette, disentitle such persons from such of the benefits as it thinks fit :

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Provided that no such order shall be passed unless a reasonable opportunity of being heard is given to the concerned factory or establishment, insured persons and the trade unions registered under the Trade Unions Act, 1926 (16 of 1926) having members in the factory or establishment.

91-C. Writing off of losses. — Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.]

92. Power of Central Government to give directions. — 2[(1)]. The Central Government may give directions to a 3[State] Government as to the carrying into execution of this Act in the 4[State].

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5[(2) The Central Government from time to time, give such directions to the Corporation as it may think fit for the efficient administration of the Act, and if any such direction is given, the Corporation shall comply with such direction.]

93. Corporation Officers and servants to be public servants. — All officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

1[93-A. Liability in case of transfer of establishment. — Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer :

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]

94. Contributions, etc., due to Corporation to have priority over other debts. — There shall be deemed to be included among the debts which, under section 49 of the Presidency-towns Insolvency Act, 1909 (III of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920), 2[or under any law relating to insolvency in force 3[in the territories which, immediately before the 1st November, 1956, were comprised in a Part B State]], 4[or under section 530 of the Indian Companies Act, 1956 (1 of 1956)], are in the distribution of the property of the 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 contribution or any other amount payable under this Act the liability whereof accrued before the date of the order of adjudication of the insolvent or the date if (sic.) the winding up, as the case may be.

5[94-A. Delegation of powers. — The Corporation and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subjects in such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.]

95. Powers of Central Government to make rules. — (1) The Central Government may, 1[after consultation with the Corporation and] subject to the condition of previous publication, make rules not inconsistent with this Act for the purpose of giving effect to the provisions thereof.

(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 : —

2[(a) the limit of wages beyond which a person shall not be deemed to be an employee ;

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(ab)

3[(ac)]

(b)

(c)

the limit of maximum monthly salary for the purpose of sub-section (1) of section 17 ; ]

the manner in which 4[appointments] and elections of members of the Corporation, the Standing Committee and the Medical Benefit Council shall be made ;

the quorum at meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in a year ;

the records to be kept of the transaction of the business by the Corporation, the Standing Committee and the Medical Benefit Council ;

(d) the powers and duties of the 1[Director-General and the Financial Commissioner] and the conditions of their service ;

(e) the powers and duties of the Medical Benefit Council ;

2[(ea)

(eb)

(ec) (ed)

(ee) (ef)

3[(eff) (eg)

NOTES

(eh)

1[(ehh)

2[\*[(ei)]

(f) (g) (h)

(i)

(j)

(k)

the types of expenses which may be termed as administrative expenses the percentage of income of the Corporation which may be spent for such expenses ;

the rates of contributions and limits of wages below which employees are not liable to pay contribution ;

the manner of calculation of the average daily wage;

the manner of certifying the certificate to recover amount by the Recovery Officer ;

the amount of funeral expenses ;

the qualifications, conditions, rates and period of sickness benefit, maternity benefit, disablement benefit and dependant's benefit ;

the income of dependant parents from all sources ; ]

the conditions for grant of medical benefits for insured persons who cease to be in insurable employment on account of permanent disablement ;

the conditions for grant of medical benefits for persons who have attained the age of superannuation ;]

the conditions under which the medical benefits shall be payable to the insured person and spouse of an insured person who has attained the age of super-annuation, the person who retires under Voluntary Retirement Scheme and the person who takes premature retirement ; ]

the manner in which and the time within which appeals may be filed to medical appeal tribunals or Employees' Insurance Courts ;]

the procedure to be adopted in the execution of contracts ;

the acquisition, holding and disposal of property by the Corporation ; the raising and repayment of loans ;

the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realization.;

the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made ;

the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out

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of the Corporation funds and the officers in whom such payment may be authorised ;

(l) the accounts to be maintained by the Corporation and the forms in which such accounts shall be kept and the times at which such accounts shall be audited ;

(m) the publication of the accounts of the Corporation and the report of auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sums so disallowed or surcharged ;

(n) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published ;

(o) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation ; 1[\*\*\*]

2[(oa) the period of non-entitlement for cash benefit in case of conviction of an insured person ;]

(p) any matter which is required or allowed by this Act to be prescribed by the Central Government.

