

FORM 'A'

Format for Furnishing Information While Applying for Registration

1. Name of the establishment, if any :
2. Postal address and situation of the establishment :
3. Whether the establishment falls under Public Sector or Private Sector :
4. Situation of office, store-room, godown, warehouse, or Workplace, if any, attached to shop but situated in premises different from those of the shop or the enterprise :
5. Name of the employer :
6. Residential address of the employer :
7. Name of the Manager, if any and his residential address :
8. category of the establishment, i.e. whether a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or any other :
9. Nature of business :
10. Date of commencement of business :
11. Names of members of employer's family employed in the establishment –

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

12. Names of other persons occupying position of management or workers engaged in confidential capacity. (Indicate sex and age in case of young persons)

13. Total number of workers (Including part-time workers)

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

14. The trade or business association of the area of which the employer is a member :

Note: Any change if it occurs in the above mentioned particulars it shall be the duty of the employer of the establishment to inform the Dy. Chief Inspector by a registered post within 30 days of occurrence of such change.

Dated:

(Signature of employer)

Form 'B'

Register of Persons Employed

Name of the establishment & Address	
Location of Work	
Name & Address of Employer	
1. Name, Father/Husband's name & address of the worker (Permanent & Temporary)	
2. Designation/Category	
3. Date of Birth	
4. Age	
4-A If the employed person is below 18 years, whether a certificate of fitness is maintained	
5. Date of Joining	
6. Sex: Male or Female	
7. Nationality	
8. Date of termination of Employment with reason	
9. Specimen signatures/thumb impression	
10. Remarks	

Form C

Leave Register

1. Name of the worker and his token number
2. Date of entry into the service
3. Calendar year of service for which leave is earned
4. The balance leave brought forward at the beginning of the calendar year as at 3 above
5. Number of days earned leave availed during the calendar year as at 3 above
6. Number of days work performed during the calendar year as at 3 above
7. Number of days leave earned during the calendar year as at 3 above
8. Total number of days leave to credit of the worker at the beginning of the current calendar year (4-5+6)
9. Number of days earned leave availed during the current year
10. Any other kind of leave availed during the current year (e.g. casual leave, maternity leave, etc.)

Form 'D'
Muster Roll-Cum-Wage Register

Name of establishment & address: _____

Location of work: _____

Name and address of Employer: _____

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Sl No.	Name & father's/ husband's name/ category of worker	Attendance 1:2:3: 30:31	PF No.	ESI No.	Wage rate/ scale of pay or piece rate/wages per unit	Other allow-ances e.g. (a) D.A. (b) HRA (c) Night allow-ances	O.T. Worked No. of Hours in the month	Amount of OT Wages	Amount of advance & purpose of advance	Total/ gross earnings	Deductions e.g. (a) PF (b) Advance (c) ESI (d) other amount	Net amount payable (13-12)	Signature/ receipt of wages/allo wances for column no. 14	Remarks
						(a) (b) (c)					(a) (b) (c) (d)			

Form 'E'

Report of the Accident by the Employer

1. Name & Address of the occupier/employer
2. The Registration Number of the Occupier/employer
3. Name & Address of the premises of the establishment/enterprise
4. Nature of work/business/activity carried on in the enterprise/establishment
5. Name(s) of the injured person/persons & their token/insurance number, their sex, age and designation
6. Addresses of the Injured person(s)
7. Date and hour of the accident
8. The time at which he/they had started work on the day of accident
9. Cause of Accident including the nature of work being done by the injured person/persons at the time of accident
10. In case the accident occurred while travelling in the transport
 - (b) whether the injured person(s) was/were travelling as passenger(s) to and from his/her/their residence to place of work
 - (c) whether the injured person(s) was/were travelling with the expressed or implied permission of the occupier/employer
 - (d) whether the transport vehicle was provided by the occupier/employer or it was a public transport vehicle
11. Names and addresses of the witnesses
12. Nature and extent of injury
 - a) Whether fatal
 - b) location of injury i.e. the part of the body injured
 - c) in case of non fatal accident whether the worker(s) has/have returned to work
 - d) if not the approximate period the worker(s) is/are likely to take for returning to work
13. The clinic or dispensary or the hospital where the treatment of the injured worker(s) was arranged
14. Whether the expenses for the treatment were borne by the employer or not.

FORM 'F'

As prescribed under Small Enterprises (Employment Relations) Act.

Form for Self-Certification by an Employer.

Name of Enterprise _____

Address of the Enterprise _____

PART I

I certify that the status of compliance of Labour Laws in my enterprise mentioned above during the year _____ is as under:

1. (i) Number of persons employed as on 1.1._____ was _____.
- (ii) Number of persons terminated/left employment during the year _____
- (iii) Number of persons who joined the employment during the year _____
2. That I have complied with the provisions of this Act pertaining to payment of wages and bonus. The wages were paid as per law and no deductions that are not authorised under the law have been made from the wages thereof of the workers.
3. That no child below the age of 14 years has been employed in the enterprise and women workers have not been discriminated against in any manner.
4. That I have provided health and welfare measures as prescribed under the Act.
5. That I have observed the provisions of the Act as pertaining to the hours of work, leave, and holidays.
6. That I have complied with the provisions of the Act pertaining to the Social Security.
7. That _____ workers were removed or retrenched during the year and I have cleared their dues including the prescribed compensation.
8. That I have maintained the registers/records prescribed under the Act, displayed the required notices and sent the Annual Return to the prescribed authority.

PART II

I Certify that:

- (i) No hazardous substances like acids, chemicals, gasses and explosives are used, handled or stored in my establishment; and
- (ii) I complied with all the provisions pertaining to safety as prescribed under the Act.

Signature of the Employer
And his office seal

Dated:

APPENDIX - III

DRAFT LAW ON WAGES

Chapter I

Preliminary

Whereas it is expedient to consolidate all legal provisions relating to wages of workers, it is hereby enacted as follows: -

1. **Extent, application and commencement**

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

2. **Definitions**

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: Wages means basic wage and dearness allowance
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: means wages, all other allowances and the value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

3. Prohibition of Discrimination Against Female Workers

- (1) There shall be no discrimination between male and female workers in the matter of wages; and the principle of equal pay for equal work shall be applicable to all workers under the same employer, in respect of work of same or similar nature.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature or where female workers has been discriminated against in any manner the matter shall be decided by the appropriate government who may designate a person to decide the question.

Chapter II

Minimum Wages

4. Payment of Minimum Wages

No employer shall be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

5. National floor level minimum wage

There shall be a National Floor Level Minimum Wage which the Central Government shall determine and notify; the National Floor Level Minimum Wage shall be revised by the Central Government from time to time and in no case less frequently than once in two years if no dearness allowance is declared, linked to All India Consumer Price Index Number and if dearness allowance linked to AICPI is declared at least once in six months it shall be revised once in 5 years.

The national floor level minimum wage will be applicable throughout the country to every worker in employment, irrespective of the nature of the activity, and shall be notified as daily rate, weekly rate and/or monthly wage.

6. **Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory shall also notify for all employments or activities a state minimum wage which shall not be less than the National Floor Level Minimum Wage and where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that no minimum wage is not less than the national floor level minimum wage.

7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

8. **Composition of Minimum Wage**

The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every six months on the basis of 100% neutralisation to a cost of living index as may be prescribed and cash value of any food items given on concession to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other cases once in two years.

Note: In fixing the national floor level minimum wage, the Central Government shall keep in view the conclusions of the Indian Labour Conference in its 15th session as also the decision of the Supreme Court of India in the case of Raptakos Brett & Co.

9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages shall be so fixed that the output by a normal worker in a 8 hour working shift will enable the worker to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the work for all the 8 hours in a shift, the worker shall be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75% of the notified daily minimum wage.

Chapter III

Payment of Wages

10. **Mode of Payment of Wages**

All wages to workers shall be paid in cash or credited, with the workers consent, to the workers bank account and where majority of workers in the establishment give their consent in writing, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind shall, in case of dispute, be determined by the appropriate Government or its designated authority and its decision shall be final.

11. **Fixation of Wage Period**

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

12. **Time of Payment of Wages**

- (1) All wages shall be paid before the 7th day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it shall be paid at the end of the shift, in cases of weekly rated payments, it shall be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.
- (2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

13. **Payment of Wages without deductions**

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

14. **Deductions which may be made from wages**

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker 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 worker of any of the following penalties, namely:-

- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar):
- b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
- c. 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 worker 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 worker 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;
- (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 employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.

Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payments of wages;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)
- (j) deductions, made with the written authorisation of the worker for payment of any premium of 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;) or to a scheme of insurance maintained by the Indian Post Office;

- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
 - (l) deduction 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 worker 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 worker 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 in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
 - (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
 - (p) deductions, made with the written authorisation of the worker, 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;
- (3) Notwithstanding anything contained in this Act, the total amount of deductions which maybe made under sub-section (2) in any wage-period from the wages of any worker shall not exceed –
- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (i) of sub-section (2), seventy five percent of such wages, and

(r) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorised under subsection (2) exceed seventy five per cent or, as the case may be, fifty percent 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 worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

Chapter IV

Payment of Bonus

15. There shall be paid to every worker who has worked atleast for 90 days in calendar year and whose wages do not exceed Rs. 7500/- per month an annual bonus calculated at 8 1/3% of the wages earned by him/her during the previous accounting year, to be paid within eight months of the close of the accounting year or as may be determined by negotiationis between the employer and the negotiating agent. (Wages for the purpose of calculating bonus shall comprise basic wage, dearness allowance, retention allowance, if any, in case of seasonal industries and no other allowance) Demand for bonus in excess of this annual bonus, either on the basis of profits earned in the accounting year or on basis of production/productivity will be determined by collective bargaining between the parties, failing which by arbitration or adjudication as an industrial dispute, so however, the total bonus including the 8 1/3% annual bonus shall not exceed 20% of the wages.

Provided that where the wages of a worker exceed Rs. 3500/- per month his wages for the purpose of calculation and payment of bonus shall be reckoned as Rs. 3500/- per month.

16. Payment of Bonus out of Allocable Surplus

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per prescribed rules as may be
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus payable the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

17. Disqualification for bonus

Notwithstanding anything contained in this Act, a worker shall be disqualified from receiving bonus under this Act, if he is dismissed from service for

- i Fraud; or
- ii Riotous or violent behaviour while on the premises of the establishment; or
- iii Theft, misappropriation or sabotage of any property of the establishment.

18. Proportionate reduction in bonus in certain cases

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher bonus that is payable to him shall be proportionately reduced taking into consideration the number of days worked in the establishment in a calendar year and number of days work put in by the worker.

19. Set on and set off of allocable surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 15, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth rules.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) rules.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

20. Adjustment of customary or interim bonus against bonus payable under the Act

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to a worker before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. Deduction of certain amounts from bonus payable under the Act

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

Provided that the worker shall be given an opportunity to be heard before making such deductions.

22. Time limit for payment of bonus

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

23. **Special provision with respect to payment of bonus linked with production or productivity**

Notwithstanding anything contained in this Act -

- i Where an agreement or a settlement has been entered into by the workers or the negotiating agent with their employer before the commencement of the Wages Act.
- ii Where the workers or the negotiating agent enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

24. **The Provisions of Payment of Bonus not to apply to certain classes of workers**

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishments & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chambers of commerce, or

charitable institutions not established for making profits, workers of universities, other educational institutions, or a construction work which is not carried for more than a year shall not be entitled to bonus under this Act.

Chapter V

Miscellaneous

25. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

26. Making of Rules

The Central Government will have the power to make Rules.

27. Repeal and Savings

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

28. Issue of Wages Slip

Every worker shall be issued a wages slip indicating the name of the establishment, name of the worker, designation, details of wages and allowances to be paid and such other details as may be prescribed, when such payment has been made showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payment.

29. Claims under the Act

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages or remuneration of a worker which are not according to this Act, payment of less wages than the

minimum, wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.

- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (i) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

30. **Records, Returns and Notices**

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
 - (i) Register of persons employed
 - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.

- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

31. **Appointment of Inspectors**

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or for different areas to carry out the objectives and purposes of this Act.

32. **Cognisance of offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

33. **Penalties**

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.
- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable or making deductions from wages not authorised under this Act, then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1,000/-.

34. **Exemptions**

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

35. **Burden of Proof**

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

36. **Contracting Out**

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

APPENDIX - IV

THE HOURS OF WORK, LEAVE AND OTHER WORKING CONDITIONS AT THE WORKPLACE ACT, 2002

An Act to provide for regulation of hours of work, leave and other working conditions in all establishments

Whereas it is expedient to consolidate the provisions pertaining to hours of work, leave and other working conditions in all enterprises and for certain other purposes as in hereafter specified, it is hereby enacted as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application

- (1) The Act may be called the Hours of Work, Leave, and Other Working Conditions at the Workplace Act, 2002.
- (2) It extends to whole of India.
- (3) It shall come into force on ... or from the date notified by the Central Government in this behalf
- (4) It shall apply to all establishments of factories, mining, plantation, construction, service, motorised transport or air transport or inland water transport or establishments of shipping companies, ports & docks or other establishments including cinema theatres workers, cinema and clubs, hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, charitable, research, training, educational institutions, consultancy and solicitors or lawyers organisations wherein 20 or more workers are employed.

Provided that Chapters III and IV of this Act shall not apply to workers governed by FRs & SRs, Central or State Civil Service Rules, CSR or any other Rules as may be specified in this behalf by the appropriate Government.

2. **Definitions**

(1) In this Act unless there is anything repugnant in the subject or context the:

- (a) 'appropriate Government' means the Central Government in respect of the establishment for which it is the appropriate Government under the Labour Management Relations Act and in respect of any other establishment the Government of the State in which that other establishment is situated.
- (b) 'adolescent' means a person who has completed 14th year of his age but not completed the 18th year.
- (c) 'child' means a person who has not completed 14th year of his age.
- (d) 'contract labour' means a worker employed in or in connection with the work of an establishment when he or she is hired in or in connection with such work by or through a contractor with or without the knowledge of principle employer.
- (e) 'contractor' means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.
- (f) 'construction' means the construction, alteration, repair, maintenance or demolition of or in relation to buildings, roads, streets, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage work), generation, transmission, and distribution of power, water works (including channels for distribution of water), oil and gas installations,

electric lines, wireless, radio, television, telephone, telegraphs, and overseas communication, dams, canals, reservoirs, water course, tunnels, bridges, wire ducts, aqua ducts, pipelines, towers, cooling towers, transmission towers, and such other works as may be specified in this behalf by the appropriate Government by notification.

- (g) 'day' means a period of 24 hours beginning at midnight.
- (h) 'employer' means an owner thereof or a person who has ultimate control over the affairs of the establishment.
- (i) 'factory' means a place where manufacturing process is carried on.
- (j) 'manufacturing process' means the process for making altering, making, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal and includes pumping of oil, water, sewage or any other substance or generating transforming or transmitting power or composing, type printing, letter printing, lithography or other similar processes or book binding or constructing, repairing, refitting, finishing or breaking up of ships or vessels or preserving or storage of articles in cold storage.
- (k) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
 - (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
 - (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
 - (iii) all levels and inclined planes in the course of being driven;

- (iv) all open cast workings;
 - (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine or minerals or other articles or for the removal of refuse therefrom;
 - (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
 - (vii) all protective works being carried out in or adjacent to a mine;
 - (viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purpose connected with that mine or a number of mines under the same management;
 - (ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
 - (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operation in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
 - (xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;
- (l) 'plantation' means any land used or intended to be used for growing tea, coffee, rubber or cardamom which admeasures 5 hectares or more and in which 20 or more persons are employed or were employed on any day of preceding 12 months

Explanation: The appropriate Government may declare growing of any other plant on land which admeasures not less than 5 hectares and in which 20 or more workers are employed as plantation by notification in official gazette after obtaining the approval of the Central Government.

- (m) 'principal employer' includes -
- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf;
 - (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, (63 of 1948), the person so named.
- (n) 'worker' means a person who is employed for wages or reward in connection with the work of the establishment and includes a contract labour engaged through a contractor in accordance with the provisions made in chapter VII but does not include a person employed in supervisory, managerial or administrative capacity.

All other terms used in this Act but not interpreted or defined shall have the same meaning as assigned to them under the Labour Management Relations Act or Wages Act.

CHAPTER II

REGISTRATION

3. Application of this Chapter

- (1) The provisions of this chapter shall apply to all establishments except the establishment of factories, mine, plantation, construction or any other establishment covered under the Occupational, Safety and Health Law.

- (2) In respect of the establishments exempted from the provisions of this chapter under sub section (1), the registration issued by a governmental authority under the Occupational, Safety and Health Law shall hold valid under this Law also.

4. **Registration of establishments**

- (1) Within three months from the date of setting up on an enterprise the employer of the establishment shall send an application in the prescribed form for registration of his or her establishment to the authority as mentioned below.
 - i Where the central Government is the appropriate Government – to the Regional Labour Commissioner (Central) of the region.
 - ii In all other cases the Labour Commissioner of the State or as the case may be the Union Territory.
- (2) The application shall be accompanied by prescribed fee and shall be sent or delivered to the concerned authority either personally or by registered post.
- (3) The authority concerned on being satisfied about the correctness of the information shall register the establishment and issue a certificate of registration within one month. The registration certificate so issued by the authority shall be valid for a period of five years.
- (4) Any change in particulars furnished by the employer for the purposes of registration, if occurs after the registration of the establishment the same shall be intimated by the employer to the concerned authority within 30 days of occurrence of such change and the authority shall, after being satisfied of the correctness of the information furnished by the employers in this regard record the change and inform the employer of the same within three weeks.

5. Renewal of Registration

- (1) The application for renewal in the prescribed format shall be made at least one month before the date of expiry of the registration and where the employer fails to make an application within one month of the date of expiry of the registration he or she shall be required to pay additional fee as may be prescribed by the appropriate Government. The renewal shall also be valid for a period of five years.

CHAPTER III

HOURS OF WORK

6. Daily & Weekly Hours of work

- (1) The hours of work of any adult worker employed in any establishment shall not exceed 9 hours in a day and 48 hours in a week except in case of adult workers employed in a mine below ground.
- (2) The hours of work in case of adult workers working in a mine below ground shall be 8 hours a day and 48 hours in a week.

Provided that the hours of work mentioned in sub sections (1) and (2) may be exceeded to facilitate the change of shifts.

7. Intervals of rest

- (1) The work periods of an adult worker shall be so fixed that no work period shall exceed 5 hours and the worker shall not work for more than 5 hours unless he or she has had an interval of rest of not less than half an hour.
- (2) The appropriate Government may by written order or by making rules exempt any establishment or a class of establishments from the provisions of sub section (1) so however that the total number of hours worked by a worker without an interval of rest does not exceed 6.

- (3) The hours of work in respect of the workers working in mines below ground as prescribed in sub section (2) of section 6 shall be inclusive of interval of rest.

8. **Spread over**

- (1) The period of work of an adult worker in an establishment except in case of below ground working in a mine shall be so arranged that the spread over including the interval for rest shall not exceed ten and half hours on any day.

Provided that the Chief Inspector may for reasons to be specified in writing increase the spread over to 12 hours.

9. **Weekly holidays**

- (1) No adult worker shall be required or allowed to work in an establishment on the first day of the week i.e. Sunday.

Provided that the appropriate Government may prescribe that there shall be different days of weekly rest for different areas or for different establishments.

- (2) Where it is not possible for an employer to give a weekly holiday to a worker as laid down under sub section (1) or prescribed by the appropriate Government, the employer shall give a holiday to the concerned worker on one of the three days immediately before or after the said day.
- (3) Where the employer substitutes a weekly holiday in respect of a worker as provided in the sub section (2) he shall forthwith issue a notice to the concerned worker and also display a copy of the same on the notice board at a prominent place in the establishment.

Provided that no substitution shall be made in such a manner that any worker is required to work for more than ten days consecutively without a holiday for the whole day.

