

# EQUAL REMUNERATION ACT, 1976

## 1. Introduction:

The principle of equal work to men and women worker has been gaining increasing acceptance all over the world. In many countries law have been passes providing discrimination between men and woman in matter relating to payment of wages for similar work. The state policy article 39 of constitution envisages that the state shall directs the policy among other things toward securing that there is equal pay for equal work for both men and women .The international women's year the president of India promulgated the equal remuneration ordinance 1975 on 26 sep 1975 to provide for payment of equal remuneration in relation to men and women workers.

### Objective of the Acts:

- (1). To pay equal remuneration to men and women workers
- (2). To prevent discrimination on the ground of sex against women in the matter of employment
- (3) To provide increasing opportunity to women.
- (4) To set up advisory committee to promote employment opportunities for women

## 2. Definition—

### (a) “appropriate Government” means –

- (i) in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and
- (ii) in relation to any other employment, the State Government;

### (g) “remuneration” means-

the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

### (h) “same work or work of a similar nature” means-

work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

## **PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN WORKERS AND OTHER MATTERS**

### ***4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature. –***

(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where

there are only two rates), or, as the case may be, the highest (in cases where there are only two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

### ***5. No discrimination to be made while recruiting men and women workers. –***

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

### ***6. Advisory Committee. –***

(1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf.

(2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

(3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women,

including part-time employment, and such other relevant factors as the Committee may think fit.

(4) The Advisory Committee shall regulate its own procedure.

(5) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit.

***7. Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints. –***

(1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the authorities for the purpose of hearing and deciding—

- (a) complaints with regard to the contravention of any provision of this Act;
- (b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature,

and may, by the same or subsequent notification, define the local limits within which each, such authority shall exercise its jurisdiction.

(2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed.

(3) If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).

(4) Where a complaint or claim is made to the authority appointed under sub-section (1) it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct, —

- (i) in the case of a claim arising out of a non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;
- (ii) in the case of complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

(5) Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195.

(6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1) on a complaint or claim may within thirty days from the

date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in

sub-section (6), allow the appeal to be preferred within a further period of thirty days but not thereafter.

(8) The provisions of sub-section (1) of Section 33-C of the Industrial Disputes Act, 1947, shall apply for the recovery of monies due from an employer arising out of decision of an authority appointed under this section.

## MISCELLANEOUS

### **8. Duty of employers to maintain registers. –**

On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

### **9. Inspectors. –**

(1) The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

(3) An Inspector may, at any place within the local limits of his jurisdiction, --

- (a) enter, at any reasonable time with such assistance as he thinks fit, any building, factory, premises or vessel;
- (b) require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents;
- (c) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;
- (d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been a worker in the establishment;
- (e) make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

(4) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

### **10. Penalties. -**

(1) If after the commencement of this Act, any employer, being required by or under this act, to do—

- (a) omits or fails to maintain any register or other document in relation to workers employed by him, or
- (b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or
- (c) omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or
- (d) omits or refuses to give any information,

he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.

(2) If, after the commencement of this Act, any employer—

- (a) makes any recruitment in contravention of the provisions of his Act, or
- (b) makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or
- (c) makes any discrimination between men and women workers in contravention of the provisions of this Act, or
- (d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6.

he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

(3) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five thousand rupees.

***11. Offences by companies. –***

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part

of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.** – For the purposes of this section, --

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

**12. Cognizance and trial of offences.** –

(1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon—

- (a) its own knowledge or upon a complaint made by the appropriate Government or an officer authorized by it in this behalf; or
- (b) a complaint made by the person aggrieved by the offence or by any recognized welfare institution or organization.

**Explanation.** –For the purposes of this sub-section “recognized welfare institution or organization” means a social welfare organization or institution recognized in this behalf by the Central or State Government.

**13. Power to make rule.** –

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the manner in which complaint or claim referred to in sub-section (1) of Section 7 shall be made;
- (b) registers and other documents which an employer is required under Section 8 to maintain in relation to the workers employed by him;
- (c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two 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.

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

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

***15. Act not to apply in certain special cases. –***

Nothing in this Act shall apply-

- (a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or
- (b) to any special treatment accorded to women in connection with—
  - (i) the birth or expected birth of a child, or
  - (ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

***16. Power to make declaration. –***

Where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, or men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be contravention of any provision of this Act.