3[(2A) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person other than the Corporation to whom such rule may be applicable.]

(3) Rules made under this section shall be published in the Official Gazette and thereupon shall have effect as if enacted in this Act.

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4[(4) Every rule made under this section 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 1[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.]

96. Power of State Government to make rules. — (1) The 2[State] Government may, 3[after consultation with the Corporation and] subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely —

- (a) the constitution of Employees' Insurance Courts, the qualifications of persons who may be appointed Judges thereof, and the conditions of service of such Judges ;
- (b) the procedure to be followed in proceedings before such courts and the execution of orders made by such Courts ;
- (c) the fee payable in respect of applications made to the Employees' Insurance Court, the costs incidental to the proceedings in such Court, the form in which applications should be made to it and the particulars to be specified in such applications ;
- (d) the establishment of hospitals, dispensaries and other institutions, the allotment of insured persons or their families to any such hospital, dispensary or other institution ;

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(e) the scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution; the keeping of medical records and the furnishing of statistical returns ;

1[(ee) the organisational structure, functions, powers, activities and other matters for the establishment of the organisation ; ]

(f) the nature and extent of the staff, equipment and medicines that shall be provided at such hospitals, dispensaries and institutions ;

(g) the conditions of service of the staff employed at such hospitals, dispensaries and institutions ; and

(h) any other matter which is required or allowed by this Act to be prescribed by the 2[State] Government.

(2) Rules made under this section shall be published in the official Gazette and thereupon shall have effect as if enacted in this Act.

3[(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.]

97. Power of Corporation to make regulations. — (1) The Corporation may 4[\*\*\*] subject to the conditions of previous publication, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation and for 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 : —

(i) the time and place of meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the procedure to be followed at such meetings ;

1[(ia) the time within which and the manner in which a factory or establishment shall be registered ;]

(ii) the matters which shall be referred by the Standing Committee to the Corporation for decision ;

(iii)

2[(iii-a)

(iv)

3[(iv-a) (iv-b)

(v) 1[(vi)

(vii)

(viii)

the manner in which any contribution payable under this Act shall be assessed and collected ;

the rate of interest higher than twelve per cent. on delayed payment of contributions ;]

reckoning of wages for the purpose of fixing the contribution payable under this Act ;

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the register of employees to be maintained by the immediate employer ;  
the entitlement of sickness benefit or disablement benefit for temporary disablement on any day on which the person works or remains on leave or on holiday and in respect of which he receives wages or for any day on which he remains on strike ;]  
the certification of sickness and eligibility for any cash benefit ;  
the method of determining whether an insured person is suffering from one or more of the diseases specified in the Third Schedule ;]  
the assessing of the money value of any benefit which is not a cash benefit ;  
the time within which 2[and the form and manner in which] any claim for a benefit may be made and the particulars to be specified in such claim ;

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(ix)

(x) (xi)

(xii) 3[(xii-a)

(xii-b)

(xii-c)

(xiii) (xiv)

1[(xv) (xvi)

2[(xvi-a)

(xvi-b) (xvii)



3[(xvii-a),(xvii-b)

Acts Applicable to  
Hospitals

(xviii)

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4[(xix)

the circumstances in which an employee in receipt of disablement benefit may be dismissed, discharged, reduced or otherwise punished ;

the manner in which and the place and time at which any benefit shall be paid ;

the method of calculating the amount of cash benefit payable and the circumstances in which and the extent to which commutation of disablement and dependant's benefits, may be allowed and the method of calculating the commutation value ;

the notice of pregnancy or of confinement and notice and proof of sickness ;

specifying the authority competent to give certificate of eligibility for maternity benefit ;

the manner of nomination by an insured woman for payment of maternity benefit in case of her or her child's death ;

the production of proof in support of claim for maternity benefit or additional maternity benefit ;]

the conditions under which any benefit may be suspended ;

the conditions to be observed by a person when in receipt of any benefit and the periodical medical examination of such persons ;