- (4) A notice issued to the worker under sub section (3) may be cancelled by another notice not later than a day before the said day or the holiday to be cancelled whichever is earlier, and a copy of the notice is also displayed in the establishment.
- (5) The appropriate Government may by making rules provide for granting exemption to an establishment from operation of sub section (3) and where due to such an exemption granted by the appropriate Government a worker loses a weekly holiday he shall be allowed a compensatory holiday in lieu of the weekly holiday so lost within the month in which the holiday was due to him or within two months immediately following that month.

10. **Shift Working**

- (1) The shift working shall be so arranged that as far as possible there is one relay of workers engaged in the work of same kind at the same time.
- (2) In case a shift of a worker working extends beyond midnight then a weekly holiday for a whole day in respect of that worker shall mean 24 consecutive hours beginning when his shift ends and the hours of work he has worked after midnight shall be counted in the previous day.

11. **Overtime work and extra wages for overtime**

- (1) A worker may be required to work overtime in case of exigency such as urgent repairs of break down of machinery or non reporting of a worker required to work at the beginning of a new shift without prior intimation of his absence.
- (2) Where a worker other than a person holding a supervisory, managerial and administrative position who is required to work extra hours above 9 hours a day or 48 hours a week including due to relaxation given under this Act or work on weekly holiday or a holiday so declared by an establishment, he shall be paid in respect of the extra hours or in respect of the work done on a holiday, extra wage at double the rate of ordinary wages.

- (3) In case of a worker paid wages on piece rate basis the time rate shall be deemed to be equivalent to daily average of his full time earnings for the days on which he actually worked on the same job or on a job identical to his job during the month preceding the month in which the overtime is done by him and such time rate shall be deemed to be the ordinary rate of wage for him.

12. Notice of periods of work for adults

- (1) Every employer shall display in every establishment a notice of periods of work for adults clearly stating the periods during which the adult workers will be required to work.
- (2) Any change required to be made in the periods of work shall be intimated to the workers at least twenty-four hours in advance and also displayed on the notice board.

13. Conditions for Employment of Female Workers

- (1) No female employee shall be required to work in any establishment between 7 p.m. and 6 a.m. except as following
 - (a) There are at least five female workers working at the premises of the establishment.
 - (b) The work is not carried on beyond 10.30 p.m. except where permission to employ female workers is granted to the employer.
 - (c) The employer arranges for the safety of female workers at the workplace and their transportation from the place of work to their residences.
- (2) No female worker shall be employed in a mine in below ground working.
- (3) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotion vis-à-vis the male workers.

14. Power to make Rules

- (1) Every employer shall prepare a list of persons who hold the position of supervision or management or are employed in confidential capacity in an establishment and who shall be exempt from the provisions of daily hours and weekly hours of work, intervals of rest and compensatory holidays. The list so prepared by the employer shall be subject to the approval of the state Government.
- (2) The workers as are required to work beyond the daily and weekly hours of work prescribed under this Act shall be paid overtime irrespective of the fact that they are working in confidential capacity or they are required to work due to exempting rules prepared by the appropriate Government.
- (3) The appropriate Government may make rules for the workers in all establishments for exempting them from the provisions of Sec. 6,7,8,9,10,12 and 13 of the Act including the conditions of exemptions as under:
 - (a) The workers engaged in urgent repairs in a factory or mine,
 - (b) Workers engaged in the work which is in the nature of preparatory or complementary and which must be carried on outside the limits laid down for weekly and daily hours of work, rest intervals and spread over
 - (c) Workers engaged in any work which for technical reasons or reasons of public convenience must be carried out continuously
 - (d) Workers engaged in making or supplying articles of prime necessity for the community which must be supplied every day.
 - (e) The workers engaged in the manufacturing process which can be carried on during a fixed season.
 - (f) Workers engaged in public transport for carrying of passengers by

road, by air or by inland water transport system.

- (g) Workers engaged in medical and hospital services for treating the sick persons.
- (h) Workers working in hotels, restaurants and eating-houses.
- (i) Workers engaged in securing sanitation and hygiene
- (j) Working engaged in manufacturing process which cannot be carried on except at times dependent on irregular action of natural forces
- (k) The workers working in or tending the engine rolls, boiler house, power plant, pressure plant and transmission machinery
- (l) Workers engaged in printing of newspapers
- (m) Workers engaged in loading/unloading of railway wagons, lorry or trucks
- (n) Workers engaged in any work notified by the central or state government to be of national importance
- (o) In a mining activity:
 - (i) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended;
 - (ii) of all or any of the persons so employed, in case of an accident actual or apprehended;
 - (iii) of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine; and
 - (iv) In any construction:

- (i) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
 - (ii) persons engaged in any work which for technical reasons has to be completed before the day is over;
- (3) In prescribing rules under this section the following limits shall be adhered to
- (a) The total number of hours of work on any day shall not exceed 11
 - (b) The spread over inclusive of interval shall not exceed 12 hours on any day
 - (c) The total number of hours of work in a week shall not exceed 64.
 - (d) The total number of hours of overtime work shall not exceed 90 in a quarter

Explanation: Quarter means a period of three consecutive month beginning first of January, April, July and October.

- (e) The appropriate Government may grant exemption to an establishment if it satisfied that going by the nature of work carried on in the establishment or to meet the targets of production or the orders received by the employer of the establishment for delivery of goods or services produced by him on time subject to the limits prescribed in the sub section (4) above, the exemption is justified.

15. Prohibition and Regulation of Employment of Children & Adolescents

- (1) No child shall be required or allowed to work in any establishment.
- (2) No adolescent shall be required or allowed to work in any establishment of a mine.
- (3) Where an adolescent is intended to be employed in any establishment except in a mine the employer shall get the adolescent medically examined and such adolescent shall be employed in the establishment if he or she is declared medically fit for the work in that establishment.

CHAPTER IV

EARNED LEAVE WITH WAGES, HOLIDAYS AND CASUAL LEAVE

16. Entitlement of Earned Leave

(1) Every worker employed in an establishment who has worked for 240 days or more in a calendar year in the establishment shall be allowed during the subsequent calendar year earned leave with wages to be calculated as following

- (a) One days earned leave for every 20 days work put in, in case of all establishments including an establishment of mine above ground
- (b) One days earned leave for every 15 days work put in, in case of a mine where the work is being carried on below ground

Provided that where a worker joins the establishment after 1st January he shall be required to work for at least 2/3 number of days calculated from his date of joining the establishment upto the end of the calendar year to be entitled to earned leave.

- (c) For the purpose of calculation of 240 days or 2/3 of the total attendance the number of days on which worker was laid off by agreement or contract or law, in case of female employee the maternity leave not exceeding 12 weeks and the leave earned and availed by the worker during the year on the basis of the work put in by him during the preceding year shall be counted.
- (2) The leave earned by a worker under sub sec (1) shall be allowed in addition to the weekly and other paid holidays.
- (3) Where a worker is discharged or removed form service or dismissed or he quits his employment or is superannuated or dies while in service, he or his nominee shall be entitled to wages in lieu of the quantum of leave to his credit and the leave which he shall be entitled to be calculated as above till the date of his separation on account of any of the above mentioned grounds and such wages shall be paid within 48 hours of such separation.

- (4) The worker shall be permitted to accumulate the leave upto 60 days.
- (5) Every employer shall decide the procedure for making application for the leave and for sanction thereof in consultation with recognised negotiating agent or college and the procedure so decided shall be displayed on the notice board for the information of the workers.

17. Entitlement for better leave

- (1) Where a worker is entitled to better benefits of leave in accordance with any agreement or settlement with the recognised negotiating agent or college or as per the rules framed by the employer he shall be governed by such better provisions of leave.

18. Wages for the Leave Period

- (1) For the leave allowed to a worker under sec 16 or 17 as the case may be, he shall be entitled to wages at the rate equal to his daily average of total remuneration or earnings for the days on which he actually worked during the preceding month excluding the overtime and bonus but including the house rent allowance, dearness allowance, the city compensatory allowance or any other allowance.
- (2) The worker shall be allowed wages to be paid in advance before proceeding on leave if he has made an application in this regard at least five days in advance.

19. Every worker shall be allowed 12 days casual and sick leave in a year. A person joining the services in a establishment after 01st January shall be allowed casual leave pro-rata.

20. Every establishment shall observe 8 holidays in a year out of which 3 national holidays i.e. Independence Day, Republic Day and Gandhi Jayanti shall be observed by every establishment and balance of holidays will be decided in consultation with the negotiating agent.

CHAPTER V

OTHER WORKING CONDITIONS & WELFARE

21. Cleanliness

- (1) Every establishment shall be maintained clean by removal of dirt, dust and refuse by sweeping or other effective methods including the staircases and passages. The sweeping and dusting shall be done on daily basis.
- (2) The employer shall ensure effective disposal of diffuse, effluvia arising from any drain or in case of a factory the disposal of fumes or gases.
- (3) The employer shall make arrangement for treatment of wastes and affluent arising from the manufacturing processes if it is carried on in his establishment.

22. Ventilation, Temperature and Lighting

- (1) The employer shall take effective steps for adequate ventilation by circulation of fresh air and maintenance of temperature at reasonable levels.
- (2) It shall be the duty of the employer to see that there is no overcrowding in workrooms and workplaces in his establishment.
- (3) The employer shall ensure that there is proper lighting, natural or artificial, as per the requirement of work carried on in the establishment.

23. Drinking Water

- (1) There shall be effective arrangement to provide and maintain suitable points for wholesome drinking water at convenient places for all workers employed in the establishment. All these points will be marked drinking

water in the language understood by the majority of workers employed in the establishment.

- (2) Provision shall be made for cool drinking water during summer.
- (3) The drinking water points shall be away from latrines, urinals and located at places away from the places where there can be possibility of contamination.

24. Latrines & Urinals

- (1) There shall be sufficient latrines & urinals of prescribed type conveniently located for use by the workers during working hours.
- (2) Separate enclosed accommodation for latrines & urinals shall be provided for male and female workers.

25. Washing Facilities

- (1) In every establishment of a factory, plantation, construction or mine adequate and suitable facility for washing shall be provided and maintained.
- (2) For female workers such facilities for washing to be provided in adequately screened accommodation.
- (3) The washing facilities shall be provided at conveniently accessible places and shall be maintained clean.

26. Facilities for Storing of Clothes

- (1) In every establishment of a factory, mine or construction suitable arrangement shall be provided for keeping clothes not worn during the working hours.

27. Facilities for sitting

- (1) In every establishment including a factory, mine, plantation or construction suitable arrangement shall be provided for all workers for sitting wherever workers are obliged to work in a standing position in

order to enable them to make use of the same during opportunities for rest due to rest intervals or otherwise.

28. **Canteens, lunch rooms and rest rooms**

- (1) In every establishment employing 200 or more workers the employer shall arrange to provide a canteen or canteens with arrangement to supply items of food and beverages on no profit no loss basis.
- (2) The appropriate Government shall make rules laying down the time limit by which the canteen shall be required to be provided, prescribe the standards for construction of canteen accommodation, furniture and the other equipment of canteen, the food stuffs to be served and the charges which may be levied for such food stuff, constitution of managing committee for managing the canteen consisting of representatives of workers and the management and the items of expenditure which will not be taken into consideration while fixing the cost of foodstuff.
- (3) The Employer of every establishment to which this Act applies shall provide lunch rooms and rest rooms for the workers where the workers can take their meals brought by them and take rest during the rest intervals or the lunch period.

29. **Crèches**

- (1) In every establishment the employer shall provide and maintain a suitable room or rooms for the use of children under the age of 6 years of workers.
- (2) Such rooms as are required under sub section (1) shall have adequate accommodation and lighted and ventilated and shall be maintained in a clean and hygienic condition. Rooms shall be under the charge of women trained in the care of children and infants.
- (3) The establishments (including those employing no female workers) may provide crèches in collaboration with other employers/establishments in the same area on cost sharing basis.

30. Welfare Officers

- (1) In every establishment or factory, mine, plantation, construction, hospital or service organisation wherein 300 or more workers are ordinarily required to be employed, the employer shall appoint one or more welfare officers.
- (2) The appropriate Government shall prescribe the duties, qualifications, conditions of service and the number of officers required to be appointed.

31. Welfare Committees

- (1) In every establishment employing 300 or more workers a welfare committee shall be constituted by the employer in consultation with the negotiating agent identified by the employer under the Labour Management Relations Law to advise the employer on the management of welfare measures.

32. Seeking Help of Local Bodies in Creation of Common Facilities

The appropriate Government shall make efforts to provide common facilities of canteen, crèches, toilets, and dispensary in industrial and business clusters by seeking cooperation of local bodies.

CHAPTER VI

ADDITIONAL WELFARE MEASURES FOR PLANTATION WORKERS

33. Housing

The workers employed in plantation establishments shall be provided family accommodation or dormitory accommodation of the prescribed type having facilities as may be prescribed.

34. Educational Facilities

Every employer in plantation establishments either by himself or jointly with other employers of plantation establishments shall provide educational facilities for the children of workers of plantation establishments as may be prescribed.

35. Medical Facilities

- (1) In every plantation the employer shall provide and maintained so as to be readily available such medical facilities for the workers and their families as may be prescribed by the appropriate Government.
- (2) If medical facilities are not provided and maintained by any employer as required in sub sec (1) the Chief Inspector may cause to be provided and maintained such facilities and recover the cost thereof from the defaulting employer by sending a recovery certificate to the collector who shall recover the same from the employer as arrears of land revenue.

Provided that if the Central Government enacts a composite law on social security to provide for health care and such a provision is extended to the plantation workers and their families this section will cease to apply to establishments of Plantations.

CHAPTER VII

CONDITIONS OF EMPLOYMENT OF CONTRACT LABOUR

36. Application of this Chapter

- (1) The provisions of this chapter shall apply to every establishment employing 20 or more contract labour and to every contractor who employs 20 or more contract labour in relation to the work of an establishment.
- (2) It shall not apply to establishments in which the work only of an intermittent or casual nature is performed. Where the question arises whether the work performed in an establishment is of intermittent or casual nature the question shall be decided by the Labour Court or the Labour Relations Commission appointed by the appropriate Government under Labour Management Relations Law.

Explanation : For the purpose of this sub section work performed in an establishment shall not be deemed to be of intermittent nature –

- (i) if it was performed for more than 120 days in the preceding 12 months or
 - (ii) if it is of seasonal character was performed for more than 60 days in a year.
- (4) For the purposes of this chapter establishment means-
- (i) any office or department of the Government or local authority or
 - (ii) any place where any industry, trade, manufacturer, business or occupation is carried on.

37. Registration of Establishment for Engaging Contract Labour

- (1) Every principal employer of an establishment to which this Act applies shall before engaging contract labour in his establishment make an application to the registering officer appointed by the appropriate Government for registration of his establishment. The application shall be accompanied by the information as may be prescribed and the prescribed fee.
- (2) If the application for registration is complete in all respects the registering officer shall register the establishment and issue to the principal employer a certificate of registration containing such particulars as may be prescribed within 10 days of furnishing the complete information by the principal employer.
- (3) Any change occurring in the information rendered by the principal employer for seeking registration shall be communicated by him to the registering officer and the registering officer if he is satisfied that the material change has taken place as may be prescribed shall affect the change in the particulars of registration of the establishment. Wherever such change is on account of increase in the number of contract labour to be employed such request for change shall be accompanied by the required fee.

- (4) If the registering officer is satisfied that registration of an establishment has been obtained by misrepresentation or suppression of material fact or that the registration has become ineffective and requires to be revoked the registering officer shall after giving an opportunity to the principal employer to be heard revoke the registration after seeking prior approval of the appropriate Government.

38. Effect of Non-Registration

- (1) No principal employer of an establishment to which this Act applies, shall
 - (i) if the establishment was required to be registered but which has not been registered within the prescribed period or
 - (ii) if the registration of the establishment has been revoked, employ contract labour in the establishment.

39. Licensing of Contractors

- (1) Every contractor to whom this Act applies shall before engaging contract labour in relation to an establishment of principal employer obtain a license from a licensing officer appointed by the appropriate Government by making an application in the form as may be prescribed with a prescribed fee and security.
- (2) Any change occurring after obtaining the license shall be intimated to the licensing officer by the contractor and where the change involves increase in number of contract labour to be employed in the establishment such intimation shall be accompanied by additional fee and security deposit as may be prescribed and the licensing officer shall accordingly issue an amended license.
- (3) The license shall be issued subject to such conditions as may be prescribed.
- (4) The license of the contractor may be cancelled or revoked or security may be forfeited by a licensing officer if he is satisfied that the license was

obtained by misrepresentation or suppression of material fact or that the conditions of license have not been fulfilled or the contractor has violated the provisions this Act or the rules made thereunder.

40. Prohibition of Employment on Contract Labour

- (1) Notwithstanding anything contained in this Act no contract labour shall be employed in any core function or activity of an establishment.
- (2) In non-core function or activity of perennial nature as given in Schedule I an employer may employ contract labour.

Provided that where a question arises whether an activity is core or non-core activity the same shall be decided by the Labour Court or Labour Relations Commission.

- (3) Where engagement of contract labour in non-core activity of perennial nature results in retrenchment or displacement of regular employees on the pay rolls of the principal employer, the principal employer shall engage contract labour in such activity after consulting the negotiating agent.
- (4) Nothing in this section shall prevent an employer from engaging workers on temporary basis including in core activity to meet the sporadic seasonal demand or supply/despatch products against sudden or sporadic orders.

41. Welfare Measures and Payment of Wages of the Contract Labour

- (1) The contractor shall be responsible for provision of welfare measures in respect of a contract labour as prescribed under Chapter V of this Act and if the contractor fails to provide the same within 15 days of engaging the contract labour the principal employer shall be responsible for providing the same.
- (2) The contract labour shall be subject to the same hours of work and leave as prescribed under this Act.

- (3) The contractor shall be responsible for payment of wages to the contract labour as per Wages Act and all wages shall be paid by the contractor in the presence of a representative of the principal employer and where the contractor fails to pay the wages within the period prescribed under the Wages Act or pays wages at lesser rate than that are prescribed under that Act the principal employer shall be held responsible to pay the wages to the contract labour as per provisions of the Wages Act.
- (4) The principal employer shall be responsible for complying with the provisions of Social Security Laws in respect of the contract labour employed in his establishment and he may do so either directly or through the contractor but the principal employer shall be held responsible for non deposit of any contribution to the social security fund in respect of the contract labour.

42. Wages to be paid to contract labour in certain cases

- (1) Where a contract labour is performing same or similar work as performed by a regular worker of the Principal Employer such Contract Labour shall be paid same wages as are paid to the regular worker and where there is no such comparable regular worker in the establishment of the principal employer, the contract labour shall be paid wages at the lowest rate of the comparable unskilled, semi skilled or skilled regular worker.

Chapter VIII

Miscellaneous

43. Employer's obligation in respect of interstate migrant workers in certain circumstances

- (1) It shall be the duty of every employer to see that the workers belonging to a State other than the State in which his establishment is situated are not discriminated against in any manner such as in hours of work, leave, welfare measures and payment of wages.
- (2) Where a workmen belonging to a State other than the State in which the establishment is located is employed in the establishment in any unskilled

or semi skilled category work the employer shall inform the State of origin of such worker and also the State in which the establishment is situated about the employment of such worker by registered post.

44. Bar against double employment

No worker shall work in an establishment on the day on which he has already worked in another establishment.

45. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

46. Making of Rules

The Central Government as well as the State Government will have the power to make Rules.

47. Registers/Records, Returns, Notices, Identity cards

(1) Every employer of an establishment and every contractor to whom this Act applies shall in addition to maintaining the registers as are prescribed under the Wages Act shall maintain the following registers:

- a. Register of relays of shifts
- b. Leave Record Register

(2) Every employer who engages contract labour through contractors shall maintain a register of contractors.