***17. Power to remove difficulties. –***

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification, make any order, not inconsistent with the provisions of this Act, which appears to it to be necessary for the purpose of removing the difficulty:

Provided that every such order shall, as soon as may be after it is made, be laid before each House of Parliament.

***18. Repeal and saving. –***

(1) The Equal Remuneration Ordinance, 1975 (12 of 1975) hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance, so repealed (including any notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act were in force when such thing was done or action was taken.

# THE MINIMUM WAGES ACT, 1948

## Introduction:

Passed in 1948 to secure the welfare of the unorganized workers in certain industries by fixing minimum rates of wages. The act empowers the appropriate government for fixation of minimum wages of employments enumerated in schedule I. The fixation of minimum of wages relates to the industries where sweated labor is most prevalent or where there is a chance of exploitation. An Act to provide for fixing minimum rates of wages in certain employments it extends to the whole of India.

## Objectives of Act:

1. To provide minimum wages to the workers working in organized sectors.
2. To stop exploitation of worker.
3. To empower the government to take steps for fixing minimum wages and to revise it in a timely manner.
4. To apply this law on most of the sections in organized sectors.

## Definition:

- (a) **“adolescent”**  
means a person who has completed his fourteenth year of age but has not completed his eighteenth year of age;
- (aa) **“adult”**  
means a person who has completed his eighteenth year of age
- (b) **“appropriate Government”**  
means  
(i) in relation to any scheduled employment carried on by or under the authority of the Central Government, the railway administration or in relation to a mine, oil field or major port, or any corporation established wholly or partly out of the funds of the Central Government; and  
(ii) in relation to any other scheduled employment the State Government;
- (bb) **“child”**  
Means a person who has not completed his fourteenth year of age
- (c) **“competent authority”**  
Means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.
- (d) **“cost of living index number”**  
In relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, the index number ascertained and declared by the competent authority by notification in Official Gazette to be the cost of living index number applicable to employees in such employment.
- (e) **“employer”**  
means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes  
(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named as manager of the factory.  
(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the person or authority in charge of the Department;  
(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees.

- where no person is so appointed the Chief Executive Officer of the local authority;
- (iv) in any other case where there is carried on any scheduled employment in respect of which minimum wages have been fixed under this Act, any person responsible to the owner for the supervision of the employees or for the payment of wages;
- (f) **“scheduled employment”**  
means an employment specified in the schedule, or any process or branch of work forming part of such employment;
- (g) **“wages”**  
 (i) means all remuneration, capable of being expressed in terms of money which would if the terms of employment express or implied, were fulfilled, be payable to a person employed in respect of his or of work done in such employment <sup>2</sup>[ and includes house rent allowance] but does not include –  
 (a) any house-accommodation, supply of light, water, medical attendance; or  
 (b) any other amenity or any service excluded by general or special order of the appropriate Government;  
 (ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of insurance;

## 2. Definition. -

(a) **“adolescent”** means –

a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) **“adult”** means-

a person who has completed his eighteenth year of age

(b) **“appropriate Government”** means -

(i) in relation to any scheduled employment carried on by or under the authority of the Central Government [or a railway administration] or in relation to a mine, oil field or major port, or any corporation established under the Central Act the Central Government; and

(ii) in relation to any other scheduled employment the State Government;

(bb) **“child”** means-

a person who has not completed his fourteenth year of age

(c) **“competent authority”** means –

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

(d) **“cost of living index number”** –

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

(e) **“employer”** means-

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

section 26-

in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause

(f) of sub- section (1) of section 7 of the Factories Act, 1948 as manager of the factory; in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the Department;

in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the Chief Executive Officer of the local authority;

in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages

(h) **“scheduled employment”** means-

an employment specified in the schedule, or any process or branch of work forming part of such employment;

(i) **“wages”** means-

all remuneration, capable of being expressed in terms of money which would if the terms of the contract of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance] does not include-

(i) the value of -

(a) any house-accommodation, supply of light, water, medical attendance; or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

(j) **“employee”** means-

any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out worker to whom any articles or materials are given out by another person, to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union

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

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

(1) The appropriate Government shall, in the manner hereinafter provided,-

(a) fix the minimum rates or wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification under section 27: Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fixing such rates for a part of the State or for any specified class or classes of such employment in the whole State or any part thereof;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary: Provided that, where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1A) Notwithstanding anything contained in sub-section