\*\*\*]

the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners and the form of medical certificates ;

the qualifications and experience which a person should possess for giving certificate of sickness ;

the constitution of medical boards and medical appeal tribunals ;]

the penalties for breach of regulations by fine (not exceeding two days' wages for a first breach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees ;

the amount of damages to be recovered as penalty ;

the terms and conditions for reduction or waiver of damages in relation to a sick industrial company ;]

the circumstances in which and the conditions subject to which any regulation may be relaxed, the extent of such relaxation, and the authority by whom such relaxation may be granted ;

NOTES

the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain ;]

(xx) the duties and powers of 1[Social Security Officers] and other officers and servants of the Corporation ;

2[(xxa)

3[(xxi)

(xxii)

the constitution of the appellate authority and the interest on amount deposited by the employer with the Corporation ; ]

the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the 4[Director-General and the Financial Commissioner] ; ]

the procedure to be followed in remitting contributions to the Corporation ; and

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(xxiii) any matter in respect of which regulations are required or permitted to be made by this Act.

5[(2A) The condition of previous publication shall not apply to any regulations of the nature specified in clause (xxi) of sub-section (2).]

(3) Regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in this Act.

1[(4) Every regulation shall, as soon as may be, after it is made by the Corporation, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid 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 regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case maybe; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

2[98. Corporation may undertake duties in [Part B States]. — \* \* \*].

3[99. Medical care for the families of insured persons. — At any time when its funds so permit, the Corporation may provide or contribute towards the cost of medical care for the families of insured persons.]

\* Publisher's Note : Existing Sec. 99 before the Amendment Act 29 of 1989, is given below.

\*99. Enhancement of benefits. — At any time when its funds so permit, the Corporation may enhance the scale of any benefit admissible under this Act and the period for which such benefit may be given, and provide or contribute towards the cost of medical care for the families of insured persons.

4[99-A. Power to remove difficulties. — (1) If any difficulty arises in giving effect in the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

(2) Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.]

1[100. Repeals and savings. — If, immediately before the day on which this Act comes into force 2[in any part of the territories which, immediately before the 1st November, 1956, were comprised in a Part B State], there is in force in 3[that part] any law corresponding to this Act, that law shall, on such day, stand repealed :

Provided that the repeal shall not affect —

- (a) the previous operations of any such law, or
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law ; or
- (c) any investigation or remedy in respect of any such penalty, forfeiture or punishment ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

Provided further that subject to the preceding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action under this Act.]

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**\*THE FIRST SCHEDULE**

(Courtesy Madras Book Agency, Villivakkam, Chennai)

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**12.7 WORKMEN COMPENSATION ACT 1923**

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**CHAPTER I : PRELIMINARY** 1. Short title extent and commencement (1) This Act may be called the Workmen'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 In this Act unless there is anything repugnant in the subject or context -

[Clause (a) omitted w.e.f. 1-6-1959.]

(b) Commissioner means a Commissioner for Workmen's Compensation appointed under section 20;

(c) compensation means compensation as provided for by this Act;

(d) dependent means any of the following relatives of a deceased workman 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 workman 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 workman 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 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 workman is alive;

Explanation: For the purpose 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.

(e) employer includes any body 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 workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service, or apprenticeship means such other person while the workman 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 18 years;

(g) partial disablement means where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman 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

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earning capacity in every employment which he was capable of undertaking at that time :

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Provided that every injury specified in Part II of Schedule 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 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 purpose of this Act;

[Clause (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 workman 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 amount 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 traveling allowance or the value of any traveling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(n) workman means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i) a railway servant as defined in Section 3 of the Indian Railways Act 1890 (9 of 1890) 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

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(ia)(a) a master seaman or other member of the crew of a ship.

(b) a captain or other member of the crew of an aircraft

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(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;

(ii) 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 the 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 a workman who has been injured shall where the workman is dead include a reference to his dependants or any of them.