(3) Every contractor shall send an annual return to the inspector with a copy to the licensing officer in the prescribed form provided that where the work allotted to the contractor by the principal employer comes to an end without completing full calendar year the return in question shall be sent by the contractor to the inspector of the area with a copy to the licensing officer within 15 days of completion of the work.

48. **Repeals and Savings**

- (1) The Shops and establishments Acts of different States, Chapter VI and VII of the Mines Act, 1952, Chapter III, Chapter V, Chapter VI, Chapter VII & Chapter VIII of the Factories Act, 1948, Chapter III, Chapter IV & Chapter VI of the Building & Other Construction Workers (RE&CS) Act, 1996, Contract Labour (R&A) Act, 1970, the Interstate Migrant Workmen (RE&CS) Act, 1979, the Motor Transport Workers Act, 1961, Cine Workers and Cinema Theatres Workers (Regulation of employment) Act, 1981, Bidi and Cigar Welfare (Conditions of Employment) Act, 1966 and Chapters I to VI A of the Plantation Labour Act, 1951 shall stand repealed on enactment of this Act.

49. **Appointment of Inspectors**

- (1) The inspectors appointed under the Wages Act by the appropriate Government shall be the inspectors under this Act.

50. **Cognisance of Offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by an inspector or a worker or a Trade Union operating in the establishment or a recognised welfare institution.
- (2) Fines may be imposed for violation for any provision of the Act by the Chief Inspector or an Joint Chief Inspector as provided in Section 43.

51. **Penalties**

For every violation of the Act fine may be imposed which shall not be less than Rs. 5,000/- but which may extend to Rs. 10,000/-. For every subsequent offence or violation of the same nature a fined of Rs. 10,000/- may be imposed. Where the violation continues an additional fine of Rs. 200/- per day may be imposed for the period till such violations continues.

SCHEDULE -I

- a) Canteen
- b) Watch and Ward
- c) Cleaning

Note : More non-core perennial functions, as determined by the appropriate Government may be added

DRAFT LAW ON WAGES

Chapter I

Preliminary

Whereas it is expedient to consolidate all legal provisions relating to wages to workers, it is hereby enacted as follows: -

1. Extent, application and commencement

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

2. Definitions

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: (As defined at present under P.W. Act)
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: (Means wages and value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

3. **Prohibition of Discrimination Against Female Workers**

- (1) There shall be no discrimination between males and female workers in the matter of wages; and the principle of equal pay for equal work will be applicable to all workers under the same employer, in respect of work of same or similar nature.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature, the matter will be decided by the appropriate government who may designate a person to decide the question.

Chapter II

Minimum Wages

4. **Payment of Minimum Wages**

No employer will be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

5. **National floor level minimum wage**

There shall be a National minimum wage which the Central Government will determine and notify; the national minimum wage will be revised by the Central Government from time to time and in no case less frequently than once in two years. In fixing the national minimum wage, the Central Government will keep in view the conclusions of the Indian Labour Conference in its 15th session as also the decision of the Supreme Court of India in the case of Raptakos Brett & Co.

The national minimum wage will be applicable throughout the country to every worker in employment, irrespective of the nature of the activity, and shall be notified as daily rate, weekly rate and/or monthly wage.

6. **Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory will also notify for all employments or activities a state minimum wage which shall not be less than

the national minimum wage; where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that so that minimum wage is not less than the national minimum wage.

7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

8. **Composition of Minimum Wage**

The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every quarter on the basis of 100% neutralisation to a cost of living index as may be prescribed and cash value of any food concession given to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other case once in two years.

9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages must be so fixed that the outputs by a normal worker in a 8 hour working shift will enable the workers to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the work for all the 8 hours in a shift, the worker will be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75% of the notified daily minimum wage.

Chapter III

Payment of Wages

10. Mode of Payment of Wages

All wages to workers shall be paid in cash or credited, with the workers consent, to the workers bank account and where majority of workers in the establishment give their consent in writing, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind will, in case of dispute, be determined by the appropriate Government or its designated authority and its decision will be final.

11. Fixation of Wage Period

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

12. Time of Payment of Wages

(1) All wages will be paid before the 7th day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it must be paid at the end of the shift, in cases of weekly rated payments, it must be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.

(2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

13. Payment of Wages without deductions

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

14. Deductions which may be made from wages

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker 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 worker of any of the following penalties, namely:-

- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar):
- b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
- c. 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 worker 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 worker 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;

- (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 employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.

Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government 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;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)

- (j) deductions, made with the written authorisation of the worker for payment of any premium of 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;) or to a scheme of insurance maintained by the Indian Post Office; and
- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
- (l) deduction 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 worker 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 worker 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 in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
- (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
- (p) deductions, made with the written authorisation of the worker, 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;

- (3) Notwithstanding anything contained in this Act, the total amount of deductions which maybe made under sub-section (2) in any wage-period from the wages of any worker shall not exceed –
- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (j) of sub-section (2), seventy five percent of such wages, and
 - (r) 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 percent 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 worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

Chapter IV

Payment of Bonus

15. There shall be paid to every workers an annual bonus calculated at 8 1/3% of the wages earned by him/her during the previous accounting year, such amount to be paid within three months of the close of the accounting year. (Wages for the purpose of calculating bonus will comprise basic wage, dearness allowance, retention allowance, if any, in case of seasonal industries, city compensatory allowance and no other allowance) Demand for bonus in excess of this annual bonus, either on the basis of profits earned in the accounting year or on basis of production/productivity will be determined by collective bargaining between the parties, failing which by arbitration or adjudication as an industrial dispute, so however, the total bonus including the 8 1/3% annual bonus shall not exceed 20% of the wages.

16. Payment of Bonus out of Allocable Surplus

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per schedule appended to Act.
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

17. Disqualification for bonus

Notwithstanding anything contained in this Act, a worker shall be disqualified from receiving bonus under this Act, if he is dismissed from service for

- i Fraud; or
- i Riotous or violent behaviour while on the premises of the establishment; or
- iii Theft, misappropriation or sabotage of any property of the establishment.

18. Proportionate reduction in bonus in certain cases

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher that is payable to other workers in the establishment for the days he has worked in that accounting year, shall be proportionately reduced.

19. Set on and set off of allocable surplus

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 11, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) Schedule.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

20. Adjustment of customary or interim bonus against bonus payable under the Act

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to worker before the date on which such bonus becomes payable, then, the

employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. Deduction of certain amounts from bonus payable under the Act

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

22. Time limit for payment of bonus

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

23. Special provision with respect to payment of bonus linked with production or productivity

Notwithstanding anything contained in this Act -

- i Where an agreement or a settlement has been entered into by the workers with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976) or
- ii Where the workers enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

24. The Provisions of Payment of Bonus not to apply to certain classes of workers

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishment & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chamber of commerce, or charitable institutions not established for making profits, workers of universities, other educational institutions, a construction work which is not carried for more than a year.

Chapter V

Miscellaneous

25. Removal of difficulties

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

26. Making of Rules

The Central Government will have the power to make Rules.

27. Repeal and Savings

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

28. **Issue of Identity Cards**

Every worker must be issued an identity card indicating the name of the establishment, name of the worker, designation, details of wages and allowances to be paid and such other details as may be prescribed, in which entries must be made at the end of each wage period showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payment.

29. **Claims under the Act**

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages of a worker which are not according to this Act, payment of less wages than the minimum wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.
- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (i) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

30. **Records, Returns and Notices**

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
 - (i) Register of persons employed
 - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.
- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

31. **Appointment of Inspectors**

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or different areas to carry out the objectives and purposes of this Act.

32. **Cognisance of offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

33. **Penalties**

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.

- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable under then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1000/-.

34. Exemptions

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

35. Burden of Proof

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

36. Contracting Out

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

APPENDIX - V

LAW ON LABOUR MANAGEMENT RELATIONS

An Act to consolidate and amend the law relating to registration of Trade Unions, rights and obligations of registered Trade Unions, conditions of employment of workers, settlements of disputes between the workers and the management, promoting healthy industrial relations based on mutual cooperation with a view to ensure accelerated economic growth while securing social justice for the workers, be it enacted as follows:

CHAPTER I

PRELIMINARY

1. Short title, Extent, Commencement & Application

- (1) This Act may be called the Labour Management Relations Act, 2002.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may by notification appoint and different dates may be appointed for different provisions of this Act and for different States, so however, the entire provisions of the Act will be brought into force in the whole of India within three years of the enactment of the Act.
- (4) It shall apply to every establishment or undertaking wherein 20 or more workers are employed, provided that nothing in this Act shall apply to an establishment of a Government performing sovereign functions of the State.

2. Definitions

- (1) In this Act unless there is anything repugnant in the subject or context the
 - (a) 'appropriate Government' means the Central Government in respect

of establishments of Departments of Central Government, railways, posts, telecommunications, major ports, light houses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR NCERT and in respect of industrial disputes between the contractor and the Contract Labour engaged in these enterprises/establishments and in respect of all others, the concerned State Government/Union Territory administrations.

- (b) 'Arbitrator' means an Arbitrator or a body of Arbitrators chosen by parties to a dispute or named so in the collective agreement or settlement drawn from the panel of Arbitrators maintained by the State Labour Relations Commission or Central Labour Relations Commission or other eminent persons in the community who are accepted or nominated as such by any person or persons who is or are party to any individual, industrial or trade union dispute.
- (c) 'average wage' means the average of wages (including piece rate earnings) payable to a worker
 - (i) in case of a monthly paid worker and piece rated worker, in three complete calendar months
 - (ii) in case of a fortnightly or weekly paid worker in four complete fortnights or four complete weeks
 - (iii) in case of daily paid worker, in the 12 full working days

preceding the date with reference to which the average pay becomes payable if the worker had worked for three complete calendar months or four complete fortnights or four complete weeks or as the case may be 12 full working days and where such average cannot be calculated, as

aforesaid, the average of wages payable to the worker during the period he actually worked.

- (d) 'award' means an interim or final determination of any individual dispute or industrial dispute or trade union dispute by an Arbitrator, Lok Adalat, Labour Court, State Labour Relations Commission, Central Labour Relations Commission or National Labour Relations Commission,
- (e) 'banking company' means a banking company as defined in section 5 of the Banking Companies Act, 1949, and includes the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934, the State Bank of India constituted under the section 3 of the State Bank of India Act, 1955, any subsidiary bank as defined in clause(k) of section 2 of the State Bank of India (subsidiary banks) Act, 1959, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 and a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (f) 'negotiating agent' means a registered trade union recognised or certified as such under this Act being the single negotiating agent or a combination or college of more than one registered trade unions and includes a negotiating committee;
- (g) 'closure' means the permanent closing down of any place of employment or part thereof;
- (h) 'employer' means who employs workers in his establishment and where the establishment is carried on by any department of Central Government or State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority;

- (i) 'establishment' means any activity carried on by co-operation between an employer and workers and includes any branch or office of the establishment within a specified local area as may be prescribed;
- (j) 'executive' means the body by whatever name called, to which the management of the affairs of a trade union is entrusted;
- (k) 'individual dispute' means any dispute or difference between an employer and any of his worker in relation to, or arising from, transfer or promotion of, or refusal or failure to promote, such worker or the termination of his employment or any punishment (including discharge or dismissal) imposed on such worker and includes any dispute or difference as to the money due to such worker from the employer or as to the amount at which a benefit, which is capable of being computed in terms of money, is to be computed.

* Explanation: Where a question arises whether a dispute is an individual dispute or an industrial dispute the same shall be decided by a Labour Court or as the case may be the appropriate Labour Relations Commission.

- (l) 'Industrial dispute' means any dispute or difference between employers and workers, or between employers and employers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or conditions of labour, of any person, but does not include an individual dispute or a trade union dispute.
- (m) 'Insurance company' means a company defined as such in section 2 of Insurance Act, 1938
- (n) 'lay off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stocks or break down of machinery or natural calamity or for any other connected reason to give employment to

a worker whose name is borne on the muster roll of his establishment and who has not been retrenched;

Explanation: Every worker whose name is borne on the muster rolls of the establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause:

Provided that if the worker, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid off only for one half of that day;

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

- (o) 'lock out' means the (temporary closing of a place of employment) or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;
- (p) 'managerial or other employee' for the purposes of Chapter X means a person who is appointed or engaged as a supervisor or an officer or a manager and includes a person engaged as a worker but excluded from the definition of a worker under this Act due to the wage limit but does not include a manager or a general manager who has overall control over the affairs of an establishment or the undertaking;

- (q) 'notification' means a notification published in the Official Gazette;
- (r) 'office bearer', in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;
- (s) 'prescribed' means prescribed by rules made under this Act;
- (t) 'registered trade union' means a trade union registered under this Act;
- (u) 'Registrar' means Registrar of a trade unions appointed under this Act;
- (v) 'retrenchment' means the termination by the employer of services of a worker on account of surplusage of manpower and does not include
 - (i) termination of service of a worker by way of punishment on account of misconduct;
 - (ii) voluntary retirement of a worker or resignation;
 - (iii) retirement of a worker on reaching the age of superannuation in terms of contract of employment, rules or standing orders, applicable to the worker;
 - (iv) termination of service of a worker on grounds of ill health;
 - (v) termination of service of a worker as a result of the contract of employment coming to an end or non renewal of contract of employment or termination of contract under stipulation in that behalf contained therein;
- (w) 'settlement' means a written collective agreement between the employer and the negotiating agent arrived at otherwise than in the course of conciliation proceedings which has been sent to the concerned Labour Relations Commission and includes a settlement arrived at in the course of conciliation proceedings a copy of which has been sent by the Conciliation Officer before whom it is signed to the concerned Labour Relations Commission and the appropriate Government;

- (x) 'socially essential service' means an establishment carrying on the activity of water supply or sanitation or generation and supply of electricity or public transport or any activity connected with any medical service;
- (y) 'sovereign functions' mean and include the functions pertaining to maintenance of law and order, making of law and justice, levy and collection of taxes, external relations and defence of the country performed by Government;
- (z) 'strike' means total or partial cessation of work by body of persons employed in any establishment acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept work or employment;
- (aa) 'trade union' means any combination whether temporary or permanent formed primarily for the purpose of regulating relations between the workers and the employers or between workers and workers or between employers and employers and includes a federation of Trade Unions or a central organisation of Trade Unions and includes an association or union of unorganised sector workers registered under this Act notwithstanding the fact that there is no employer-employee relationship or such relationship is not clear;
- (bb) 'trade union dispute' means any dispute –
 - (i) between a trade union and another trade union or
 - (ii) between a member or two or more members of a trade union and the trade union, or between two or more members of a trade union relating to registration, certification, administration management of affairs of that trade union including election of officer bearers thereof;
 - (iii) between a worker and a trade union regarding non

admission as a member of the trade union without sufficient reason;

- (cc) 'undertaking' means a body set up set up under the Companies Act or under any other law relating to setting up of banking or insurance companies or a partnership or proprietary firm and includes the offices, sections, units and branches of an undertaking whether situated in an area or in the whole of the country.

Explanation: a body corporate, partnership or proprietary firm shall be treated as a separate undertaking where it is drawing a separate balance sheet and preparing separate profit and loss account.

- (dd) 'wages' or 'remuneration' will have the same meaning as assigned to them in the Wages Act and wages generally used in this Act may mean remuneration wherever the context so requires.

- (ee) 'worker' means any person employed for carrying out any activity in an establishment for hire or reward whether the terms of employment be expressed or implied and whose wages do not exceed Rs. 25,000 per mensem and for the purposes of any proceedings under this Act in relation to an individual dispute includes any such worker who has been dismissed, discharged or retrenched and whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

- (i) who is a subject of Air Force Act, Navy Act or Army Act;
- (ii) who is employed in the police service or as an officer or other worker of a prison; or
- (iii) who is employed in a managerial, administrative or supervisory capacity;

CHAPTER II

AUTHORITIES TO BE SET UP UNDER THE ACT

3. Registrar of Trade Unions

- (1) Appropriate Government may by notification appoint a person to be the Registrar of Trade Unions, and other persons as Additional Registrars of Trade Unions, Joint Registrar of Trade Unions and Dy. Registrars of Trade Unions who shall exercise such powers and perform such duties of the Registrar as the appropriate Government may by notification specify from time to time.
- (2) Subject to the provisions of any order made by the appropriate Government where an Additional Registrar of Trade Unions or a joint Registrar of trade unions or a Dy. Registrar of Trade Unions exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated such Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Dy. Registrar of Trade Unions shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Act.

4. Grievance Redressal Committee

- (1) In every establishment there shall be established a Grievance Redressal Committee consisting of equal number of workers and employers representatives for looking into grievances of workers.
- (2) The Grievance Redress Committee shall consist of not more than 10 and not less than 2 members depending on the employment size of the establishment and where the number of representatives is 4 or more it shall have a chairman and a vice chairman elected by the Committee.
- (3) Where in respect of an establishment there is recognised negotiating agent, the workers representatives on the committee shall be nominated by such negotiating agent certified under this Act.

- (4) The appropriate Government shall make rules to prescribe the number of representatives to be nominated by the negotiating agent and the employer depending on the employment size of the establishment, election of chairman and vice chairman and such other matters as may be necessary for the conduct of business of the Grievance Redressal Committee for resolution of grievances of workers.

5. Lok Adalats

- (1) The appropriate Government may by notification establish such number of Lok Adalats as it thinks fit and define the local limits of their jurisdiction.
- (2) The Lok Adalat shall have its headquarter at such place as the appropriate Government may by notification specify in this behalf. Provided that nothing shall prevent the Lok Adalat from holding its sittings at such other place or places within the local limits of its jurisdiction as it considers necessary.
- (3) The qualification for appointment as Presiding Officer of a Lok Adalat shall be the same as have been prescribed for appointment of Presiding Officer of a Labour Court under this Act.
- (4) Lok Adalat shall subject to others provisions of this Act have powers to arbitrate in individual disputes, industrial disputes, trade union disputes and perform such other functions as may be assigned to it under this Act.

6. Conciliation Officers And Their Duties & Functions

- (1) The appropriate Government may by notification appoint such number of persons as it thinks fit depending on the number of cases to be the Conciliation Officers charged with the duty of conciliating in and promoting the settlement of individual and industrial disputes.

- (2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area either permanently or for a limited period.
- (3) The duties and functions of a Conciliation Officer shall be as under:
 - (i) to assist employers or their representatives and the trade unions to achieve and maintain effective labour relations;
 - (ii) to chair conciliation proceedings;
 - (iii) to deal with such matters as are referred to him by the Labour Court or the Labour Relations Commission;
 - (iv) to offer his services to the parties to a dispute, and to assist them to resolve the dispute including making of enquiry as may be necessary;
 - (v) to exercise such other functions as are conferred on a conciliator under this Act.

7. **Arbitrators**

'Central Labour Relations Commission' or as the case may be the State Labour Relations Commission shall maintain a panel of persons who have distinguished themselves in the field of Trade Union, management, economics or have distinguished themselves as conciliators or being in the service of Central or State Government are dealing with the labour issues, to function as Arbitrators in individual disputes, industrial disputes and trade union disputes.

Provided that nothing shall prevent the parties to any individual, industrial or trade union dispute to accept or nominate by agreement other eminent persons in the community to arbitrate in their disputes.

8. Labour Courts

- (1) The appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission shall by notification establish such number of Labour Courts as it thinks fit and define local limits of their jurisdiction and appoint Presiding Officers of such Labour Courts.

The Labour Court shall have its headquarters at such place as the appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission may by notification specify.

- (2) Provided that the Labour Court may hold its sittings at such other place or places within its local limits of jurisdiction, as it considers necessary.

Provided further that nothing shall prevent the appropriate Government from transferring a Presiding Officer of the Labour Court to another Labour Court set up by it.