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

(2) The appropriate Government may fix -

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

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

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

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

(2-A) Where in respect of an industrial dispute relating to the rate of wages payable to any of the employees employed in a scheduled employment any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947, or before any like authority under any other law for the time being in force or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of any award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees, in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.(3) In fixing or revising minimum rates of wages under this section-

(a) different minimum rates of wages may be fixed for-

(i) different scheduled employment;

(ii) different classes of work in the same scheduled employments;

(iii) adults, adolescents, children and apprentices;

(iv) different localities;

(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely,- (i) by the hour, (ii) by the day, (iii) by the month, or (iv) by such other larger wage period as may be prescribed and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, indicated]: Provided that where any wage periods have been fixed under section 4 of the Payment of Wages Act, 1936 minimum wages shall be fixed in accordance therewith.

#### **4. Minimum rate of wages.-**

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under sec. 3 consist of-

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

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or

(iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. (2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

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

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

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

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

(2) After considering the advice of the committee or committees, appointed under clause (a) of sub-section (1), or as the case may be all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue: Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate Government shall consult the Advisory Board also.

#### **6. Advisory Committees and sub-committees-**

Repealed by the Minimum Wages (Amendment) Act, 1957 , section 5 (w.e.f 19-9-1957).]

#### **7. Advisory Board.-**

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

#### **8. Central Advisory Board.-**

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

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

#### **9. Composition of committees, etc.-**

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

#### **10. Correction of errors.-**

- (1) The appropriate Government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.
- (2) Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.

#### **11. Wages in kind.-**

- (1) Minimum wages payable under the Act shall be paid in cash.
  - (2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorise the payment of minimum wages either wholly or partly in kind.
  - (3) If the appropriate Government is of the opinion that provisions should be made for the supply of essential commodities at concessional rates, the appropriate Government may, by notification in the Official Gazette, authorise the provision of such supplies at concessional rates.
  - (4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

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

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

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

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

- (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may-
  - (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
  - (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
  - (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

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

- (a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;
  - (b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
  - (c) employees whose employment is essentially intermittent;
  - (d) employees engaged in any work which for technical reasons has to be completed before the duty is over;

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

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

#### **14. Overtime.-**

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

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act, 1948 in any case where those provisions are applicable

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

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

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

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

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

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

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

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

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

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

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

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

#### **19. Inspectors.-**

(1) The appropriate Government may, by notification in the Official gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their functions.

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

(a) enter at all reasonable hours, with such assistant (if any), being persons in the service of the Government] or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record or



wages or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;

(c) require any person giving out-work and any out-workers to give any information, which is in his power to give, with respect to the names and addresses of the persons, to, for and from whom the work is given out or received, and with respect to the payment to be made for the work;

(d) size or take copies of such register, record of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act which he has reason to believe has been committed by an employer; and] (e) exercise such other powers as may be prescribed.

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

(4) Any person required to produce any document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code

## **20. Claims.-**

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

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

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amounts became payable: Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other period to which the employer may be liable under this Act, direct-

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees; and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

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

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

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or if the Authority is not a Magistrate, by any Magistrate, to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

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

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for

the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973.

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

(1) Subject to such rules as may be prescribed, a single application] may be presented under section 20 on behalf or in respect of a number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of section 20 shall not exceed ten times the aggregate amount of such excess, or ten rupees per head as the case may be].

(2) The Authority may deal with any number of separate pending applications presented under section 20 in respect of employees in scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provisions of that sub-section shall apply accordingly.

#### **22. Penalties for certain offences.-**

Any employer who—

(a) Pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act or (b) Contravenes any rule or order made under section 13 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both:

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

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

#### **22B. Cognizance of Offences.-**

(1) No Court shall take cognizance of a complaint against any person for an offence-

(a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint; (b) under clause (b) of section 22 or under section 22-A, except on a complaint made by, or with the sanction of, the Inspector.

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

(a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section; (b) under section 22-A, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

#### **22C. Offences by companies.-**

(1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible, to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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

All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to him shall be deemed to be a debt due to him by the employer.

the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority and that authority shall deal with the money so deposited in such manner as may be prescribed.

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

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

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

Notwithstanding anything contained in the Payment of Wages Act, 1936, the appropriate Government may, by notification, in the Official Gazette, direct that, subject to the provisions of sub-section (2), all or any of the provisions of the said Act shall with such notifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employment as may be specified in the notification.