(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 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 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 notification by the Central Government within

the territories to which the Act extends or in the case of a notification by a State Government within the State to such classes of persons :

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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.

## CHAPTER II. WORKMEN'S COMPENSATION

### 3. Employer's liability for compensation

(1) If personal injury is caused to a workman 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 workman 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 -

the workman having been at the time thereof under the influence of drink or drugs or the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen or the wilful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety of workman. (2) If a workman 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 workman 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 workman whilst in the service of



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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 as 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 proved -

that a workman 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 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 workman 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 injury by accident within the meaning of this section.

(2A) If a workman 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

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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 and 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.

Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to a workman 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. Nothing herein contained shall be deemed to confer any right to compensation on a workman 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 workman 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 workman 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 :-

where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees whichever is more; where permanent total disablement results from the injury an amount equal to sixty per cent of the

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monthly wages of the injured workman multiplied by the relevant factor; or an amount of sixty thousand rupees whichever is more. Explanation I : For the purpose of clause (a) and clause (b) relevant factor in relation to a workman 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 workman on his birthday immediately preceding the date on which the compensation fell due;

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Explanation II: Where the monthly wages of a workman exceed two thousand rupees his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

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(c) where permanent partial disablement results from the injury

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 in the case of an injury 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 workman 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 workman in respect of an accident occurred outside India the Commissioner shall take into account the amount of compensation if any awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -

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from the date of disablement where such disablement lasts for a period of twenty-eight days or more or 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 -

there shall be deducted from any lump sum or half monthly payments to which the workman is entitled the amount of any payment or allowance which the workman 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 no half monthly payment shall in any case exceed the amount if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident. Explanation : Any payment or allowance which the workmen 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.

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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 monthly a sum proportionate to the duration of the disablement in that half month. If the injury of the workman results in his death the employer shall in addition to the compensation under sub-section (1) deposit with the Commissioner a sum of one thousand rupees for payment of the same of the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman 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. 4A. Compensation to be paid when due and penalty for default 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 workman as the case may be without prejudice to the right of the workman to make any further claim.

direct that the employer shall in addition to the amount of the arrears pay simple interest thereon at the rate of twelve per cent 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 if in his opinion there is no jurisdiction 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 payable under sub-section (3) shall be paid to the workman or his dependant as the case may be and the penalty shall be credited to the State Government.

Method of calculating wages In this Act and for the purpose thereof the expression monthly wages means the amount of wages deemed to be payable for a months' service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated as follows namely :-

where the workman 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 workman 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 that period; where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month the monthly wages of the workman shall be the average monthly amount which during the twelve months immediately preceding the accident was being earned by a workman employed on the same work by the same employer or if there was no workman so employed by a workman employed on similar work in the same locality; 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 fourteen days.

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6. Review 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 workman 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

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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 may be.

8. Distribution of compensation (1) No payment of compensation in respect of a workman 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 directly by an employer shall be deemed to be a payment of compensation :

Provided that in the case of a deceased workman an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such workman 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.

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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. The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him. On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman 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 dates 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. Compensation deposited in respect of a deceased workman shall subject to any deduction made under sub-section (4) be apportioned among the dependants of the deceased workman 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. 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. 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 workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman. 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 order 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 and case in which it would involve the repayment by a dependant of any sum already paid to him.

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(9) 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

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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 workman 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 workman 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 workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman 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:

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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 -

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(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him and the workman 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 workman 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 sub-section 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 workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at these premises at which workmen are employed a notice book in the prescribed form which shall be readily

accessible at all reasonable times to any injuries workman employed on the premises and to any person acting bona fide on his behalf.

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(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 accident (1) Where a Commissioner receives information from any source that a workman 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 workman'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 workman 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 workman 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.

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(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 person 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 workman 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 workman 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:

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Provided that a workman 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 workman on being required to do so by employer under sub-section (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 workman 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.