- (3) No person shall be qualified as Presiding Officer of a Labour Court unless:

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- a. he has for a period of not less than one year been a District Judge or an Additional District Judge or
- b. he has held a judicial office in India for not less than 7 years or is a member of Indian Labour judicial Service, or
- c. he has practiced as an advocate or attorney for not less than 7 years in any court or
- d. he has held the post of a Dy. Labour Commissioner or above under the State Government or held the post of Regional Labour Commissioner or above in the Central Government and has experience of dealing with Labour matter for not less than 10 years.
- e. he has in the opinion of appropriate Government distinguished himself in the field of Industrial relations or human resource management.

- (4) The Labour Court shall subject to other provisions of this Act have powers to adjudicate in individual disputes; and Trade Union disputes and claims as prescribed under this Act and may be assigned such other functions such as settlement of disputes and claims, and trial of offences under this Act and other enactments as may be specified in this behalf by appropriate Government by notification.

9. **Central & State Labour Relations Commission**

- (1) The Central Government shall, by notification, establish a Labour Relations Commission to be known as the Central Labour Relations Commission.
- (2) The State Government shall, by notification establish a Labour Relations Commission to be known as the State Labour Relations Commission.
- (3) (a) The Central Labour Relations Commission and each of the State Labour Relations Commission shall consist of a president and such number of other members as are necessary provided that the number of members representing labour shall be equal to the number of members representing management.
- (b) Subject to the other provisions of this code, the jurisdiction, powers and authority of the Central Labour Relations Commission and the State Labour Commissions may be exercised by benches thereof.
- (c) (i) A bench shall consist of not less than three members of whom one shall be a judicial member.
- (ii) The President may discharge the functions of a judicial member of any bench.
- (iii) The President may for the purpose of securing that any case or cases which, having regard to the nature of the questions involved requires or require in his opinion or

under the rules made by the Central Government or, as the case may be, by the State Government, in this behalf, to be decided by a bench composed of more than three members, issue such general or special orders as he may deem fit; provided that every bench constituted in pursuance of this clause shall include at least one judicial member, one non-judicial member representing employers and one member representing the workers.

- (iv) The benches of the Central or State Labour Relations Commission shall sit at such place or places as the Central or as the case may be the State Government may by notification specify.
- (4) (a) The President of the Central Labour Relations Commission or State Labour Relations Commission shall be a sitting or retired judge of a High Court or is eligible to be appointed as a judge of the High Court.
- (b) The Members of the Central and State Labour Relations Commission shall be persons who have distinguished themselves in the field of economics, labour or labour relations, trade union movement and management.
- (5) Central and State Labour Relations Commission will be deemed to be set up under Article 332- B of the Constitution.

10. **National Labour Relations Commission**

- (1) The Central Government may by notification establish a National Labour Relations Commission to
 - (i) hear appeals against any order or award of the Central Labour Relations Commission or a State Labour Relations Commission involving substantial question of law.
 - (ii) adjudicate in an industrial dispute of national importance.
 - (iii) adjudicate in an industrial dispute in which establishments situated in more than one States are likely to be interested.

- (iv) adjudicate in a trade union disputes of a Trade Union having offices in more than one State.
- (2) The National Labour Relations Commission shall consist of President who shall be a sitting judge of the Supreme Court or a person who is eligible to be appointed as a judge of the Supreme Court and such other number of members as may be prescribed one of whom shall be from judiciary or from Indian Labour Judicial Service and other members shall be distinguished persons from the field of Labour, trade union, economics or management.
- (3) The National Labour Relations Commission may issue any direction to any Labour Court, Labour Relations Commission or an official of the Government for carrying out purposes of this Act.
- (4) The National Labour Relations Commission may have benches or have sittings at such places as may be decided by the Commission and where a bench is set up it shall have not less than 3 members presided over by a judicial member.
- (5) National Labour Relations Commission shall have the powers exercisable by the Supreme Court under Clause 3 of Article 32 of the Continuation in pursuance thereof.

11. Tenure of Office of the President and members of the Commission, Procedure of removal, staff of the Commission, and other related matters

- (1) In the event of the occurrence of any vacancy in the office of the President of a Labour Relations Commission, the senior most member of the Labour Relations Commission shall act as the president until the date on which a new president is appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

- (2) When the president of a Labour Relations Commission is unable to discharge his functions owing to absence, illness or any other cause the senior most member shall discharge the function of the president until the date on which the president resumes office.
- (3) The president and members of a Labour Relations Commission shall hold office until they attain the age of sixty-five years.
- (4) The president or any other member of the Labour Relations Commission may, by notice in writing under his hand addressed to the Central Government or the State Government, as the case may be, resign his office:

Provided that the president or other member of the Commission shall, unless he is permitted to relinquish his office sooner by the Central Government or the State Government, as the case may be, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office whichever is the earliest.

- (5) (a) The president, or any other member of the Central Labour Commission and a member of the National Labour Relations Commission may be removed from office by an order made by the president of India on the grounds of proved misbehaviour or incapacity on the recommendation of the National Judicial Commission or a Committee set up in this behalf under chairmanship of Chief Justice of India after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- (b) The president or any other member of a State Labour Relations Commission may be removed from office by an order made by the Governor of the State on the ground of proved misbehaviour or

incapacity by the National Judicial Commission or a Committee appointed under the Chairmanship of the Chief Justice of the High Court, after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

- (c) The Central Government shall by rules, lay down the procedure for the investigation of misbehaviour or incapacity of the president or member referred to in sub-section (a) and (b).
- (6) (a) The salaries and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the President and other members of the National Labour Relations Commission and the Central Labour Relations Commission shall be such as may be prescribed by the Central Government and those of the President and members of the State Labour Relations Commission shall be such as may be prescribed by the State Government.
- (b) Neither the salary and allowances nor the other terms and conditions of service of the President or any other member shall be varied to his disadvantage after his appointment.
- (7) (a) No High Court shall have any power of superintendence over the Labour Relations Commissions.
- (b) No Court shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of or in relation to the Labour Relations Commission.
- (8) (a) The president of a Labour Relations Commission shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the Central Government or, as the case may be, the State Government.

- (b) The president of a Labour Relations Commission shall have authority to delegate such of his financial and administrative powers as he may think fit, to any other member or officer of the Commission subject to the condition that such member or officer shall while exercising such delegated powers, continue to act under the direction, control and supervision of the president.
- (9)
- (a) The Central Government or, as the case may be, the State Government shall determine the nature and categories of the officers and other employees required to assist the Labour Relations Commission in the discharge of their functions and provide the Commission with such officers and other employees as it may think fit.
 - (b) The salaries, allowances and conditions of service of the officers and other employees of the Central Labour Relations Commission or the State Labour Relations Commission shall be such as may be specified by rules made by the Central Government or as the case may be, the State Government.
 - (c) The officers and other employees of the Labour Relations Commission shall discharge their functions under the general superintendence of the president.
- (10) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely :-
- (a) Hearing of appeals against the award of a Labour Court.
 - (b) adjudication of disputes as provided under this Act which are not settled by collective bargaining and there is no agreement to refer the same to arbitration.

provided that in cases where the parties agree to arbitration of a dispute but are not able to agree upon an Arbitrator the appropriate Labour Relations Commission may, on a motion by either party or of the appropriate Government. get the dispute arbitrated by any member of the Commission or by an Arbitrator from out of a panel of Arbitrators maintained by the Commission for the purpose.

CHAPTER III

Trade Unions

12. Trade Unions to be Formed

- (1) A Trade Union may be formed by workers or employers and in case of a federation or central organisation by Trade Unions of workers or employers.
- (2) Every Trade Union shall carry on its activities in accordance with the provisions of this Act and the constitution and rules framed by it and approved by the Registrar.
- (3) A Trade Union, which is not registered under this Act, shall not be entitled to any rights and privileges under this Act.

13. Requirement for Registration

- (1) (a) In case of Trade Union of workers a minimum of 10% of workers employed in an establishment, undertaking or industry with which a Trade Union is connected shall be required to be the members of the Trade Union for making an application for registration

Provided that where 10% of workers exceed 100 it shall be sufficient if the application is made by 100 workers.

Provided further that where 10% of workers of an establishment or undertaking or an industry is less than seven workers a minimum of 7 workers shall be required to make an application for registration.

- (b) In the case of unions or association of workers in unorganised sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10% membership in an establishment or undertaking or industry shall not apply.
- (2) In the case of a Trade Union of employers not less than 7 employers shall be required for making an application for registration.

14. **Application for Registration**

- (1) Every application for registration of a Trade Union shall be accompanied by —
 - (a). A statement showing —
 - (i) The names, occupations and addresses of the persons making the application, the name and address of the establishment, undertaking or industry, and where the establishment has two or more units, branches or offices, the name and address of the unit, branch or office, wherein such persons are employed;
 - (ii) The name of the Trade Union and the address of its head office;
 - (iii) The title, name, age, residential address and occupation of each of the office bearers of the Trade Union;
 - (iv) In the case of a Trade Union, being a federation or central organisation of trade unions, the names, addresses of registered offices and registration numbers of the member Trade Unions;

- (b). Three copies of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;
- (c). A copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and
- (d). In the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

Explanation: For the purpose of this clause, resolution adopted by the members of the Trade Union means, in the case of a Trade Union, being a federation or a central organisation of Trade Unions, the resolution adopted by the members of each of the member trade unions, meeting separately.

- (2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

15. **Prohibition of Craft, category or caste based unions**

A union which comprises workers of a craft or category or a union which is based on caste shall not be registered under this Act.

16. **Power to call for further information or alternation of name**

- (1) The Registrar may call for further information from the persons making application for registration with a view to satisfy himself that the

application made for registration of the Trade Union complies with the provisions of this Act and it is otherwise entitled for registration under this Act and may refuse to register the Trade Union until such information is furnished.

- (2) If the name under which the Trade Union is proposed to be registered is identical with that of an existing Trade Union or in the opinion of the Registrar so nearly resembles the name of an existing trade union that such name is likely to deceive the public or the members of the either Trade Union, the Registrar shall require the persons making application to alter the name of Trade Union and shall refuse to register the Trade Union until such alteration has been made

17. Provisions to be contained in the Constitution & Rules of the Trade Union

- (1) A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules of the Trade Union provide for the following matters, namely: -
 - (a). the name of the trade union;
 - (b). the whole of the objects for which the trade union has been established;
 - (c). the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
 - (d). the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office bearers and members of the trade union;
 - (e). the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the establishment, undertaking or industry, or units, branches or offices, of an establishment as the case may be, with which the

trade union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 35 to be office bearers to form the executive of the trade union;

- (f). the payment of a subscription by members of the trade union as prescribed under this Act;
- (g). the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on any member;
- (h). the annual general body meeting of the members of the trade union, the business to be transacted at such meeting, including the election of office bearers of the trade union;
- (i). the manner in which the members of the executive and the other office bearers of the trade union shall be elected once in a period of every two years and removed and filling of casual vacancies’
- (j). the safe custody of the funds of the trade union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office bearers and members of the trade union;
- (k). the manner in which the rules shall be amended, varied or rescinded; and
- (l). the manner in which the trade union may be dissolved.

18. **Registration of a Trade Union**

- (1) If the information furnished by the trade union which has made the application is complete in all respects the Registrar shall make an order within 60 days from the date of receipt of the application for registration of the Trade Union for either granting or refusing to grant the registration and shall communicate his order to the applicant union.

Provided that where the Registrar refuses to grant the registration he shall state the reasons thereof for such refusal

- (2) Where the Registrar makes an order for registration of a trade union he shall issue a certification of registration to the applicant trade union in the prescribed form which shall be the conclusive evidence that the trade union has been registered under this Act.
- (3) If the Registrar has issued a registration certificate to a trade union he shall enter the name and other particulars of the trade union in a register maintained in this behalf in the prescribed form.

19. Deemed Registration in Certain Cases

- (1) Every trade union registered under the Trade Unions Act, 1926 having valid registration before the commencement of this Act shall be deemed to be registered under this Act.

Provided that a union which does not fulfil the requirement of Section 13 and 17 or a union which consists of workers of a certain craft or category as members or a union which is based on the caste shall not be automatically deemed to have been registered.

- (2) The Registrar shall within 6 months of commencement of this Act serve on every union covered by the proviso to sub section (1) a notice requiring such trade union to either amalgamate with other trade union or unions or become a general union or to otherwise comply the requirements of the proviso.
- (3) Where any such union which has been served a notice under sub section (2) fails to comply with the direction given by the Registrar in his notice within the specified period the registration of such a trade union shall stand cancelled.

20. Cancellation of Registration

- (1) Certificate of registration of a trade union may be cancelled by the Registrar -

- (a). on the application of the trade union to be verified in such manner as may be prescribed;
- (b). if the union had obtained the registration by misrepresentation or fraud or mistake;
- (c). if the union has failed to maintain the accounts or to submit the annual return in the prescribed manner or within the prescribed period or the annual return submitted by it is false or defective and the defect is not rectified within the prescribed period;
- (d). if the trade union has wilfully after the notice from the Registrar contravened any provision of this Act or rules made thereunder or has contravened its constitution and rules;
- (e). if the trade union has not held its elections as prescribed under this Act within the prescribed period;
- (f). if the trade union has made or allowed to continue any provision in its constitution and rules which is inconsistent with this Act or rules made thereunder or has rescinded any of its rules providing for any matter, provision for which is required to be made by section 17.

Provided that not less than 60 days previous notice in writing specifying the grounds on which it is proposed to cancel the certificate of registration of a trade union shall be given by the Registrar to the trade union before the certificate of registration is cancelled otherwise than on the application of the trade union

- (g). if the trade union no longer fulfills the requirements of registration as prescribed under section 13.
- (2) A certificate of registration of a trade union shall be cancelled by the Registrar where a Labour Court or the Central or the State Labour Relations Commission or the National Labour Relations Commission has made an order for cancellation of registration of such union.

- (3) While cancelling the certificate of registration of a trade union the Registrar shall record the reasons for doing so and communicate the same in writing to the trade union concerned.

21. Appeal against Non-Registration or Cancellation of Registration

- (1) Any person aggrieved by the refusal of the Registrar to grant registration to a trade union under section 18 or by cancellation of a certificate of registration under section 20 or if the Registrar has not acted within 60 days on the application for registration may within such period as may be prescribed prefer an appeal to the Labour Court whose decision shall be final.
- (2) The Labour Court may after giving the parties concerned an opportunity to be heard dismiss the appeal or pass an order directing the Registrar to register the trade union and to issue a certificate of registration or set aside the order of cancellation of certificate of registration as the case may be and forward a copy of the order to the Registrar.

22. Registered Office of the Trade Union

All communications and notices to a registered trade union may be addressed to its registered office which shall be the address of the head office of the trade union as entered in the register maintained by the Registrar of the trade unions.

23. Change in Address & other Particulars of the Trade Union

It shall be incumbent on a trade union to inform the Registrar by a registered post if any change in the particulars of the trade union as contained in section 13 and 17 has occurred or there is change in the address of the registered office of the trade union within 14 days of occurring of such change.

24. Incorporation of a Registered Trade Union

Every registered trade union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal

with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued.

25 **Certain Acts not to Apply to Registered Trade unions**

The following Acts namely –

- (a). the Societies Registration Act, 1960
- (b). the Cooperative Societies Act of the Central Government & similar enactments of the State Governments, and
- (c). the Companies Act, 1956

shall not apply to any registered trade union and the registration of any such trade union under any such Act shall be void.

26. **Objects on Which General Funds of a Trade Union may be Spent**

The general funds of a registered trade union shall not be spent on any objects other than the following namely: -

- (a). the payment of salaries, allowances and expenses to office bearers of the trade union;
- (b). the payment of expenses for the administration of the trade union including audit of the accounts of the general funds of the trade union;
- (c). the persecution or defence of any legal proceeding to which the trade union or any member thereof is a party when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the trade union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (d). the conduct of individual, industrial or trade union disputes on behalf of the trade union or any member thereof;
- (e). the compensation of members for loss arising out of any individual or

industrial dispute;

- (f). allowances to members or their dependants on account of death, old age, sickness, accidents, or unemployment of such members,
- (g). the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
- (h). the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or the dependants of members;
- (i). the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workers as such;
- (j). the payment, in furtherance of any of the objects on which the general funds of the trade union may be spent, of contributions to any cause intended to benefit workers in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one fourth of the combined total of the gross income which has up to that time accrued to the general funds of the trade union during that year and of the balance at the credit of those funds at the commencement of that year; and
- (k). subject to any conditions contained in the notification, any other object notified by the appropriate Government in the (official gazette).

27. Constitution of a Separate fund for Political purposes

- (1) A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2)
- (2) The objects referred to in sub section (1) are –

- (a). the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the constitution or of any local authority, before, during, or after the election in connection with his candidature or election; or
 - (b). the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
 - (c). the maintenance of any person who is a member of any legislative body constituted under the constitution or of any local authority; or
 - (d). the registration of electors or the selection of a candidate for any legislative body constituted under the constitution or of any local authority; or
 - (e). the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.
- (3) No member shall be compelled to contribute to the fund constituted under sub section (1) and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the trade union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the trade union.

28. **Immunity from Civil Suit in Certain Cases**

- (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of an individual dispute, industrial dispute or trade union dispute to which a member of the trade union is a party on the ground only that such act

induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he desires.

- (2) A registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortuous act done in contemplation or furtherance of an individual dispute, industrial dispute or trade union dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

29. **Criminal Conspiracy in Industrial Disputes**

No office bearer or member of the registered trade union shall be liable to punishment under sub section (2) of Section 120-B of Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Section 26, unless the agreement is an agreement to commit an offence.

30. **Enforceability of Agreements**

Notwithstanding anything contained in any other law for the time being in force an agreement between the members of a registered trade union shall not be void or voidable merely by reasons of the fact that any of the objects of the agreement are in restraint of trade.

Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a trade union shall or shall not sell their goods, transact business, work, employ or be employed.

31. **Bar on Membership of Multiple Unions**

No worker shall be a member of more than one trade union at a time.

32. Right to Inspect Books of Trade Union

The account books of a registered trade union and the list of members thereof shall be open to inspection by an office bearer or member of the trade union at such times as may be provided for in the rules of the trade union.

33. Rights of Minor to Membership of Trade Union

Any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the trade union to the contrary, and may, subject to as aforesaid enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules;

34. Membership Fee & Mode of Its Collection

- (1) The subscriptions payable by the members of the trade union shall be
 - (i) in case of a trade union of persons employed in agricultural operations or rural establishments or workers employed in the establishment in the unorganised sector not less than 50 paise per month per member; and
 - (ii) in other cases not less than one rupee per month per member;
- (2) Workers who are members of a trade union shall give a written authorisation in the prescribed manner in favour of the trade union of which they are members authorising the employer to deduct their subscription from their wages and to pay that over to the trade union concerned in the prescribed manner.
- (3) Where any worker is not a member of any trade union he shall be liable to pay subscription to the welfare fund established by the State Government for securing welfare of workers in general at a rate equal to the membership fee of the sole negotiating agent or the highest subscription of any union included in the negotiating college and where there is no general fund of the State Government to the fund established by employer with the approval of the State Government for the welfare of workers of the establishment or undertaking.