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

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

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

- (a) that he has used due diligence to enforce the execution of this act, and
- (b) that the said other person committed the offence in question

without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged:

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witnesses, if any, shall be subject to cross examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

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

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

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

#### **25. Contracting out.**

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

#### **26. Exemptions and Exceptions.-**

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

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

(2-A). The appropriate Government may, if it is of opinion that, having regard to the terms and conditions of service applicable to a class of employees in a scheduled employment generally or in a scheduled employment in a local area or to any establishment or a part of any establishment in a scheduled employment] it is not necessary to fix minimum wages in respect of such employees of that class <sup>4</sup>[in respect of employees in such establishment or part of any establishment ] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct by notification in the Official Gazette and subject to such conditions, if any, as it may think fit to impose, the provisions of this Act or any of them shall not apply in relation to such employees:

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

#### **27. Power of State Government to add to schedule.-**

The appropriate Government, after giving by notification in the Official Gazette not less than three month's notice of its intentions so to do, may by like notification add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the <sup>5</sup>[State be deemed to be amended accordingly].

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

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

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

The Central Government may, subject to the conditions of previous publication, by notification in the Official Gazette, make rules prescribing the terms of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

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

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

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

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

(b) prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the enquiry before the Committees, Sub-Committees and the Advisory Board;

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

(d) prescribe the time and conditions of payment of, and the deductions permissible from wages;

(e) provide for giving adequate publicity to the minimum rates of wages fixed under this Act;

(f) provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such a day;

(g) prescribe the number of hours of work which shall constitute a normal working day;

(h) prescribe the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day;

(i) prescribe the form of registers and records to be maintained and the particulars to be entered in such registers and records;

(j) provide for the issue of wage books and wage slips and prescribe the manner of making and authenticating entries in wage books and wage slips;

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

- (l) regulate scale of costs that may be allowed in proceedings under section 20;
- (m) prescribe the amount of court-fees payable in respect of proceedings under section 20; and
- (n) provide for any other matter which is to be or may be prescribed.

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

(1) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses, agree in making any modification in the rule, or both Houses agree that the rule shall 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

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

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

Where during the period-

(a) commencing on the 1st of April 1952 and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1954 (26 of 1954); or

(b) commencing on the 31st day of December, 1954 and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1957 (30 of 1957); or

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

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

## **THE PAYMENT OF BONUS ACT, 1965**

### **INTRODUCTION**

The practice of paying bonus in India appears to have originated during First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917. In certain cases of industrial disputes demand for payment of bonus was also included. In 1950, the Full Bench of the Labour Appellate evolved a formula for determination of bonus. A plea was made to raise that formula in 1959. At the second and third meetings of the Eighteenth Session of Standing Labour Committee (G. O.I.) held in New Delhi in March/April 1960, it was agreed that a Commission be appointed to go into the question of bonus and evolve suitable norms. A Tripartite Commission was set up by the Government of India to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Government of India accepted the recommendations of the Commission subject to certain modifications. To implement these recommendations the Payment of Bonus Ordinance, 1965 was promulgated on 29<sup>th</sup> May, 1965. To replace the said Ordinance the Payment of Bonus Bill was introduced in the Parliament.

### **STATEMENT OF OBJECT AND REASONS**

A Tripartite Commission was set by the Government of India by their resolution No.WB-20(9)/61, dated 6<sup>th</sup> December, 1961 to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission's Report containing their recommendations was received by the Government on 24<sup>th</sup> January, 1964. In their Resolution No. WB- 20(3)/64, dated the 2<sup>nd</sup> September, 1964, the Government announced acceptance of the Commission's recommendations subject to a few modifications as were mentioned therein. With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29<sup>th</sup> May, 1965. The object of the Bill is to replace the said Ordinance.

## **THE PAYMENT OF BONUS ACT, 1965**

An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:-

### **1. Short title, extent and application.-**

(1) This Act may be called the Payment of Bonus Act, 1965.