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Where a workman 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 workman. 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. Where an injured workman 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 workman 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 workman had been regularly attended by a qualified medical practitioner whose instructions he had followed and compensation if any shall be payable accordingly.

12. Contracting 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 contract 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 workman employed in the execution of the work any compensation which he would have been liable to pay if that workman 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 workman under the employer by whom he is immediately employed. 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 workman 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 workman 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. Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal. 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.

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13: Remedies of employer against stranger Where a workman 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

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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 of aforesaid

14. Insolvency of employer Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman then in the event of the employer becoming insolvent or making a compensation 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 workman 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 workman than they would have been under the employer. If the liability of the insurers to the workman is less than the liability of the employer to the workman the workman may prove for the balance in the insolvency proceedings or liquidation. Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers to 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 workman : Provided that the provisions of

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this sub-section shall not apply in any case in which the workman fails to give 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.

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 where for 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. Where the compensation is a half-monthly payment the amount due in respect thereof shall for the purpose 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 application 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. 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). 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 where for 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 master and seamen

This Act shall apply in the case of workmen who are masters of ships or seamen subject to the following modifications namely:-

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. In the case of the death of a master or seaman the claim for compensation

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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 so 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 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 -

if the deposition is authenticated by the signature of the Judge Magistrate or Consular Officer before whom it is made; 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 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 or 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.

No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of gratuity allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine etc.) Scheme 1939 or

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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. 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 – an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause and 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 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 person commencing the proceedings. 15A. Special provisions relating to captains and other members of crew of aircraft This Act shall apply in the case of workmen who are captains or other members of the crew of aircraft subject to the following modifications namely:

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 as 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. 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 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 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 claims be admissible in evidence -

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(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 workmen aboard of companies and motor vehicles  
This Act shall apply

-in the case of workmen who are persons recruited by companies registered in India and working as such aboard and 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 workmen subject to the following modifications namely :- 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. In the case of death of the workman 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 proved 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 workman 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 -

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(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 workmen 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

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pervious 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 workman 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.

18. Proof of age [Repealed by the Workmen's Compensation (Amendment) Act 1959, (8 of 1959)]

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18A. Penalties (1) Whoever -

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(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 shall be punishable with fine which may extend to five thousand 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.

### CHAPTER III : COMMISSIONERS

19. Reference of Commissioners

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 workman) or as to the amount of 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. No Civil Court shall have jurisdiction to settle decided 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

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(1) The State Government may by notification in the Official Gazette appoint any person to be a Commissioner for Workmen's 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).

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21. Venue of proceedings 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 workman 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 workman being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman 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.

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(1A) If a Commissioner other than the Commissioner with whom any money has been deposited under section 8 proceeds with matters 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 made 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 disposal continue the proceedings as if they had originally commenced before him.

(4) On receipt of 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

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(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 of 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. Where any sum has been deposited by an employer as compensation payable in respect of a workman 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

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### 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 authorised in writing by such person or with the permission of the Commissioner by any other person so authorised.

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### 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 :

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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 take down as nearly as may be word for word.

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 of 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;

[Clause (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

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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 workman 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 as 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;

(a) an order awarding interest or penalty under section 4A;

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(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 workman 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 three hundred rupees :

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.

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. Withholding of certain payments pending decision of appeal

Where an employer makes an appeal under clause (a) of sub-section (1) of section 30 the Commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.

### 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

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Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act 1890 (1 of 1890).

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#### CHAPTER IV : RULES.

##### 32. Power of the State Government to make rules

- (1) The State Government may make rules to carry out the purpose 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 subjects to which a workman 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 workman 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;

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(g) for prescribing the form and manner in which memorandum 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 application 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;

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(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 occupation 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.

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33. Power of Local Government to make rules

[Repealed by the A.O. 1937]

34. Publication of rules

The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

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 proposed rules was published for general information.