35. **Disqualification of Office Bearers of Trade Unions**

- (1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office bearer of a registered trade union if—
- (i) he has not attained the age of 18 years;
 - (ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment unless a period of 5 years has elapsed since his release after undergoing such imprisonment;
 - (iii) he is already office bearer of 10 trade unions;
 - (iv) the Labour Court or a Labour Relations Commission has directed that he shall be disqualified for being chosen or for being office bearer of a trade union for a period specified therein

36. **Adjudication of Trade Union Disputes**

- (1) Where a dispute arises between –
- (a) one trade union and another;
 - (b) one group of members and another group of members of a trade union;
 - (c) one or more members of a trade union and the trade union;
 - (d) one or more workers who are members of the trade union and the union regarding registration, administration or management or election of office bearers of the trade union; and
 - (e) one or more workers who are refused admission as members and the trade union

an application may be made in the prescribed manner to the Labour Court having jurisdiction over the area where the Registered office of the trade union or trade unions is located for adjudication of such disputes –

- (i) where the dispute is between one trade union and another by the principal office bearer of any one of the trade union;
 - (ii) where the dispute is between a worker and a trade union on account of non admission as a member by the worker himself;
 - (iii) where the dispute is between one group of members and another groups of members of the union or between one or more members of the union and the union, by any person who is a member of the trade union; or
 - (iv) where a dispute is in respect of a trade union which is a federation of trade unions by principal office bearer authorised in this behalf by the trade union.
- (2) Notwithstanding anything contained in sub section (1) where the appropriate Government is of the opinion that any trade union dispute is of considerable importance the appropriate Government may make an application to the Central Labour Relations Commission or as the case may be to the State Labour Relations Commission for seizing the trade union dispute in adjudication.
- (3) Notwithstanding anything contained in sub section (1) & sub section (2) where the Central Government is of the opinion that the dispute involves any question of national importance or the party to the dispute is a registered trade union having offices in more than one state the office bearer of the trade union, the Central Government may make an application to the National Labour Relations Commission for seizing the trade union dispute in adjudication for resolution of such dispute.
- (4) The order or award of the Central or State Labour Relations Commission or as the case may be of the National Labour Relations Commission shall be final.
- (5) No civil court shall have power to entertain any suit or other proceedings in relation to any dispute referred to in sub section (1).

37. Proportion of Office Bearers not engaged in the establishment or industry

- (1) Not more than one third of total number of office bearers or a total number of five office bearers whichever is less shall be the persons who are not actually engaged or employed in the establishment or industry with which the trade union is connected.

Provided that the appropriate Government may by special or general order declare that the provisions of this sub section shall not apply to any trade union or class of trade unions specified in the order.

Explanation: for the purpose of this Sub section a worker who has retired or has been retrenched from the establishment or industry with which the trade union is connected shall not be construed as outsider for the purposes of this sub section.

- (2) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the trade union is connected) in the Union or a State shall be a member of the executive or other office bearer of a trade union.

38. Change of Name

Any registered trade union may, with the consent of not less than two thirds of the total number of its members and subject to the provisions of Section 18, change its name.

39. Amalgamation of Trade Unions

Any two or more registered trade unions may be amalgamated as one trade union with or without dissolution or division of the funds of such trade unions or either or any of them, provided that the votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least 60% of the votes recorded are in favour of the proposal.

40. Notice of Change of Name or Amalgamation

- (1) Notice in writing of every change of name and of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the trade union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every trade union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated trade union is situated in a different state to the Registrar of such state.
- (2) If the proposed name is identical with that by which any other existing trade union has been registered or in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either trade union, the Registrar shall refuse to register the change of name.
- (3) Save as provided in sub section (2) the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in Section 8, and the change of name shall have effect from the date of such registration.
- (4) The Registrar of the State in which the head office of the amalgamated trade union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration under section 18, register the trade union and the amalgamation shall have effect from the date of such registration.

41. Effects of Change of Name And of Amalgamation

- (1) The change in the name of a registered trade union shall not affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

- (2) An amalgamation of two or more registered trade unions shall not prejudice any right of any such trade unions or any right of a creditor of any of them.

42. **Dissolution**

- (1) When a registered trade union is dissolved, notice of the dissolution signed by seven members and by the secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar, and such Union shall be deregistered by him if he is satisfied that the dissolution has been affected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such deregistration.
- (2) Where the dissolution of a registered trade union has been registered and the rules of the trade union do not provide for the distribution of funds of the trade union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

43. **Annual Returns**

- (1) Every registered trade union shall forward annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of such registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union, existing on such 31st day of December.
- (2) The general statement shall be prepared in such form, and shall contain such particulars, as may be prescribed.
- (3) Together with the general statement referred to in sub-section (1) every registered trade union shall forward to the Registrar a statement showing all changes of office bearers made by the trade union during the year to which such general statement relates, along with a copy of the rules of the trade union corrected up to the date of despatch thereof to the Registrar.

- (4) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.
- (5) For the purpose of examining the documents referred to in sub section (1), (3) and (4), the Registrar or any officer authorised by him by general or special order, may at all reasonable time inspect the certificate of registration, account books, registers and other documents, relating to a trade union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such trade union.

CHAPTER IV

STANDING ORDERS

44. Non application of this Chapter in Certain Circumstances

The provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

45. Making of Rules and Model Standing Orders by the Central Government

- (1) The provisions of this section and sections 46, 47 and 48 shall apply to all such establishments or undertakings as have employed not less than 50 or more workers on any day during preceding 12 months.

Provided that where the provisions of this section and sections 46, 47 and 48 have become applicable to an establishment they shall continue to apply to such establishment notwithstanding the fact that less than 50 workers are employed at any time thereafter.

- (2) The central Government shall make rules and Model Standing Orders to provide for the following matters, namely: -
 - (a) classification of workers, that is to say, whether permanent, temporary, apprentice, probationers, badlies;
 - (b) conditions of service of workers, including matters relating to the hours of work, holidays, pay day, wage rates, attendance and late coming, entry and exit from specified gates, liability for search, closing and opening or reopening of sections and shops of establishment, temporary stoppage of work and rights and obligations of employer and workers arising therefrom, issue of orders of appointment of workers, procedure to be followed by workers in applying for, and the authority which may grant, leave and holidays and issue of service certificate;
 - (c) acts of misconduct on the part of the workers, classification between minor and major acts of misconduct, enquiry to misconducts, suspension pending enquiry, graded punishment such as suspension, stoppage of increment(s), reduction to lower rank, removal or dismissal from service depending on the nature and gravity of misconduct;
 - (d) the list of misconducts which shall be either exhaustive or be treated as illustrative and should include in alia sexual harassment of female workers, go slow, work rule, refusal to undergo training organised by employer at his cost without sufficient cause, etc.
 - (e) superannuation of workers;
 - (f) shift working of workers,
 - (g) method of filling vacancies, transfers, confirmation, secrecy to be

maintained by the workers, supply of copies of standing orders;

- (h). production norms and productivity, multi stuffing, job enrichment
- (i). medical aid in case of accident; and
- (j). any other matter as may be deemed appropriate by the Central Government.

- (3) Appropriate Government may by making additional rules and additional Model Standing Orders provide for any matter as it may deem appropriate.

46. Preparation of Draft Standing Orders by the Employer and Procedure for Certification

- (1) The employer shall prepare draft the standing orders based on the rules and model standing orders and on any other matter considered necessary by him for incorporation in the standing orders for his establishment or undertaking considering the nature of activity in his establishment or undertaking provided such provision is not inconsistent with any of the provision of the Act and discuss and decide the same by agreement with the negotiating agent and forward a copy of the same for being certified by the certifying officer.
- (2) Where no agreement is reached between the employer and the negotiating agent on the standing orders proposed by the employer in the draft or where there is no recognised negotiating agent in the establishment or undertaking the employer shall forward the draft of proposed standing orders to the certifying officer appointed by appropriate Government in respect of the establishment or in case of an undertaking the certifying officer appointed by the appropriate Government in respect of the Head office of the undertaking requesting the certifying officer to intervene in the matter.
- (3) Where the employer has requested the certifying officer to intervene in the matter, as mentioned in sub section (2), the certifying officer shall

issue notice to the negotiating agent, if any, of the establishment or undertaking and where there is no certified negotiating agent to all the unions operating in the establishment or undertaking for seeking their comments in the matter and after receipt of their comments give an opportunity to be heard to the negotiating agent or as the case may be to the unions and decide whether or not any modification or addition to the draft standing orders is necessary to render the draft standing order certifiable and shall make an order in writing in this regard.

- (4) The provisions of Standing Order agreed upon under sub-section (1) or certified sub section (3) may be modified by the employer, in relation to any establishment or undertaking, if a period of one year has elapsed from the date of certification or last modification and if an agreement is entered into by him with the negotiating agent in this regard for such modification:

Provided that where no agreement is reached on any modification proposed by the employer and the negotiating agent the procedure laid down in sub section (2) and sub section (3) shall be followed for deciding the proposed modification.

Provided further that where the Standing Orders is modified by agreement a copy of the same shall be sent to certifying officer concerned.

47. **Appeals**

An employer or the negotiating agent or where there is no negotiating agent in an establishment or undertaking any union if not satisfied with the order of the certifying officer given under sub section (3) of section 45 may file an appeal within 60 days of receipt of the order of the certifying officer to the Labour Court having jurisdiction over the establishment.

48. **Interpretation, etc. of Standing Orders**

If any question arises as to the application, or interpretation, of the Standing orders certified under sub-section (1) or sub section (3) of section 46 or the modification made therein by an agreement entered into under sub section (4) of that section, the employer or any worker or workers concerned or the negotiating agent in relation to the workers employed in the establishment or undertaking, wherein the question has arisen, may apply to the Labour Court, within the local limits of whose territorial jurisdiction such establishment or the office, section or branch of the undertaking is situated, to decide the question and the Labour Court shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and such decision shall be final:

49. **Special Provisions for Model Standing Orders in Certain Cases**

The appropriate Government shall make simple separate rules and model standing orders for establishments employing less than 50 workers.

Provided that nothing shall be construed to prevent an employer who intends to have a certified Standing Order in respect of his establishment notwithstanding the fact that less than 50 workers are employed in his establishment from having a certified Standing Orders as provided under section 46.

50. **Time Limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance**

- (1) Where any worker is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, such investigation or enquiry, or where there is an investigation followed by an enquiry both the investigation and enquiry shall be completed ordinarily within a period of ninety days from the date of suspension.
- (2) The Standing Orders certified under sub section (1) or sub section (3) of section 46 or modified under sub-section (4) of that section shall provide

that where a worker is suspended as aforesaid the employer in relation to an industrial establishment or undertaking shall pay to such worker employed in such establishment or undertaking subsistence allowance at the rates specified in sub section (3) of this section for the period during which such worker is placed under suspension pending investigation or enquiry into complaints or charges of misconduct against such worker.

- (3) The amount of subsistence allowance payable under sub-section(2) shall be-
- (a) fifty per cent of the wages which the worker concerned was in receipt immediately preceding the date of suspension, for the first 90 days of suspension;
 - (b) seventy five per cent of such wages for the next 90 days of suspension; and
 - (c) full wages for the remaining part of the period of suspension the total period of which shall not exceed one year and where the employer considers it necessary to keep the worker under suspension, he shall be liable to pay the worker his/her full wages for the period in excess of one year;

Provided that where the delay in the completion of disciplinary proceedings against the worker is directly attributable to the conduct of such worker, the rate of subsistence allowance payable to such worker shall in no case be more than 50% of his wges.

- (4) If any doubt or dispute arises regarding the quantum or rate of subsistence allowance payable to a worker, the worker or the employer concerned may apply to the Labour Court within the local limits of whose jurisdiction the establishment or unit, branch or office of an undertaking wherein such worker is employed is situate, and the decision of the Labour Court shall be final.

51. **Laying of Standing Orders before the Houses of Parliament**

Every Rule or Model Standing Order made by the Central Government under sub section (1) or it being the appropriate Government under sub section (2) of section 44 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 to 30 days and every rule of model standing orders made by the State Government under sub section (2) of Section 44 shall be laid by the State Government before the legislature of the state while it is in the session for a period of 10 days.

CHAPTER V

NEGOTIATING AGENT

52. **Manner of collection of Subscription/Check Off System**

- (1) The provisions for certification of unions based on check off system shall apply to an establishment or undertakings wherein 300 or more workers are employed;
- (2) Every member of a registered trade union of workmen shall authorise his employer, being an employer in relation to an establishment or branch unit or office of an undertaking in writing in such manner as may be prescribed, the deduction from his wages of monthly subscription payable by him, to the trade union of which he is a member and remittance thereof to such trade union in whose favour he has authorised the deductions of subscription from his wages and submit a copy of the same with the official of the establishment appointed by the employer for the purpose;

Provided that no such member shall authorise his employer to deduct the monthly subscription in relation to more than one registered trade unions.

- (3) The trade union shall prepare a list of authorisations received by it containing the names of the workers their token or ticket numbers, the shop, office or branch of an undertaking where the workers included in

the list are employed and forward the same to the employer and record of correspondence made in this regard by the trade union with the employer shall be maintained in its office;

- (4) Every authorisation under sub section (2) shall be valid for a period of four years and any document relating to such authorisation shall be maintained by the employer and the trade unions in such manner as may be prescribed.
- (5) Every employer shall prepare and maintain a record of all authorisations received under sub-section (1) and the subscriptions deducted in such manner as may be prescribed and such record shall be available for perusal to every registered trade union.

53. Certification of Negotiating Agent Based on Check Off System

- (1) Where a trade union has received authorisations for deduction of subscription from 66% or more of workers of an establishment or undertaking from their wages in its favour or where there is only one trade union, that union shall make an application to the appropriate Labour Relations Commission claiming certification of the union as single negotiating agent.
- (2) Where no union has received authorisations in its favour from 66% or more of workers of the establishment or the undertaking, the unions having received authorisations from 25% or more of workers of the establishment or undertaking may by making an application to the appropriate Labour Relations Commission claim to be included as constituents of the negotiating college and such negotiating college shall be certified as negotiating agent in respect of the establishment or undertaking under this Act.
- (3) The single negotiating agent or negotiating college to be certified as negotiating agent shall consist of such number of representatives to be nominated by the single negotiating agent or the constituents of negotiating college in proportion to their membership verified based on the check off system as may be prescribed.

54. Certification of Negotiating Agent by Secret Ballot in Certain Cases

- (1) In any establishment or undertaking wherein there is more than one union and wherein less than 300 workers are employed, any party in relation to such establishment or the undertaking may approach the appropriate Labour Relations Commission for holding secret ballot for identification of negotiating agent instead of by the check off, and if the Labour Relations Commission orders the secret ballot to be held, the secret ballot shall be held in such establishment for determination of relative membership of the trade unions wherein all the workers shall be entitled to vote in favour of a union of their choice and in such establishments the certification of negotiating agent shall be in following manner.
 - (a) Where there is only one registered trade union of workers in an establishment, or undertaking that union shall be certified as single negotiating agent.
 - (b) Where a union has secured votes of 66% or more of workers of the establishment or undertaking in its favour at the secret ballot that union shall be entitled to be certified as single negotiating agent.
 - (c) Where no union has secured votes of 66% or more of workers in its favour at the secret ballot all the unions as have secured 25% or more votes at the secret ballot in their favour shall be included as constituents in the negotiating college, which shall be certified as negotiating agent in respect of that establishment or undertaking.
- (2) The single negotiating agent or negotiating college to be certified as negotiating agent as per sub section (1) shall consist of such number of representatives to be nominated by the single negotiating agent or the constituents of the negotiating college in proportion to their verified membership based on the secret ballot as may be prescribed.
- (3) Notwithstanding anything contained in sub section (1) where there is no union in an establishment a negotiating committee consisting of such

number of representatives as may be prescribed shall be set up by electing such representatives by secret ballot and shall be certified as negotiating agent.

55. Savings

- (1) Where in an industry there is a practice of having negotiations at the industry cum region or industry cum national level nothing in this chapter shall be constituted to prevent such industry from carrying on with such practice.
- (2) Where any question as to at what level the negotiations shall be held in respect of an industry covered by sub section (1) or otherwise the same shall be decided by the appropriate Labour Relations Commission.

56. Period of Validity of Negotiating Agent

The negotiating agent whether certified based on the check off system or by secret ballot as single negotiating agent or included as a constituent in the negotiating college or the negotiating committee shall continue to be recognised as such for a period of four years from the date of such certification.

57. Duties and Functions of the Labour Relations Commission in Respect of Certification of Unions or Negotiating Committee as Negotiating Agent

- (1) Wherever in an establishment or undertaking secret ballot is required to be held for identification of negotiating agent in respect of that establishment or undertaking the concerned Labour Relations Commission shall arrange to get such secret ballot conducted.
- (2) Where in respect of an establishment or undertaking a trade union has been identified as single negotiating agent or as a constituent of negotiating college whether by check off or otherwise or where there being no union in an establishment or undertaking a negotiating committee has been set up by electing representatives on the committee by secret ballot, such single negotiating agent or negotiating college or

as the case may be the negotiating committee shall be certified by the concerned appropriate Labour Relations Commission as negotiating agent in respect of that establishment or undertaking for the purpose of this Act.

- (3) No application for certification of a trade union of employees as negotiation agent shall be entertained by a Labour Relations Commission if any other trade union or trade unions or as the case may be the negotiating committee is already certified as negotiating agent unless the term of such negotiating agent has expired.

Provided that nothing shall prevent a Labour Relations Commission from directing an employer of establishment concerned within the jurisdiction of such Labour Relations Commission to initiate the process of identification of negotiating agent 60 days before the expiry of the term of the negotiating agent already certified in respect of an establishment or undertaking.

58. Employer Bound to Recognise the Negotiating Agent

Where any trade union or college of trade unions or negotiating committee has been certified as negotiating agent in relation to an establishment or undertaking, the employer shall so long as the certification is in force continue to recognise such negotiating agent.

59. Rights of Negotiating Agents

A registered trade union or college of registered trade unions or as the case may be the negotiating committee certified as negotiating agent shall be entitled : -

- (a) to approach the employer in relation to the establishment or undertaking, or unit, branch or office, of the establishment or undertaking, in regard to the general matters concerning employment or non-employment or terms of employment and conditions of labour of the workers of such establishment or undertaking including the unit branch or office of the establishment or undertaking to commence negotiations and enter into collective agreements or settlements with such employer in pursuance of

negotiations under section 70 or in conciliation under section 73 or agree to refer such disputes for arbitration under section 71 or adjudication under section 76;

- (b) subject to the other provision of this Act, to call for a strike;
- (c) to obtain from the employer such accommodation for its office as the employer is capable of providing for conduct of its business as negotiating agent;
- (d) to put up or cause to be put up a notice board on the premises of the establishment or undertaking or unit, branch or office of the establishment or undertaking and affix or cause to be affixed thereon, notices relating to meetings, statement of accounts of its income and expenditure and other statements or announcements other than statements or announcements which are subversive of discipline;
- (e) to hold discussions after prior intimation to the employer concerned with the workers within the premises of the establishment or undertaking or any of unit, branch or office of the establishment or undertaking at such place as shall be allowed by the employer concerned;

Provided that such discussions shall not interfere with the due working of the establishment or undertaking;

- (f) to hold discussions with the employer concerned or any person nominated by such employer for the purpose of redressing any grievances of all or any of the workers of the establishment or undertaking;
- (g) to hold discussions with the employer in relation to the establishment or undertaking or unit, branch or office of the establishment or undertaking regarding the state of finance and economy of such establishment or undertaking;
- (h) to seek and receive as and when required information in regard to the finance and economy of such establishment or undertaking so as to enable such negotiating agent to make suggestions and proposals in order to safeguard the interests of the workers of such establishment or

undertaking or of the public and for improving the efficiency in functioning of the establishment;

- (i) for the purposes of effectively discharging its functions under this Act, to inspect, by prior arrangement with the employer concerned, books of accounts maintained in the establishment or undertaking or the unit, branch or office of the establishment or undertaking constituting;
- (j) to nominate representatives of workers on the shop floor council, Establishment council, on Board of Management and grievance redress committee constituted under this Act;
- (k) to nominate representatives on behalf of workers on the Canteen Managing Committee or the Welfare Committee required to be constituted under the Hours of Work, Leave and Other Leave and other Working Conditions at the Work Place Act or any other body, whether or not established by or under this Act, in relation to the establishment or undertaking consisting of representatives of workers;
- (l) to represent all or any of the workers of the establishment or undertaking before any authority under this Act,

Provided that where a union or unions are certified as negotiating agent being a single negotiating agent, or negotiating committee may represent all workers in any individual or industrial dispute and where a negotiating college is certified as negotiating agent such college may represent all workers in any industrial dispute and the individual constituents may represent their members in individual disputes.