(2) It extends to the whole of India

(3). Save as otherwise provided in this Act, it shall apply to –

(a) every factory; and

(b) every other establishment in which twenty or more persons are employed on any day during an accounting year. Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act with effect from; such accounting year as may be specified in the notification, to any establishment or class of establishment [including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of section 2 of the Factories Act, 1948 (63 of 1948)] employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

(4). Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year:

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of person employed therein falls below twenty or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3)

### **2. Definition.-**

(1) “**accounting year**” means –

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case -
  - (a) the year commencing on the 1<sup>st</sup> day of April; or (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31<sup>st</sup> day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit;

(2) **“agricultural income”**

shall have the same meaning as in the Income-tax Act.

(3) **“agricultural income-tax law”** means-

any law for the time being in force relating to the levy of tax on agricultural income.

(4) **“allocable surplus”** means-

(a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year; (b) in any other case, sixty per cent of such available surplus.

(5) **“appropriate Government”** means-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Central



Government.

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate.

(6) **“available surplus”** means-  
the available surplus computed under section 5

(7) **“award”** means –  
an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under section 10A of that Act or under that law.

(8) **“banking company”** means-  
a banking company as defined in section 5 of the Banking Companies Act, 1949 , and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) <sup>2</sup>[any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), <sup>3</sup>[any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Under takings) Act, 1980 (40 of 1980),] any co-operative bank as defined in clause (bii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934),] and any other banking institution which may be notified in this behalf by the Central Government.

(9) **“company”** means –  
any company as defined in section 3 of the Companies Act, and includes a foreign company within the meaning of section 591 of that Act.

(10) **“co-operative society”** means-  
society registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law for the time being in force in any State relating to co-operating societies.

(11) **“corporation”** means –  
any body corporate established by or under any Central, Provincial or State Act

but does not include a company or a co- operative society.

(12) “**direct tax**” means-

(a) any tax chargeable under-

(i) the Income-tax Act

(ii) the Super Profits Tax Act, 1963

(iii) the Companies (Profits) Surtax Act, 1964

(iv) the agricultural income-tax law; and (b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act.

(13) “**employee**” means-

any person (other than an apprentice) employed on a salary or wage not exceeding <sup>1</sup>[three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

(14) “**employer**” includes-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub- section (1) of section 7 of the Factories Act, 1948 the person so named.

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

(15) “**establishment in private sector**” means-

any establishment other than an establishment in public sector.

(16) “**establishment in public sector**” means-

an establishment owned, controlled or managed by-

(a) a Government company as defined in section 617 of the Companies

Act, 1956.

(b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by- (i) the Government; or (ii) the Reserve Bank of India; or (iii) a corporation owned by the Government or the Reserve Bank of India.

(17) “**salary or wage**” means-

all remuneration other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living

but does not include-

- (i) any other allowance which the employee is for the time being entitled to.
- (ii) the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles
- (iii) any traveling concession
- (iv) any bonus (including incentive, production and attendance bonus)
- (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force
- (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him.
- (vii) any commission payable to the employee

### **3. Establishments to include departments, undertakings and branches.-**

Where an establishment consists of different department or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then such department or undertaking or branch shall be treated as

a separate establishment for the purpose of computation of bonus, under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

**4. Computation of gross profits.—**

The gross profits derived by an employer from an establishment in respect of the accounting year shall—

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule.

(b) in any other case, be calculated in the manner specified in the Second Schedule.

**5. Computation of available surplus.—**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6; <sup>2</sup>Provided that the available surplus in respect of the accounting year commencing on any day 1968 and in respect of every subsequent accounting year shall be the aggregate of –

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6

(b) an amount equal to the difference between --

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year.

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

**6. Sums deductible from gross profits.—**

The following sums shall be deducted from the gross profits as prior charges, namely:-

(a) any amount by way of depreciation admissible in accordance with the provisions

of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be: Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29<sup>th</sup> May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such notional normal depreciation.

(b) any amount by way of <sup>1</sup>[development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the income-tax Act.

(c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.

(d) such further sums as are specified in respect of the employer in the third schedule.

#### **7. Calculation of direct tax payable by the employer.—**

Any direct tax payable by the employer] for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:-

(a) in calculating such tax no account shall be taken of --

- (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes.
- (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act
- (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section,101 of that Act, as in force immediately before the commencement of the Finance Act, 1965

(b) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act.

(c) where the employer is individual or a Hindu Undivided Family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

(d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate.

(e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

#### **8. Eligibility for bonus.—**

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

#### **9. Disqualification for bonus.—**

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

- (a) fraud.or
- (b) riotous or violent behaviour while on the premises of the establishment or
- (c) theft, misappropriation or sabotage of any property of the establishment.