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 workmen'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 :

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Provided that no sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until 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 of the successive sessions aforesaid both Houses agree in making any

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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 [Sections 2(1) and (4)]

PART I List Of Injuries Deemed To Result In Permanent Total Disablement

S.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

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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

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5. Very severe facial disfigurement 100

6. Absolute deafness 100

#### PART II List Of Injuries Deemed To Result In Permanent Partial Disablement

##### Amputation cases-upper limbs (either arm)

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

NOTES

Amputation cases-lower limbs

- 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-phalngeal joint 40
- 14 Loss of all toes of both feet 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 trochanter 80
- 18 Amputation below hip with stump exceeding 12.70 cms in length measured from tip of great trochanter but not beyond middle thigh 70
- 19 Amputation below middle thigh to 8.89 cms below knee 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 stump 50
- 23 Amputation through one foot proximal to the metatarso-phalangeal joint 50
- 24 Loss of all toes one foot through the metatarso-phalangeal joint 20



OTHER INJURIES

25 Loss of one eye, without complication, 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 10

Loss of

A. Fingers of right or left hand

INDEX FINGER

27 Whole 14

28 Two phalanges 11

22

29 One phalanx 9

30 Guillotine amputation of tip without loss of bone 5

MIDDLE FINGER

31 Whole 12

32 Two phalanges 9

33 One phalanx 7

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34 Guillotine amputation of tip without loss of bone 4

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RING OR LITTLE FINGER

35 Whole 7

36 Two phalanges 6

37 One phalanx 5

38 Guillotine amputation of tip without loss of bone 2

B. Toes of right or left foot

GREAT TOE

39 Through metatarso-phalanges joint 14

40 Part, with some loss of bone 3

ANY OTHER TOE

41 Through metatarso-phalangeal joint 3

42 Part, with some loss of bone 1

TWO TOES OF ONE FOOT, EXCLUDING GREAT TOE

43 Through metatarso-phalangeal joint 5

44 Part, with some loss of bone 1

THREE TOES OF ONE FOOT, EXCLUDING GREAT TOE

45 Through metatarso-phalangeal joint 6

46 Part, with some loss of bone 3WX.

FOUR TOES OF ONE FOOT, EXCLUDING GREAT TOE

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23

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

[Section 2(1)(n)]

### LIST OF PERSONS WHO SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n) ARE INCLUDED IN THE DEFINITION OF WORKMEN

The following persons are workmen within the meaning of Section 2(1)(n) and subject to the provisions of that section that is to say any person who is -

1. employed otherwise than in a clerical capacity or on a railway 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
2. employed otherwise than in clerical capacity 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 incident 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

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3. 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 wherein or within the percents whereof twenty or more person are so employed.

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

4. employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

5. 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 other than clerical work incidental to or connected with any mining operation or with the mineral obtained or in any kind or work whatsoever below ground; or

6. 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) any ship not included in sub-clause (a) of twenty-five tonnes net tonnage or over; or

(c) any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sails alone; or

24

7 employed for the purpose of -

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(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 post subject to the Indian Ports Act 1908 (15 of 1908) or the Major Port Trusts Act 1963 (18 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 chir springs and check wires painting depth marks on locksides removing or replacing fenders whenever necessary landing of gangways maintaining lifebuoys 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

8 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

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(c) any road bridge tunnel or canal; or

(d) any wharf quay sea wall or other marine work including any moorings of ships; or

9 employed in setting up maintaining repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or standard or fittings and fixtures for the same; or

NOTES:

10 employed otherwise than in a clerical capacity in the construction working repair or demolition of any aerial ropeway canal pipeline or sewer; or

11 employed in the service of any fire brigade; or

12 employed upon a railway as defined in clause (31) of section 2 and sub-section (1) of section 197 of the Indian Railway Act 1989 (24 of 1989) either directly or through a sub-contractor by a person fulfilling a contract with the railway administration; or

13 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

14 employed otherwise than in a clerical capacity in connection with operations for winning natural petroleum or natural gas; or

15 employed in any occupation involving blasting operations; or

25

16 employed in the making of any excavation in which on any one day of the preceding twelve months more than twenty-five persons have been employed or explosives have been used or whose depth from its highest to its lowest point exceeds twelve feet; or