- (m) in the case of a registered trade union of workers certified as single negotiating agent or constituent of negotiating agent or college to collect sums payable by the members thereof to such registered trade union of workers by the check off system; and
- (n) to exercise such other powers conferred on it by or under this Act.

Provided that a negotiating agent shall not disclose any information obtained by it under clause (h) or in pursuance of inspection of books of

account under clause (i) to any person for any purpose other than for the purpose of properly discharging its functions under this Act.

60. **Rights of Other Unions in Certain Cases**

A union, which is not certified as negotiating agent on account it being neither the sole Negotiating Agent or constituent of negotiating college but has received authorisations for deduction of subscriptions of 10% or more of workers of the establishment or undertaking in its favour or where identification of negotiating agent has been done by holding secret ballot, has received votes of 10% or more of workers of the establishment or undertaking in its favour such union may –

- (i) represent the workers who are its members in their individual disputes before any authority set up under this Act;
- (ii) take up the matter of the workers who are its members with the management;
- (iii) request the employer to deduct subscription payable by its members to the union from their wages and remit the same to the union;
- (iv) have any other right as may be prescribed.

61. **Protection of Conditions of Service**

During the period when any worker continues to be an office bearer of any registered trade union of workers certified as negotiating agent or continues to be the chairman or other member of a negotiating committee and for a further period of 2 years immediately after he ceases to be such office bearer or chairman or member, the employer in relation to such worker shall not –

- (a) alter to the prejudice of such worker the conditions of service applicable to him immediately before he became such office bearer, chairman or member; or
- (b) discharge or punish (whether by dismissal or otherwise) any such worker for anything done by him as such office bearer or chairman or member, not being anything done in contravention of any provision of this Act or any other law except with the prior permission of the appropriate Labour Relations Commission.

62. Penalty for Giving Authorisations in Favour of More than One Union

Any worker who gives authorisation for making deductions of subscription from his wages in favour of more than one union shall be punishable with fine as may be specified in this Act.

63. Rules to be Made to Provide for Procedure Under this Chapter

The appropriate Government may by making rules to provide for the procedure for identification of negotiating agent by check off system or by secret ballot and provide for the duties, responsibilities and functions of the employer, trade union and the Central or as the case may be the State Labour Relations Commission and also lay down the time frame for the check off system or the secret ballot to be conducted once in 4 years in every establishment or undertaking.

CHAPTER VI**STRIKES & LOCKOUTS****64. Prohibition of Strikes and Lockouts in Socially Essential Services**

- (1) No worker employed in any socially essential service shall go on strike unless
 - (i) the strike has been called by the recognised negotiation agent, and
 - (ii) the call for strike by the recognised negotiation agent has been preceded by a strike ballot, in which not less than 51% of the workers have supported the proposed strike.
- (2) The strike ballot would be conducted by the negotiation agent, under the overall supervision of officers appointed by the Registrar of Trade Unions of the local area and in case the strike is called in respect of establishment or undertaking having its branches or units in more than one state or union territory, the strike ballot would be coordinated by the Registrar in whose jurisdiction the Registered or the Head Office of the

undertaking is located but would be conducted by the Registrars of the respective areas.

- (3) (i) If a recognised negotiating agent decides to conduct a strike-ballot, it shall inform the Registrar of Trade Unions of its intention to conduct a strike ballot together with details of issues/disputes involved, the total number of workers in the establishment or units, offices or branches of the undertaking, a list of such workers and such other details as may be prescribed. A copy of the notice shall be sent to the employer also. The Registrar of Trade Union shall appoint officers who shall conduct the secret ballot, with assistance of the workers of the establishment.
- (ii) The Registrar may direct the employer of the establishment or undertaking to provide premises for the purposes of conducting of the strike ballot.
- (iii) The cost of conducting the secret ballot would be borne by the recognised negotiation agent.
- (iv) The appropriate government may prescribe rules for the conduct of strike ballot.
- (4) The strike ballot shall be conducted as expeditiously as possible keeping in mind the number of workers involved, the number of branches/units of the establishment or the undertaking
- (5) (i) The negotiation agent shall send a copy of the notice of strike ballot to the Labour Commissioner of the State Government or Regional Labour Commissioner appointed by the Central Government and the Conciliation Officer in whose jurisdiction the establishment is situated.
- (ii) The Conciliation Officer shall, on receipt of the notice or on getting information of the proposed strike ballot, initiate conciliation proceedings in the matter with a view to bring about a settlement of the industrial dispute.

- (6) If not less than 51% of the workers in the establishment or the undertaking support the proposed strike, the strike would be deemed to have taken place and the appropriate government shall forthwith refer the industrial dispute for arbitration by an Arbitrator or Arbitrators agreed upon by the employer and recognised bargaining agent or an Arbitrator or Arbitrators from the panel maintained for the purpose by the appropriate Labour Relations Commission.
- (7) No employer of a socially essential service shall declare a lockout unless the decision to declare a lockout has been taken at the highest level of the management.
- (8) (i) The decision to declare a lockout as indicated in sub-section (7), would be communicated to the negotiating agent and the Regional Labour Commissioner (C) or as the case may be the Labour Commissioner and the Conciliation Officer in whose jurisdiction the establishment or the head office is located.

(ii) The information in Clause (1) shall include details of issues/disputes involved, the total number of workers in the establishment or the undertaking, a list of such workers and such other details as may be prescribed.
- (9) The lockout would be deemed to have commenced on the receipt of the communication referred to in sub-section (8), by the representatives of workers or the negotiating agent and the authorities prescribed therein and the appropriate government shall in such case forthwith refer the industrial dispute for arbitration by an Arbitrator or Arbitrators agreed upon by the employer and recognised negotiating or an Arbitrator or Arbitrators from the panel maintained for the purpose by the appropriate Labour Relations Commission.
- (10) Where the parties do not agree to appointment of Arbitrator or Arbitrators the appropriate Government may make an application to the concerned Labour Relations Commission for appointment of an Arbitrator or Arbitrators to arbitrate in the dispute.

65. **General Prohibition of Strikes and Lockouts**

- (1) Workers in an establishment or undertaking which is not socially essential service may go on strike if there is failure of negotiations and the employer has refused arbitration.
- (2) No worker in any establishment or undertaking mentioned in sub-section (1) shall go on strike -
 - (a) unless a strike ballot is held in the manner prescribed in sub-section (3), (4) and (5) of Section 64 and not less than 51%, of the workers of the establishment or undertaking support the strike.
 - (b) a notice of strike is served by the negotiating agent in the prescribed manner on the matter in dispute on the employer of the establishment or the undertaking.
 - (c) within fourteen days of giving notice.
 - (d) before the expiry of the date of strike specified in the notice.
 - (e) during the pendency of conciliation proceedings and fourteen days after the conclusion of such proceedings.
 - (f) during the pendency of arbitration or adjudication proceedings on the matters in dispute.
 - (g) during any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award except where the strike is commenced for seeking implementation of settlement or award.
- (3) The notice of strike shall be served only by the recognised negotiation agent.
- (4) An employer may declare a lockout if there is failure of negotiations on the matters in dispute and the negotiating agent has refused arbitration

thereon provided the decision to that effect is taken at the highest level of the management except in case of grave threat to the establishment or management.

- (5) No employer shall lockout any of his worker:
 - (a) without giving notice in the manner prescribed.
 - (b) before the expiry of the date of lockout specified in the notice.
 - (c) within fourteen days of giving such notice.
 - (e) during the pendency of conciliation arbitration or adjudicatory of proceedings.
 - (f) during any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award except where the lock out is commenced for seeking implementation of settlement or award.
- (6) An appropriate government may by a general or special order prohibit a strike or lockout and refer the dispute for adjudication.

66. Illegal Strikes and Lockouts and Penalties for Illegal Strikes and Lockouts

- (1) A strike or lockout shall be illegal if it is declared in contravention of sections 64 and 65.
- (2) Three days' wages shall be deducted, by the employer, in respect of a worker who goes on an illegal strike for each day during which such illegal strike is continued.
- (3) A union which leads an illegal strike would be derecognised and deregistered and office bearers of this union would be debarred from becoming office bearers of any union for a period of three years.

- (4) An employer who resorts to an illegal lockout will be liable to pay wages equivalent to three days' wages to those workers who have been locked out for each day during which such illegal lock out continued.

CHAPTER VII

PROCEDURE FOR EFFECTING CHANGES IN THE CONDITIONS OF EMPLOYMENT

67. Notice of Change of Terms of Employment & Conditions of Labour

- (1) No employer who proposes to effect any change in the terms of employment or conditions of labour applicable to any worker in respect of: -
- (i) (a) wages, including the period and mode of payment;
 - (b). contributions paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the worker under any law for the time being in force;
 - (c). compensatory and other allowances;
 - (d). hours of work and rest intervals;
 - (e). leave with wages and holidays;
 - (f). starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
 - (g). classification by grades;
 - (h). withdrawal of any customary concession or privilege or change in usage;
 - (i). introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders;
 - (j). rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workers;
 - (k). any reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or

department or shift (not occasioned by circumstances over which the employer has no control).

Shall do so without giving notice to the workers effected by such change and the negotiating agent, and

(ii) Within 21 days of giving of such notice

Provided that such disagreement between the workers or the negotiating agent and the employer shall not operate as a stay on the changes proposed by the employer.

- (2) The workers affected by such change or the negotiating agent in relation to such workers may object to the proposed change in the terms of employment or conditions of labour and, where the employer and the workers or the negotiating agent do not agree to the proposed change, the provisions of this Act shall apply in relation to such dispute as they apply in relation to any other industrial dispute.
- (3) Notwithstanding anything contained in sub section (1) no notice shall be required under sub section (1) for effecting any change where the change is proposed to be effected in pursuance of any agreement, settlement or award of an Arbitrator or a Labour Court, Central or State Labour Relations Commission or the National Labour Relations Commission where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, Apply.
- (4) Where the employer and the negotiating agent fail to arrive at a settlement in regard to any change in respect of any matter relating to terms of employment or conditions of labour or the negotiations to arrive at a settlement continue for a period of more than sixty days, the

employer and the negotiating agent shall forward, jointly or separately in the prescribed manner a report to the Conciliation Officer, having jurisdiction in relation to the dispute, regarding the failure of the negotiations or the continuance thereof as aforesaid and the facts of the dispute and the provisions of this Act shall apply in relation to any dispute in this regard as they apply in relation to any other industrial dispute.

68. Terms of Employment, etc. to remain unchanged under Certain Circumstances

- (1) Where an industrial dispute pertaining to an establishment or undertaking is already pending before a Conciliation Officer or an Arbitrator or a Labour Court or a Central or State Labour Relations Commission or the National Labour Relations Commission, as the case may be with regard to matters not covered by the notice of change issued by an employer under section 67, no employer shall –
 - (a). in regard to any matter connected with the dispute alter to the prejudice of the workers concerned in such dispute the terms of employment or conditions of labour applicable to them immediately before the commencement of such proceedings ; or
 - (b). for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise any worker concerned with such dispute,
 save with the express permission in writing of the authority before which the proceeding is pending.
- (2) During the pendency of any proceeding referred to in sub section (1) the employer may, subject to the other provisions of this Act –
 - (a). alter, in regard to any matter not connected with the dispute, the terms of employment or conditions of labour applicable to that worker immediately before the commencement of such proceedings; or
 - (b). for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that worker:

Provided that no such worker shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the application is pending for the approval of the action taken by the employer.

- (3) Where an employer contravenes the provisions of this section during the pendency of any proceeding referred to in sub section (1), any worker aggrieved by such contravention, may make, a complaint in writing, in the prescribed manner to the authority before which such proceeding is pending, and such authority shall, on receipt of such complaint, adjudicate upon the complaint and in so doing the authority shall have all the powers conferred by or under this Act on a Labour Court while adjudicating an individual dispute.

CHAPTER VIII

RESOLUTION OF DISPUTES

69. Resolution of Individual Disputes

- (1) In the case of an individual dispute, the worker or any registered trade union of which the worker is a member provided the union has at least 10% membership amongst the workers in that establishment, may refer the dispute to the Grievance Redressal Committee set-up by the employer in accordance with the rules made under this Act for a decision.
- (2) Where the Grievance Redressal Committee is not able to settle the dispute within 30 days, or if no Grievance Redressal Committee is in existence, either partly to the dispute may refer the dispute for arbitration to a mutually agreed Arbitrator or Conciliation Officer or to a Lok Adalat or Labour Court in the prescribed manner.
- (3) The provisions of section 71 and section 73 shall so far as may be, apply to the arbitration or as the case may be the conciliation proceedings of any individual dispute referred for arbitration or conciliation under sub-section (2).

- (4) An individual dispute may be filed before a Labour Court by the aggrieved worker or the trade union to which he belongs provided such a trade union has at least 10% membership amongst the workers in that establishment, for adjudication of the dispute.
- (5) (i) No application shall be made under sub-section (1) to the Grievance Redressal Committee after expiry of 3 months from the date of arising of the cause of action and no application shall be made under sub-section (4) to the Labour Court after the expiry of one year from the decision of the Grievance Redress Committee.
- (ii) Provided that the Labour Court may entertain an application under sub-section (2) after the expiry of the aforesaid period if –
- (a) the Labour Court is satisfied that the delay in making the application is for reasons beyond the control of the party making the application;
 - (b) the parties to the dispute making the application jointly agree that the application may be entertained notwithstanding the expiry of the aforesaid period of one year.
- (6) Where an individual dispute relating to the discharge or dismissal of a worker has been filed before a Labour Court, Arbitrator, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission for adjudication and in the course of adjudication proceedings the Labour Court, Arbitrator, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission is satisfied that the order of discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the worker on such terms and conditions if any, as it thinks fit and give such other relief to the worker including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that where a worker has been discharged or dismissed from service after a proper and fair inquiry on the charges of violence, sabotage, theft, or assault and if the Labour Court, Arbitrator, the Central or State Labour Relations Commission or the National Labour Relations Commission, as the case may be comes to the conclusion that the grave charge or charges have been proved then the Labour Court or the Arbitrator or the Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission shall not order reinstatement of the delinquent worker.

- (7) Where in any case a Labour Court by its award directs reinstatement of any worker and the employer prefers proceedings against such award in the Labour Relations Commission, the employer shall be liable to pay such worker during the pendency of proceedings full wages last drawn by him, including any maintenance allowance admissible to him, under any rules.

Provided that no such wages shall be payable for the period where the worker is employed or self-employed and earning wages or income not less than wages last drawn by him and an affidavit by such a worker has been filed to that effect is such Labour Court or the Labour Relations Commission.

70. **Collective Agreements**

- (1) Negotiations for an agreement on one or more issues may be initiated by either party, namely, the employer or the recognised negotiation agent by making request to the other party in the prescribed form provided there is no collective agreement already in force with respect to those issues.
- (2) Every collective agreement shall be reduced to writing and signed by the authorised representatives of the parties and shall contain the following information, namely –
- (a) the names of employers or employers' associations and the trade unions certified as negotiating agent or negotiating committee who negotiated the agreement;

- (b) the period for which the agreement or settlement is concluded;
 - (c) the categories or classes of employees covered by the agreement;
 - (d) the agreed terms and conditions that are to govern individual employment relationships during its currency;
 - (e) method of settlement of disputes arising from the agreement between the contracting parties in connection with the application of the agreement including by an Arbitrator or a panel of Arbitrators;
 - (f) procedure for renewal or termination or alteration of the agreement.
- (3) Every collective agreement shall be filed before the concerned Conciliation Officer appointed by the appropriate Government who shall maintain the collective agreement on his records till the validity of such agreement.
- (4) Unless otherwise specified in the collective agreement, a collective agreement shall be binding on –
- (a) all parties to the agreement;
 - (b) successors and assignees of the employer concerned;
 - (c) all persons who were employed in the establishment, or undertaking as the case may be, on the date of the agreement and all persons who subsequently become employed therein.
- (5) A collective agreement shall come into operation on such date as is agreed upon by the parties and if no date is agreed upon the date on which the memorandum of agreement is signed by the parties concerned.
- (6) A collective agreement shall be binding for such period as is agreed upon by the parties and if no such period is stipulated for a period of four

years from the date on which the memorandum of agreement is signed by the parties and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement, or until a new agreement is reached whichever is earlier.

- (7) All parties to the negotiations of a collective agreement shall disclose all information relevant to the negotiations including information contained in records, papers, books or other documents and make earnest effort to conclude the negotiations in absolute good faith.

71. **Arbitration**

- (1) Where any industrial dispute exists or is apprehended and the employer and the negotiating agent is not able to mutually settle such dispute, they may agree to refer the dispute to arbitration by a written agreement, and the reference shall be to such person or persons as an Arbitrator or Arbitrators or a Lok Adalat as may be specified in the arbitration agreement.
- (2) Where an arbitration agreement under sub-section (1) provides for reference of the dispute to an even number of Arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, and if the Arbitrators are equally divided in their opinion, the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.
- (3) Where the parties agree to refer a dispute for arbitration but do not agree on the Arbitrator, the appropriate Labour Relations Commission shall nominate an Arbitrator or Arbitrators on the request of the parties or where there is difference or dispute about the cost of arbitration to be born between the parties the same shall be decided by the appropriate Labour Relations Commission keeping in mind the nature of dispute or the financial position of the parties.

- (4) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.
- (5) A copy of the arbitration agreement shall be forwarded to the Conciliation Officer and the appropriate Labour Relations Commission.
- (6) The Arbitrator or Arbitrators shall investigate the dispute and announce the award. A copy of the award will be submitted to the appropriate government and the concerned Labour Court.
- (7) Provisions of this Act in respect of arbitration shall prevail over any other law on the subject.
- (8) Subject to the provisions of this Act Arbitrator or Arbitrators shall follow such procedure as he or they may deem fit.
- (9) An Arbitrator or Arbitrators may for the purpose of the inquiry into any dispute, after giving reasonable notice enter the premises of any establishment to which the dispute relates.
- (10) The award of an Arbitrator or Arbitrators shall be in writing and signed by Arbitrator or Arbitrators.
- (11) An arbitration award shall be final and shall not be called in question by any court in any manner whatsoever.
- (12) An arbitration award shall come into operation with effect from such date as may be specified therein and where no date is specified, it shall come into operation from the date on which it is signed.
- (13) An arbitration award shall be binding on –
 - (a) all parties to the dispute;
 - (b) all other parties summoned to appear in the proceedings as parties to the dispute unless the opinion is recorded by the Arbitrator or Arbitrators that they were summoned without proper cause.
 - (c) where a party referred to in clause (a) or (b) is an employer his successors or assignees in respect of the establishment to which the dispute relates;

- (d) where the party referred to in clause (a) or (b) is composed of workers all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of dispute and all persons who subsequently became employed therein.
- (14) An arbitration award shall be in operation for a period of four years and shall continue to be in force and to be binding on the parties after the expiry of period four years until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating the intention to terminate the award or until a fresh award is given, or settlement signed, whichever is earlier.
- (15) No notice given under sub-section (14) shall have effect unless it is given by a party who is recognised as the negotiating agent.

72. **Functions of Labour Relations Commission**

- (1) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely :-
 - (a) certification of negotiating agents;
 - (b) adjudication of disputes which are not settled by collective bargaining, conciliation or arbitration: provided that in cases where the parties agree to arbitration of a dispute but are not able to agree upon an Arbitrator the appropriate Labour Relations Commission may, on a motion by either party, get the dispute arbitrated by any member of the Commission or by an Arbitrator from out of a panel of Arbitrators maintained by the Commission for the purpose and shall prescribe fee to be paid to Arbitrators and by whom it shall be paid.
 - (c) Supervise over the functioning of the Labour Courts and hear

appeals against the awards or decisions of a Labour Courts.