#### **10. Payment of minimum bonus.—**

Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees,

whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effecting relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were substituted.

**11. Payment of maximum bonus.—**

(1) Where in respect of any accounting year referred to in section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent, of such salary or wage.

(2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section.

**12. Calculation of bonus with respect to certain employees.—**

Where the salary or wage of an employee exceeds <sup>4</sup>[two thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [two thousand and five hundred rupees] per mensem.

**13. Proportionate reduction in bonus in certain cases.—**

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

**14. Computation of number of working days.—**

For the purposes of section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which--

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial

Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment.

(b) he has been on leave with salary or wage.

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wage, during the accounting year.

**15. 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 employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees 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 utilized 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 employees in the establishment under section 10, and there is no amount of sufficient amount carried forward and set on under sub-section (1) which could be utilized 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 accounting year shall first be taken into account.

**16. Special provisions with respect to certain establishment—**

(1) Where an establishment newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-section (1A), (1B) and (1C).



(1A) In the first five accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this act in relation to that year, but with out applying the provisions of section 15.(1B) For the sixth and seventh accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply subject other following modifications, namely:--

(i) for the sixth accounting year --

set on or set off, as the case may be, shall be made in the manner illustrated in the <sup>1</sup>[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years; (ii) for the seventh accounting year --

set on or set off, as the case may be, shall be made in the manner illustrated in the <sup>1</sup>[Fourth Schedule] taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting year.

(1C) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 15 shall apply in relation to such establishment as they apply in relation to any other establishment.

*Explanation I.* – For the purpose of sub-section (1), an establishment shall not be newly set up merely by reason of a change in its location, management, name or ownership.

*Explanation II.*-- For the purpose of sub-section (1A), an employer shall not be deemed to have derived profit in any accounting year unless –

(a) he has made provision for that year’s depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax, law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

*Explanation III.* – For the purpose of sub-section (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.

(2) The provisions of sub-section (1), (1A), (1B) and (1C)] shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different (departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29<sup>th</sup> May, 1965, been paying bonus to the employees of all; such departments or undertakings or branches, irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertaking or branches, then, such employer shall be liable to pay bonus in accordance with the provisions of this Act to the employees of all such departments or undertaking or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.

### **17. Adjustment of customary or interim bonus against bonus payable under the Act.—**

Whether in any accounting year --

- (a) an employer has paid any puja bonus or other customary bonus to an employee; or
- (b) an employer has paid a part of the bonus payable under this Act to an employee 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 employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance.

## **18. Deduction of certain amounts from bonus payable under the Act. –**

Where in any accounting year, an employee 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 employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

## **19. Time-limit for payment of bonus. –**

All amounts] payable to an employee 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, extended 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

### **Application of Act to establishments in public sector in certain cases.-**

(1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both less than twenty percent of the gross income of the establishment in public sector for that year, then, the provision of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Act shall apply to the employees employed by any establishment in public sector]

## **21. Recovery of bonus due from an employer.-**

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government or such authority as the appropriate Government may specify in this behalf 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 arrears 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 employee from the employer.

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

**22. Reference of disputes under the Act.-** Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industries dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.

**23. Presumption about accuracy of balance-sheet and profit and loss account of corporation and companies.-**

Where, during the course of proceedings before any arbitrator or Tribunal under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State (hereinafter in this section and in sections 24 and 25] referred to as the "said authority" ) to which any dispute of the nature specified in section 22 has been referred, the balance-sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the comptroller and Auditor- General of India or by auditors duly qualified to Act as auditors of companies under sub-section(1) of section 226 of the Companies Act, 1956 are produced before it, then, the said authority may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements

and particulars by the filing of an affidavit or by any other mode.

Provided that where the said authority is satisfied that the statement and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statement and particulars.

When an application is made to the said authority by any trade union being a party to the dispute or where there is no trade union, by the employees being a party to the dispute requiring any clarification relating to any item in the balance-sheet or the profit and loss account it may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the trade union or the employees such clarification within such time as may be specified in the direction and the corporation or , as the case may be, the company, shall comply with such direction.

**24. Audited accounts of banking companies not to be questioned. –**

(1) Where any dispute of the nature specified in section 22 between an employer , being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company duly audited and produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts, but the trade union or employees to question the correctness of such accounts, but the trade union or employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act.