17 employed in the operation of any ferry boat capable of carrying more than ten person; or

18 employed otherwise than in a clerical capacity on any estate which is maintained for the purpose of growing cardamom cinchona coffee rubber or tea and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

19 employed otherwise than in a clerical capacity in the generating transforming transmitting or distribution of electrical energy or in generation or supply of gas; or

20 employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse Act 1927 (17 of 1927); or

21 employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

22 employed in the training keeping or working of elephants or wild animals; or

23 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

24 employed in operations for the catching or hunting of elephants or other wild animals; or

25 employed as a diver; or

26 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 and in which on any one day of the preceding twelve months ten or more persons have been so employed or

(b) any market in which on any one day of the preceding twelve months fifty or more persons have been so employed; or

27 employed in any occupation involving the handling and manipulation of radium or X-ray apparatus or contract with radioactive substances; or

28 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

29 employed in horticultural operations forestry bee keeping or framing by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

30 employed otherwise than in a clerical capacity in the construction working repair or maintenance of a tube-well; or

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31 employed in the maintenance repair or renewal of electric fittings in any building;  
or

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32 employed in a circus.

33 employed as watchman in any factory or establishment; or

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34 employed in any operation in the sea for catching fish;

35 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 insects; or

36 employed in handling animals like horses mules and bulls;

37 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;

38 employed in cleaning of sewer lines or septic tanks within the limits of a local authority;

39 employed on surveys and investigation exploration or garage or discharge observation of rivers including drilling operations hydrological observations and flood forecasting activities groundwater surveys and exploration;

40 employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed;

41 employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed;



42 employed in installation maintenance or repair of pumping equipment used for lifting of water from wells tube wells ponds lakes streams and the like;

43 employed in the construction boring or deepening of an open well bore well bore-cum-dug well filter point and the like;

44 employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or

45 employed in mechanised harvesting and threshing operations;

46 employed in working or repair or maintenance of bulldozers tractors power tillers and the like;

47 employed as artists for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level;

48 employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act 1955 (45 of 1955) and engaged in outdoor work.

Explanation: In this Schedule the preceding twelve months relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

### SCHEDULE III

[Section 3]

### LIST OF OCCUPATIONAL DISEASES

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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 or merchandise which may have been contaminated by animals or animal carcasses;

(d) Other work carrying a particular risk of contamination

2. Disease 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

PART 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 amino toxic derivatives of benzene or its homologous All work involving exposure to the risk concerned.

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## 6.8 SUMMARY

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The Employee's Provident Funds Act 1952 to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments.

The Payment of Gratuity Act 1972 in 1926, Government of India wrote to local governments to ascertain the position with regard to the delays which occurred in the payment of wages to the persons employed in Industry. Material so collected was placed before the Royal Commission on Labour which was appointed in 1929. On the report of the Commission, Government of India re-examined the subject and in February, 1933 the Payment of Wages Bill, 1933, was introduced in the Legislative Assembly and circulated for the purpose of eliciting opinions. A motion for the reference of the Bill to a Select Committee was tabled but the motion could not be passed and the Bill lapsed. In 1935 the Payment of Wages Bill, based upon the same principles as the earlier Bill of 1933 but thoroughly revised was introduced in the Legislative Assembly on 15th February, 1935. The Bill was referred to the Select Committee. The Select Committee presented its report on 2nd September, 1935. Incorporating the recommendations of the Select Committee, the Payment of Wages Bill, 1935 was again introduced in the Legislative Assembly.

The Minimum Wages Act 1948 to provide for fixing minimum rates of wages in certain employments. WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments.

The ESI Act 1948 to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

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## 6.9 REVIEW QUESTIONS

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1. What is the Employee's Provident Funds Act 1952?
2. What is the Payment of Gratuity Act 1972?
3. What is the Payment of Wages Act 1936?
4. What is the Minimum Wages Act 1948?
5. What is the ESI Act 1948?
6. What is the Workmen Compensation Act 1923?