73. Conciliation in Industrial Disputes

- (1) Where any labour dispute exists or is apprehended the Conciliation Officer may and where a notice of strike or lockout has been served in an industrial dispute, the Conciliation Officer shall hold conciliation proceedings in such manner as may be prescribed.
- (2) The Conciliation Officer shall, for the purpose of bringing about a settlement of the dispute without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all other things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- (3) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout is received by the appropriate commission or, on the date the Conciliation Officer issues notices asking the parties concerned to attend a joint discussions before him.
- (4) A conciliation proceeding shall be deemed to have concluded -
 - (a) where a settlement is arrived at, when a memorandum of settlement is signed by the parties to the dispute;
 - (b) where no settlement is arrived at when the report of the Conciliation Officer is received by the appropriate government;
 - (c) when a reference is made to a Labour Court or the Labour Relations Commission during the pendency of conciliatory proceedings.
- (5) If a settlement of the dispute on any of the matters in dispute is arrived at, in the course of the conciliation proceeding the Conciliation Officer shall send a report thereof to the appropriate Labour Relations commission and the appropriate government together with a memorandum of settlement signed by the parties to the dispute.

- (6) If no such settlement is arrived at, the Conciliation Officer shall as soon as practicable after the close of the investigation send to Labour Court, the appropriate commission and the appropriate government, a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which in his opinion, a settlement could not be arrived at.
- (7) The report referred to in sub section (6) shall be submitted by the Conciliation Officer before the expiry of 90 days from the commencement of conciliation proceedings.

74. Disputes of the Trade Unions

- (1) A dispute of trade union or trade unions of workers registered under this Act shall be determined by the Labour Court concerned on a reference by any party; and no civil court shall have jurisdiction over such disputes.
- (2) Any Dispute between one employers' trade union and another or between one or more members of the employers' trade union and the employers' trade union or between one or more employers who are not member of the employers' trade union and the employers' trade union shall be determined by a Labour Court on a reference by any party and no civil court, shall have jurisdiction over such disputes.

75. Adjudication of Industrial Disputes by Labour Court

In the event of failure of conciliation either party to an individual dispute or a trade union dispute may make an application in prescribed format to the Labour Court for adjudication.

76. Adjudication by Labour Relations Commission

- (1) The Central Labour Relations Commission and the State Labour Relations Commission shall adjudicate in all industrial and other disputes relating

to any matter except a matter which falls within the jurisdiction of a Labour Court.

- (2) The Labour Relations Commission shall have the jurisdiction and exercise all the powers and authority exercisable in relation to an appeal against any order passed by the Labour Court.
- (3) The National Labour Relations Commission shall have the jurisdiction and exercise all the powers and authority relating to (1) an appeal against an order or award by the Central Labour Relations Commission or a State Labour Relations Commission in cases where substantial question of law is involved (2) industrial dispute considered by the Central Government to be of national importance or where establishments situated in more than one state are likely to be interested in and central Government makes an application in this behalf to the National Labour Relations Commission.
- (4)
 - (a) Where the appeal against an order of a Labour Court in relation to the legality or otherwise of a strike or lockout the same shall be preferred within thirty days from the date of the order appealed against and the Labour Relations Commission shall decide such appeal within thirty days of the filing of such appeal.
 - (b) In other cases the period of limitation for filing an appeal under this section shall be sixty days; provided that the Labour Relations Commission may if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the said period of sixty days permit the appellant to prefer the appeal within a further period of sixty days.
 - (c) No proceedings before a Labour Relations Commission shall lapse merely on the ground that any period specified in relation to the determination of such appeal by the Commission had expired.
- (5) The Labour Relations Commission shall have the same jurisdiction and exercise same powers and authority in respect of contempt of itself as a

High Court has and may exercise and for this purpose the provision of the Contempt of Courts Act, shall have effect subject to the modifications that -

- (a) the reference therein to a High Court shall be construed as including a reference to the Labour Relations Commissions;
 - (b) the reference to the Advocate General in Section 15 of the said Act shall be construed, (i) in relation to the Central Labour Relation Commission as a reference to the Attorney General and the Solicitor General or the Additional Solicitor General and (ii) in relation to the State Labour Relations Commission as a reference to the Advocate General of the State and its equivalent in Union Territories.
- (6) (a) Where benches of a Labour Relations Commission are constituted the appropriate Government may, from time to time by notification, make provisions as to the distribution of the business of the commission, amongst the Benches in consultation with the Labour Relations Commission and specify the matters which may be dealt with by each Bench.
- (b) If any question arises as to whether any matter falls within the purview of business allocated to a Bench of the Labour Relations Commission the decision of the president of such commission shall be final.
- (7) The order of a Labour Relations Commission shall be executed in the same manner as an order or a decree of a court is executed.
- (8) On the application of any of the parties and after notice to the parties, and after hearing such of them as may desire to be heard, or on his own motion without such notice the president of the Labour Relations Commission may transfer any case pending before one Bench for disposal to another Bench.

- (9) All the decisions of the Labour Relations Commissions shall be taken on the basis of the opinion of the majority but shall be without prejudice to the rights of the members to canvass their dissenting opinion if given any in other cases.
- (10) The award of a Labour Court or a Labour Relations Commission shall be in writing and the signed by the presiding officer concerned.

CHAPTER IX

LAY OFF, RETRENCHMENT & CLOSURE

77. Definition of Continuous Service

In this chapter continuous service in relation to a worker, means the uninterrupted service of such worker, including his service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the worker.

Explanation I: where worker is not in continuous service within the meaning of this clause for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- a. for a period of one year, if the worker during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than-
- (i) one hundred and 90 days in the case of a worker employed below ground in a mine; and
 - (ii) 240 days, in any other case;
- b. for a period of six months, if the worker during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than:

- (i) 95 days in the case of worker employed below ground in a mine; and
- (ii) 120 days, in any other case

Explanation II: for the purpose of Explanation 1, the number of days on which a worker has actually worked under an employer shall include the days on which –

- (ii) he has been laid off under an agreement or as permitted by or under this Act or any other law applicable to the establishment ;
- (iii) he has been on leave on full wages earned in the previous years;
- (iv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (v) in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed twelve weeks.

78. Rights of Workers Laid off for Compensation and Duty of Employer to Maintain Muster Rolls of Workers Notwithstanding Lay Off

- (1) Whenever a worker whose name is borne on the muster rolls of an establishment (whether or not such establishment is of a seasonal character or in which work is performed only intermittently) and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all the days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the wages, that would have been payable to him had he not been so laid off.

Provided that workers engaged in any establishment which is of a seasonal character shall be entitled to compensation under this sub

section only in relation to any lay off during the season in which such establishment ordinarily carries on its activity.

(2) No compensation shall be payable by the employer under sub section (1) to a worker who has been laid off: -

(a). if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situated in the same town or village or within a radius of 8 kilometres from the establishment, as the case may be, to which he belongs, and-

(i) such alternative employment does not, in the opinion of the employer, call for any special skill or previous experience and can be done by the worker;

(ii) the wages which would normally have been paid to the worker had he not been laid off are offered for the alternative employment also; and

(iii) the acceptance of the alternative employment does not involve undue hardship to the worker having regard to the facts and circumstances of his case; or

(b). if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(c). if such laying off is due to a strike or slowing down of production on the part of workers in another part of the establishment .

(3) If during any period of 12 month a worker is so laid off for more than 45 days no lay off compensation shall be payable in respect of any period of lay off after expiry of first 45 days, if there is an agreement to that effect between the worker and the employer.

Provided that it shall be lawful for the employer in any case falling within sub section (3) to retrench the worker in accordance with the provisions contained in this Act at any time after expiry of first 45 days of lay off.

- (4) Notwithstanding that workers in any establishment have been laid off or not, it shall be the duty of every employer to maintain for the purpose of this Chapter a muster roll and to provide for making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours under clause (b) of sub section (2).

79. **Prohibition of Lay Off in Certain Cases**

- (1) No employer of an establishment (other than the establishment of a seasonal character or in which work is performed intermittently) wherein 300 or more worker are employed on a average per working day for the preceding 12 months, shall lay off the workers (other than badli and casual workers) for more than 30 days.
- (2) No worker (other than a badli worker or a casual worker) whose name is borne on the muster rolls of an establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 300 workers were employed on an average per working day for the preceding 12 months, shall be laid off for more than 30 days by his employer and if in the opinion of a employer of an establishment to which sub section (1) is applicable the lay off is likely to continue for more than 30 days the employer shall forthwith or as soon as is possible but before the expiry of 30 days from the date of commencement of lay off shall make an application to the appropriate Government for seeking post facto approval of the Government for such lay off and for continuance of the lay off after 30 days.

- (3) In the case of every application for the approval of lay off or for permission to continue lay off under sub section (2), the appropriate Government may, after making such inquiry as it thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for or refer the matter to Labour Relations Commission for adjustment.
- (4) Where an application for the approval of lay off under sub section (2) or for permission to continue lay off under sub section (3) has been made and the specified authority does not communicate the permission or approval or refusal of permission or approval to the employer within a period of 60 days from the date on which the application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period of 60 days.
- (5) Where no application for the approval or for continuance of lay off under sub section (2) has been made or where such permission or approval has been refused, such lay off shall be deemed to be illegal from the date on which the workers have been laid off and the workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off.
- (6) If a question arises whether an establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Explanation: Badli worker means a worker who is employed in an establishment in place of another worker whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purpose of this section if he has completed one year of continuous service in the establishment.

80. Conditions Precedent to Retrenchment of Workers

- (1) No worker employed in any establishment who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until: -

- (a). the worker has been given two months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of notice;
 - (b). a copy of the notice as mentioned in clause (a) has been sent to the negotiating agent.
 - (c). the worker has been paid at the time of retrenchment compensation as prescribed in sub section (2).
 - (d). notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in official gazette.
- (2) Where an employer has served notice for retrenchment on the concerned worker, the negotiating agent and the appropriate Government he shall be liable to pay retrenchment compensation as under: -
- (a). if the establishment has been making profits, 60 days average wages for every completed year of continuous service or any part thereof in excess of 6 months; and
 - (b). if the establishment has not been making profits, 45 days average wages for every completed year of continuous service or any part thereof in excess of 6 months

Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation prescribed in clause (a) or as the case may be clause (b) of sub section (2).

81. **Procedure for Retrenchment**

- (1) Where any worker in an establishment, is to be retrenched and he belongs to a particular category of workers in that establishment, in the absence of any agreement between the employer and the worker in this behalf, the employer shall ordinarily retrench the worker who was the last person to be employed in that category.

Provided that the employer may for reasons to be recorded in writing retrench a worker other than the last worker employed in a category.

82. Reemployment of Retrenched Worker

Where any worker is retrenched and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workers who are citizens of India to offer themselves for reemployment and such retrenched workers as offer themselves for reemployment shall have preference over other persons.

83. Compensation to Workers in Case of Transfer of Establishment

Where the ownership or management of an establishment or undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment or undertaking to a new employer, every worker who has been in continuous service for not less than one year in that establishment or undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 80 as if the worker had been retrenched.

Provided that nothing in this section shall apply to a worker in any case where there has been a change of employer by reason of the transfer, if-

- (a). the service of the worker has not been interrupted by such transfer;
- (b). the terms and conditions of service applicable to the worker after such transfer are not in any way less favourable to the worker than those applicable to them immediately before the transfer; and
- (c). the new employer is under the terms of such transfer or otherwise, legally liable to pay to the worker, in the event of his retrenchment, compensation and gratuity on the basis that his service has been continuous and has not been interrupted by the transfer.

84. Procedure for Closing Down of the Establishment

- (1) An employer who intends to close down an establishment shall not do so unless: -

- (a). the workers have been given two months notice in writing indicating the reasons for closure and the period of notice has expired, or the workers have been paid in lieu of such notice wages for the period of notice;
 - (b). a copy of the notice as mentioned in clause (a) has been sent to the negotiating agent;
 - (c). the workers have been paid compensation as prescribed in sub section (2);
 - (d). notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette;
- (2) The compensation payable to the workers for closing down of the establishment as per sub section (1) shall be as under: -
- (a). where the establishment has been making profits, 45 days wages for every completed year of continuous service or any part in excess of 6 months thereof; and
 - (b). where the establishment has not been making profits for the last 3 years continuously, 30 days wages for every completed year of continuous service or any part in excess of 6 months thereof;

Provided that in case of establishment employing less than 100 workers the compensation payable shall be reduced by 50% of the compensation prescribed in clause (a) or as the case may be clause (b) of sub section (2).

85. Conditions Precedent to Closing Down of Establishment in Certain Cases

- (1) The provisions of this section shall apply to all establishments employing 300 or more workers irrespective of the nature of activity carried on in the establishment.

Provided that nothing in this section shall apply to an establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

- (2) An employer who intends to close down an establishment to which this section applies shall, in the prescribed manner, apply, for prior permission at least 90 days before the date on which the intended closure is to become effective, to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the worker or negotiating agent in the prescribed manner:
- (3) Where an application for permission has been made under sub section (2), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers, the negotiating agent and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer, and the negotiating agent.
- (4) Where an application has been made under sub section (2) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of 60 days.
- (5) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub section (6) be final and binding on all the parties and shall remain in force for one year from the date of such order.
- (6) The appropriate Government may, either on its own motion or on the application made by the employer, the negotiating agent or any worker

review order granting or refusing to grant permission under sub section (3) or refer the matter to Labour Relations Commission for adjudication:

Provided that where a reference has been made to a Labour Relations Commission under this sub section, it shall pass an award within a period of 30 days from the date of such reference.

- (7) Where no application for permission under sub section (2) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the worker shall be entitled to all the benefits under any law for the time being in force as if the establishment had not been closed.
- (8) Notwithstanding anything contained in the forgoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub section (2) shall not apply in relation to such establishment for such period as may be specified in the order.
- (9) Where an establishment is permitted to be closed down under sub section (3) or where permission for closure is deemed to be granted under sub section (4), every worker who is employed in that establishment immediately before the date of application for permission under this section, shall be entitled to receive compensation as prescribed under section 84.

CHAPTER X

PROTECTION OF MANEGERIAL AND OTHER EMPLOYEES AGAINST UNFAIR DISMISSALS AND DENIAL OF REMUNERATION

86. Effect of Laws Inconsistent With the Act

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or in any other law, contract of service, settlement or arbitration award.

Provided that where under the provisions of such other law or contract of service, settlement or arbitration award a managerial or other employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the managerial or other employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

87. Employer to Make Regulations in Regard to Penalties for Misconduct

- (1) Every employer in relation to any establishment shall make regulations to provide for the following matters, namely: -
 - (a). any act or conduct which, in relation to a managerial or other employee, shall constitute misconduct;
 - (b). the penalties for such misconduct, including termination of employment or reduction in rank or in salary or allowances;
 - (c). the authorities to impose such penalties; and
 - (d). the procedure for enquiry into such misconduct.
- (2) Every regulation made under sub section (1)(including any modification thereto) shall be : -
 - (a). registered in the prescribed manner with such officer as the appropriate Government may, by notification in the official gazette, specify in this behalf (hereinafter referred to as the specified officer); and
 - (b) notified on the notice board of the establishment.
- (3) The regulations referred to in sub section (1) shall be made and submitted to the specified officer for registration under clause (1) of sub section (2) by the employer in relation to an establishment:

- (a) where such establishment is in existence at the commencement of this Act, within a period of six months from such commencement; and
 - (b) where such establishment comes into existence after the commencement of this Act, within a period of six months from the coming into existence of such establishment; and
 - (c) every modification to such regulations shall be submitted by the employer to the specified officer for registration within a period of six months from the date on which such modification is made.
- (4) The employer shall supply to any managerial or other employee on a request made therefore by such managerial or other employee a copy of the regulations made by the employer, under sub section (1) or modified under sub-section (3) to managerial or other employee.

88. Model Regulations

- (1) Notwithstanding anything contained in section 87 the appropriate Government may, by notification in the official gazette make model regulations in respect of the matters referred to in sub section (1) of that section.
- (2) The model regulations made under sub section (1) in regard to any matter shall be deemed to be in force in every establishment in the same manner as regulations made by the employer in regard to establishment until regulations made by such employer in regard to that matter are registered with the specified officer under sub section (2) of section 87.

89. Termination of Employment of Managerial or Other Employee

- (1) The employment of no managerial or other employee shall be terminated except in accordance with the provisions of this Act.
- (2) Where an employer proposes to terminate the employment of any managerial or other employee, such employer shall give in the prescribed

manner three months notice to the managerial or other employee declaring the intention of the employer to terminate the employment of such managerial or other employee stating the reasons for such termination.

Provided that no such notice shall be required where such termination is on the ground of misconduct of such managerial or other employee and after an enquiry into the alleged misconduct in accordance with the regulations made under section 87 or section 88 as the case may be.

- (3) Any managerial or other employee –
- (a). who is served with a notice under sub section (2) declaring the intention to terminate his employment; or
 - (b). whose employment is terminated on the ground of misconduct, may, before the expiry of a period of three months from the date of the service on him of the notice referred to in clause (a), or the termination of his employment on the ground of misconduct, represent to the employer against the proposed termination or termination, as the case may be.
- (4) Where –
- (a). an employer does not communicate his decision on the representation, referred to in sub section (3), to the managerial or other employee concerned before the expiry of a period of thirty days from the date on which such representation is made; or
 - (b). the managerial or other employee is aggrieved by the decision of the employer on such representation,
- such managerial or other employee may apply to the appropriate Labour Relations Commission within such time and in such manner as may be prescribed to set aside the notice referred to in sub section (2) or the termination of employment on the ground of misconduct under sub-section (3), as the case may be.

- (5) The Labour Relations Commission, after giving the managerial or other employee and the employer a reasonable opportunity of being heard and after holding such enquiry, as it deems fit, shall decide
 - (a). Where the application is to set aside a notice declaring the intention to terminate the employment of the managerial or other employee whether
 - (i) the reasons stated in the notice for such proposed termination are true and justify the proposed termination; or
 - (ii) the proposed termination is in contravention of the contract of employment, rules or any law; or
 - (b). where the application is to set aside a termination of employment on the ground of misconduct, whether
 - (i) the enquiry into the alleged misconduct has been conducted in accordance with the regulations made under section 87 or 88, as the case may be; and
 - (ii) the findings of the enquiry justify the termination of employment on the ground of misconduct.

90. **Application in Respect of Non-Payment of Dues**

- (1) Any managerial or other employee may apply to the Labour Relations Commission in such manner as may be prescribed –
 - (a) for an award of any money due to him from his employer in the course of his employment; or
 - (b) for the determination of the amount at which a benefit which is capable of being computed in terms money is to be computed.
- (2) The Labour Relations Commission shall, after giving the managerial or other employee and the employer a reasonable opportunity of being heard and after making such investigation, as it deems fit, give its award which shall be final

91. Persons on Whom Awards are Binding

Every award of the Labour Relations Commission in any proceeding under this Chapter and every order of the Labour Relations Commission under Section 89 shall be binding on –

- (a) the parties to the proceeding; and
- (b) in the case of a party to the proceeding being an employer

his successors or assignees in respect of the establishment to which such proceeding relates.

92. Recovery of Money Under an Award

Where any money is due to any managerial or other employee under any award or an order of the Labour Relations Commission under Section 89 or 90, the managerial or other employee or any other person authorised by him in writing in this behalf or, in the case of the death of the managerial or other employee, his assignee or heirs may without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that the money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one-year from the date on which the money became due to the managerial or other employee from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, but not exceeding two years if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within such period.

93. **Penalties**

Any employer who

- (a) refuses or fails to submit for registration the regulations or any modification thereto as required by section 87; or
- (b) terminates the employment of any managerial or other employee in contravention of the provisions of section 89; or
- (c) refuses or fails to comply with the award of a Labour Relations Commission or any order made by it under section 89,

shall be punishable with penalty as may specified in this behalf.

Chapter XI

Participation of Workers in Management of Enterprises

94. **Application of this Chapter**

- (1) Nothing in this chapter shall apply to establishments employing less than 300 workers.

Provided that appropriate Government may by a non-statutory scheme provide for workers participation in management limited to exchange of information and consultation in respect of establishments employing less than 300 workers.

- (2) Every employer of an establishment to which this Chapter applies shall set up shop floor or department or section level councils for each shop floor or department or section and an establishment level council and where the number of workers employed in a shop, department or section is less than 20, a joint shop floor or department or section level council up for two or more shop floors, departments or sections as may be prescribed by rules by appropriate Government.
- (3) The shop floor, department or section level council and the establishment level council shall consist of equal number of representatives of workers to be nominated by the negotiating agent certified in respect of the establishment and the employer of that establishment.

Provided that a person representing the workers shall cease to be a member of the council when he ceases to be a worker of the establishment and the vacancy so caused shall be filled up for the un-expired term of the council.

(4) The chairman, and other office bearers of the council shall be chosen by the council from amongst its members as may be prescribed by the appropriate Government.

95. The Composition, Powers, Functions and Procedure of the Council

(1) The matters within the competence of a Shop Floor, Department or Section level Council and the Establishment Level Council shall be as specified in Schedule I and II respectively.

(2) An Establishment Level Council may in consultation with employer identify matters on which there shall be exchange of information or consultations and matters on which there shall joint decisions.

(3) The composition, the procedure for conducting the business of the shop floor, department or section level councils and establishment level councils, the procedure for nomination of members, the manner of filling up of vacancies and election of chairpersons of councils shall be such as may be prescribed in this behalf by the appropriate Government.

96. **Board of Management**

(1) Notwithstanding anything contained in any other law for the time being in force, the Board of Management of every body corporate owning an establishment or undertaking shall include persons to represent workers and managerial and other employees employed in that establishment or undertaking and the persons representing workers shall constitute 12^{1/2} (twelve and half) per cent and the persons representing managerial and other employees shall constitute twelve and half per cent of the total strength of such Board of Management.

Provided that in case of a fraction of a number, such number shall be rounded off to the nearest whole number and, for this purpose, where such fraction is one-half or more, it shall be increased by a whole number and if such fraction is less than one-half it shall be ignored.

Provided further that where the total strength of the Board of Management is not sufficient for giving representation to workers and managerial and other employee, the Board of Management shall include at least one worker and one managerial and other employee.

- (2) The persons to represent the managerial and other employees shall be elected from amongst, managerial and other employees of the establishment or undertaking by secret ballot, in accordance with the Scheme as may be prescribed.
- (3) The persons to represent the workers shall be nominated by, the negotiating agent of the establishment or the undertaking in accordance with the Scheme as may be prescribed.
- (4) The term of office of the representatives of the workers and managerial and other employees shall be four years from the constitution of the Board of Management.

Provided that a person representing the workers or, as the case may be managerial or other employees shall cease to be a representative on the Board of Management when he ceases to be a worker or managerial or other employees in an establishment or undertaking and the vacancy so caused shall be filled up in such manner as may be specified in the Scheme.

- (5) For the removal of doubts, it is hereby declared that every representative, of the workers and the managerial and other employees shall exercise all the powers and discharge all the functions of a member of Board of Management and shall be entitled to vote.

- (6) The Board of Management shall review the functioning of each Shop Floor Council and the Establishment Council of the establishment or undertaking concerned.

CHAPTER XII

PROCEDURES, POWERS & DUTIES OF AUTHORITIES

97. Adjudicating Authorities to Determine their Procedure Subject to the Provisions of the Act and the Rules

Subject to the provisions of this Act, and any rules made thereunder:

- (a) by the appropriate Government in the case of an Arbitrator, Lok Adalat, Labour Court or Central or State Labour Relations Commission; or
- (b) by the Central Government, in the case of a National Labour Relations Commission,

an Arbitrator, Lok Adalat Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall follow such procedure as he or it thinks fit

98. Powers to Summon Witnesses, to Inspect Premises, etc.

- (1) Every Arbitrator, Presiding Officer of a Lok Adalat or Labour Court or Central or State Labour Relations Commission or National Labour Relations Commission shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely: -
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) compelling the production of documents and material objects;
 - (c) issuing commissions for the examination of witnesses; and
 - (d) in respect of such other matters as may be prescribed;

and every enquiry or investigation by an Arbitrator, a Presiding Officer of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

(2) A Conciliation Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person;
- (b) examining any person;

Provided that such examination shall not be on oath;

- (c) compelling the production of documents and material objects; and
- (d) in respect of such other matters as may be prescribed.

(3) A Conciliation Officer, a single Arbitrator or member of a body of Arbitrators, Presiding Officer of a Lok Adalat or Labour Court, or Central or State Labour Relations Commission or National Labour Relations Commission for the purpose of enquiring into any matter connected with any existing or apprehended individual dispute,, industrial dispute or trade union dispute, may, after giving reasonable notice (not being less than twenty-four hours) enter the premises in which any establishment or undertaking or the office of a trade union to which the dispute relates is situated and inspect any record or books of account.

99. Power of Labour Court, etc. to Proceed in Absence of Parties of Dispute

(1) Where on the day fixed for hearing of any dispute or any other proceeding, pending before a Labour Court or Central or State Labour Relations Commission or National Labour Relations Commission, any of the parties to the dispute or other proceeding, having notice of the hearing does not appear, the Labour, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, may proceed with the hearing of the dispute or other proceeding

notwithstanding the absence of such party and, where it does so, it shall have the same powers in relation to the making of any award or determining or deciding any question as it would have had such party appeared as aforesaid.

Explanation: In this sub section "day fixed for hearing" includes the day fixed for the appearance of any party, filing of any statement, examination of witnesses, production of documents, hearing of arguments or the doing of any other thing by the party concerned or his authorised representative in connection with the adjudication of the dispute or other proceeding.

- (2) Where any party to a dispute or other proceeding to whom time has been granted for producing his evidence, or causing attendance of witnesses, or performing any other act necessary for the further progress of the adjudication of the dispute or other proceeding fails to do so within the time so granted, the Labour Court, Central or State Labour Relations Commission, or National Labour Relations Commission, as the case may be, may notwithstanding such failure: -
 - (a) if the parties are present, proceed to adjudicate the dispute or other proceeding forthwith; or
 - (b) if any of the parties are absent, proceed under sub section(1)
- (3) Where any of the parties to the dispute or other proceedings, who fails to appear, or to do any act referred to in sub section (2) within the time allowed therefore, subsequently satisfies the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, within such time as may be prescribed, that there was sufficient cause for his non appearance or for such failure, it may make such order as it considers just and proper in the circumstances of the case (including an order setting aside any award or order made) and direct re-hearing of the dispute or other proceeding subject to such conditions (including a condition as to payment of costs) as it may think fit to impose.

100. Appointment of Assessors to Assist Court of Inquiry, etc.

An Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission may, if he or she so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor to advise him or it in the proceeding before such Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be.

101. Power to Grant Interim Relief

It shall be lawful for the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission to grant to any party to any proceeding in relation to any individual dispute, industrial dispute or trade union dispute pending before it, such interim relief (whether subject to any conditions or not) including stay of any order, issue of injunction or direction in regard to payment of wages or subsistence allowance including the non-payment of such wages and subsistence allowance, as it deems just and proper in the circumstances of the case:

Provided that the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall not grant any such interim relief unless all the parties to the proceeding have been served with a notice on the application for such interim relief and have been given a reasonable opportunity of being heard:

Provided further that the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission may, having regard to the nature of the interim relief sought and the circumstances of the case pass appropriate orders granting or refusing to grant such interim relief as it deems just and proper in the circumstances of the case before the notice referred to in the proceeding proviso is served on the parties to the proceeding:

Provided also that where the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission makes any order under the proviso immediately preceding, it shall record the reasons for making the order before complying with the requirements specified in the first proviso.

102. Power to Transfer Proceedings

- (1) Where any proceeding relating to the adjudication of any individual dispute is pending before a Labour Court, or a bench of Central or State Labour Relations Commission, the Central or State Labour Relations Commission on an application made to it in that behalf by any party to such proceeding and after notice to the other party or parties to such proceeding, and after hearing such of them as desire to be heard, may, at any stage by order and for reasons to be stated therein, transfer the proceeding to another Labour Court or other bench of Central or State Labour Relations Commission within its jurisdiction.
- (2) The Labour Relations Commission may, by order and for reasons to be stated therein withdraw any proceeding relating to the adjudication of any industrial dispute or trade union dispute or any other proceeding under this Act, other than a proceeding referred to in sub section (1) pending before any Labour Court, or any bench of the Labour Relations Commission and transfer the same to another Labour Court, or other bench of Labour Relations Commission
- (3) The Labour Court or the bench of Labour Relations Commission to which a proceeding is transferred under sub section (1) or sub section (2) may, subject to any special directions in the order of transfer, proceed either de novo or from stage at which it was so transferred.

103. Pronouncement of Award by Arbitrator, Labour Court, etc.

- (1) Every award or other determination or decision by an Arbitrator or a Lok Adalat or Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be pronounced on the date of which notice has been given to the parties to the dispute and shall be dated and signed by the person or persons pronouncing the award and when once signed shall not thereafter be altered or added to, save as provided in this Act.

- (2) The award of an Arbitrator shall be pronounced in his office and the award of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall be pronounced in the open court.
- (3) A copy of every award or other determination or decision referred to in sub-section (1), certified in such manner as may be prescribed, shall be given by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, to each of the parties to the dispute free of cost and a copy of the award or other determination or decision so certified shall be sent by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, to the appropriate Government.

104. Time Limit for Submission of Report, Making of Awards, etc.

- (1) The Labour Court shall pronounce its award ordinarily within a period of ninety days from the date on which the application is made to it.
- (2) The Central or State Labour Relations Commission or National Labour Relations Commission shall pronounce its award ordinarily within a period of 180 days from the date on which the dispute is referred to it.
- (3) Where the Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission is unable to make its award within the periods referred to in sub section (1) or sub section (2), as the case may be, it shall record the reasons therefore.

105. Persons on Whom are Binding

- (1) An award of a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission which has become enforceable under section 103 shall be binding on (a) all the parties to the individual dispute, industrial dispute or trade union dispute;
(b) all other parties summoned to appear in the proceeding as parties to the dispute, unless the Labour Court, Central or State Labour

Relations Commission or National Labour Relations Commission, as the case may be, records the opinion that they were so summoned without proper cause;

- (c) where a party referred to in clause (a) or clause (b) is an employer, his successors or assignees in respect of the industrial establishment or undertaking to which the dispute relates; and
- (d) where a party referred to in clause (a) or clause (b) is a negotiating agent, all persons who were workers of the establishment or undertaking on the date of the dispute and all persons who subsequently become workers of the establishment or undertaking.

106. Period of Operation of Award

- (1) Every award of an Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission shall, subject to the provisions of this section, remain in operation for a period of four years from the date on which the award becomes enforceable:
- (2) Notwithstanding the expiry of the period of operation referred to in sub-section (1) the award shall continue to be binding on the parties until a period of 60 days has elapsed from the date on which notice in writing is given by any party bound by the award to the other party or parties, as the case may be, intimating its intention to terminate the award.
- (3) No notice given under sub section (2) shall be entertained or be valid in the case of an industrial dispute, unless it is made or given—
 - (a) where such dispute is between workers and the employer or employers, by the negotiating agent or the employer; or
 - (b) where dispute is between workers and workers or employers and employers by the majority of any of the parties bound by the award.

107. Review of Award by Authorities and correction of mistakes

- (1) Any party to an individual dispute, industrial dispute or trade union dispute, who, on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of an award made by an arbitrator, a Lok Adalat, a Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, may apply to such authority and where such authority, after giving all the parties to the individual dispute, industrial dispute or trade union dispute, as the case may be, a reasonable opportunity of being heard is of the opinion that the application for review should be granted, it shall grant the same.
- (2) Clerical or arithmetical mistakes in awards or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be, either of its own motion or on the application of any of the parties to the dispute or the appropriate Government.

108. Award of Costs

Subject to any rules made under this Act, the costs of, and incidental to, any proceeding before an arbitrator, or a Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, shall be in the discretion of the arbitrator, Lok Adalat, Labour Court Central or State Labour Relations Commission or National Labour Relations Commission, and the Arbitrator, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, as the case may be shall have full power to determine by whom, to whom, and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purpose aforesaid and such costs may be recovered under section 110 in the same manner as if it were money due under any settlement or award.

109. Execution of Settlement or Award by Labour Court, etc.

Every settlement arrived at in negotiations or conciliation and every award or determination or decision of an Arbitration, Lok Adalat, Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission, shall be executed by the Labour Court as if it were an award made by such Labour Court in such manner as may be provided under this Act.

110. Procedure for Recovery of Money Due Under Settlement or Award

(1) Where any money is due to any of the parties to a settlement or award under such settlement or award, such party or any person, in, or on, whom the rights of such party under the settlement or award have been vested or devolved, by assignment, inheritance or otherwise, may, without prejudice to any other mode of recovery, make an application to the Labour Court, to whom an application for the execution of the settlement or award may be made under section 109 or the recovery of the money so due to such party and where the Labour Court, is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue and remit the amount so recovered to the Labour Court.

Provided that every such application shall be made within one year from the date on which the money becomes due to such party.

Provided further that any such application may be entertained after the expiry of the said period of 1 year if the Labour Court, is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) The Labour Court, as the case may be, shall disburse or cause to be disbursed in such manner as may be prescribed, the amounts remitted to it by the Collector under sub section (1) to the person or persons entitled to receive the same.

111. No demand in Regard to Same Matter to be Raised So Long as Settlement or Award is in Force

So long as any settlement arrived at in the course of negotiation, or in conciliation or any award of an Arbitrator or a Labour Court, Central or State Labour Relations Commission or National Labour Relations Commission is in operation, it shall not be lawful for the workers or negotiating agent or employer or employers as the case may be, to raise any dispute with respect to any matter covered by such settlement or award.

CHAPTER XIII

PENALITIES

112. Penalties May be Provided for:-

- (i) failure to submit information or for submitting wrongful information, withholding the information or making false statement
- (ii) failure to recognise negotiating agent
- (iii) breach of standing orders
- (iv) giving authorisations for deduction of subscriptions from wages by the workers in favour of more than union
- (v) disclosure of confidential information
- (vi) effecting lay off, retrenchment or closure in contravention of this Act
- (vii) illegal strikes or lock outs
- (viii) instigation
- (ix) giving financial aid to illegal strikes or lock outs
- (x) breach or settlement or award
- (xi) other offences and violations.

113. Cognisance of Offences

114. Offences by a company

CHAPTER XIV

MISCELLANEOUS

115. Power of the Appropriate Government to Exempt

- (1) Where the appropriate Government is satisfied that in an establishment or undertaking carried on by the department of that Government there are adequate provisions for resolution of individual as well as industrial disputes of workers through the machinery of joint consultation, administrative tribunals or otherwise, the appropriate Government may by notification exempt such establishment from any or all provisions of this Act.
- (2) The appropriate Government may by notification exempt any establishment or undertaking from any or all provisions of this Act if it is of the opinion that the application of the provision or provisions is likely to cause extreme hardship to the establishment or undertaking or due to emergent situation arising in the establishment or undertaking it is necessary to exempt such establishment or undertaking from such provision or provisions.

Provided that no exemption granted under sub section (2) shall be for a period exceeding 6 months at a time.

116. Competence to Remove the Difficulties in Interpretation of Settlement or Awards

- (1) Subject to the other provisions of this Act where any difficulty or doubt or difference of opinion arises as to the interpretation of any provision of a settlement or award, a party to the settlement or in case of an award, a party to whom the award is binding may make an application to the Labour Court for interpretation of the provision of settlement or award.
- (2) The Labour Court before whom such application is made shall after giving the parties opportunity of being heard decide such question and its decision in this regard shall be final.

117. Matters to be kept Confidential

No Conciliation Officer, Arbitrator, Lok Adalat Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission shall include in any report or award any information obtained by him or it relating to a trade union or any establishment or undertaking which is not available otherwise than through the evidence given before such Arbitrator, Conciliation Officer, Lok Adalat, Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission, if the trade union, person, firm or company in question has made a request in writing in this behalf that such information shall be treated as confidential nor shall Arbitrator, Conciliation Officer, Presiding officer of the Lok Adalat or Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission or any other person present at or concerned in such proceedings disclose any information without the consent in writing of the trade union or the person, firm or company in question.

Provided that nothing contained in this Section shall apply to any disclosure of information for the purpose of prosecution proceeding under this Act.

118. Representation of Parties

- (1) A worker who is a party to any proceedings under this Act in relation to an individual dispute shall be entitled to be represented in any such proceeding by-
 - (a) by himself or through an advocate duly appointed by him wherever permitted under this Act;
 - (b) an office bearer of a single negotiating agent or constituent of the negotiating college certified under this Act as negotiating agent if he is a member of such single negotiating agent or constituent of a negotiating college;

- (c) by an office bearer of a registered trade union of which he is a member if such registered trade union has at least 10% membership amongst the workers of the establishment where such worker is employed.
- (2) No person or a trade union other than the negotiating agent as certified under this Act shall represent the workers of the establishment in any proceedings in relations to any industrial dispute under this Act

Provided that the negotiating agent may be represented in any industrial dispute by a legal practitioner wherever permitted under this Act.

- (3) An employer who is a party to any proceeding in relation to any individual or industrial dispute under this Act shall be entitled to be represented in such proceedings by –
- (a) by himself or through an officer of an establishment duly authorised in this behalf or an advocate wherever permitted under the Act;
 - (b) an office bearer of a registered trade union of employers of which he is a member;
- (4) No legal practitioner shall be permitted to represent any party in any proceedings in relation to any individual or industrial dispute before a Conciliation Officer or a Lok Adalat.
- (5) Notwithstanding any thing contained in sub-sections (1) to (3) in any proceedings before a Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission, a party to such proceedings may be represented by a legal practitioner with the consent of the other party or parties to the proceeding and with the leave of the Labour Court, Central or State Labour Relations Commission or as the case may be the National Labour Relations Commission

119. Delegation of Powers

The appropriate Government may, by notification, direct that any power exercisable by it under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also –

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

120. Power to Require Production of Books, etc.

Where any person is required by or under this Act to make any statement or furnish any information to any authority, that authority may by order, with a view to verifying the statement made or the information furnished by such person, require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

121. Protection of Action taken Under the Act and Protection of Persons

- (1) 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 in pursuance of this Act or any rules made thereunder.
- (2) Notwithstanding anything contained in the rules of a trade union no person refusing to take part or to continue to take part in any strike or lock out which is illegal under this Act shall by reason of such refusal or by reason of any action taken by him under this Section, be subject to expulsion from such trade union or to any fine or penalty, or to

deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of such trade union.

- (3) Nothing in the rules of a trade union requiring the settlement of dispute in any manner shall apply to any proceeding for enforcing any right secured by this section, and in any such proceeding the Labour Court, may, in lieu of ordering a person who has been expelled from membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as that court thinks just.

122. Powers to Make Rules

- (1) The appropriate Government shall have powers to make rules for the purpose of giving effect to different provisions of this Act by notification.
- (2) Before notifying the rules the appropriate Government shall by notification publish the proposed rules giving 3 months time to the public to submit their objections, if any, to the proposals and rules shall be notified after considering the objections if any received specified in the said notification.

123. Laying of Rules before the Parliament and the State Legislatures

- (1) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.
- (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.

124. Repeal and Savings

- (1) The Trade Union Act, 1976, The Industrial Employment (Standing Order) Act, 1946, the Industrial Disputes Act, 1947, including amendments made by the State Government, the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, the Bombay Industrial Relations Act, 1946, the Madhya Pradesh Industrial Relations Act, 1961 U.P. Industrial Disputes Act and similar laws of other State Governments shall stand repealed on enactment of this Law.

Notwithstanding the repeal of the Acts referred to in sub section (1) the proceedings pending under the above enactments on the date of enactment of this Law shall be disposed of as if these Acts have not been repealed.

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