(2) Nothing contained in sub-section (1) shall enable trade union of the employees to obtain any information which the banking company is not compelled to furnish under the provisions of section 34A of the Banking Regulation Act, 1949 (10 of 1949).

**25. Audit of accounts of employers, not being corporations or companies.-**

(1) Where any dispute of the nature specified in section 22 between an employer, not being a corporation or a company, and his employees has been referred to the said authority under that section and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under sub-section (1) of section 226 of the Companies Act, 1956, are produced before the said authority, the provisions of section 23, shall , so far as may be, apply to the accounts so audited.

(2) When the said authority finds that the accounts of such employer of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, it

may, by order direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(3) Where an employer fails to get the accounts audited under sub-section (2) the said authority may, without prejudice to the provisions of section 28, get the accounts audited by such auditor or auditors as it thinks fit.

(4) When the accounts are audited under sub-section (2) or sub-section (3) the provision of section 23 shall, so far as may be, apply to the accounts so audited.

(5) The expenses of and incidental to, any audit under sub-section (3) (including the remunerating of the auditor or auditors) shall be determined by the said authority (which determination shall be final) and paid by the employer and in default or such payment shall be recoverable from the employer in the manner provided in section 21.

#### **26. Maintenance of register, records, etc. –**

Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may prescribed.

#### **27. Inspectors. –**

(1) The appropriate Government may, by notification on the Official Gazette, appoint such person as it think fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

(2) An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with --

(a) Require an employer to furnish such information as he may consider  
Necessary

(b) at any reasonable time and with such assistance, if any, as he thinks fit enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment.

(e) exercise such other powers as may prescribed. (3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian penal Code .

(4) Any person required to produce any accounts, book, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.

(5) Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of any its books of account or other documents which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provision of section 34A of the Banking Regulation Act, 1949.

## **28. Penalty.-**

if any person-

(a) contravenes any of the provision of this Act or any rule made thereunder, or

(b) to whom a direction is given or a requisition is made under this Act fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **29. Offences by companies.-**

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and

punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all; due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **30. Cognizance of offences. –**

(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the appropriate Government <sup>1</sup>[or an officer of that Government (not below the rank of a Regional Labour Commissioner in the case of an officer of the Central Government, and not below the rank of a Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government].

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

### **31. Protection of action taken under the Act. –**

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 rule made thereunder.

#### **31A. 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 employees with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976), or
- (ii) where the employees enter into any agreement or settlement with their employer after such commencement, for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such employees shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be:



Provided that any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right

Provided further that] such employees shall not be entitled to be paid such bonus in excess of twenty per cent. of the salary or wage earned by them during the relevant accounting year.

### **32. Act not to apply to certain classes of employees. –**

Nothing in this Act shall apply to --

- (i) employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India
- (ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 .
- (iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 , and employed by registered or listed employers;
- (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a Local authority
- (v) employees employed by –
  - (a) the Indian Red Cross Society or any other institution of a like nature (including its branches)
  - (b) universities and other educational institutions;
  - (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;
- (vi) employees employed through contractor on building operations
- (vii) employees employed by the Reserve Bank of India;
- (viii) employees employed by --
  - (a) the Industrial Finance Corporation of India
  - (b) any Financial Corporation established under section 3, or any Joint Financial Corporation established under section 3A, of the State Financial Corporations Act, 1951
  - (c) the Deposit Insurance Corporation.
  - (d) the National Bank for Agriculture and Rural Development.
  - (e) the Unit Trust of India.
  - (f) the Industrial Development Bank of India.

(fa) the Small Industries Development Bank of India

**34. Effect of laws and agreements inconsistent with the Act. –**

Subject to the provisions of section 31A, the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.]

**35. Saving.–**

Nothing, contained in this Act shall be deemed to affect the provisions of the Coal Mines, Provident Fund and Bonus Schemes Act, 1948 , or of any scheme made thereunder.

**36 Power of exemption.** – If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishment, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as maybe specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishment from all or any of the provisions of this Act.

**38. Power to make rules. –**

(1) The Central Government may make rule for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for --

(a) the authority for granting permission under the proviso to sub-clause (iii) of clause (1) of section 2.

(b) the preparation of registers, records and other documents and the form and manner in which such registers, records and documents may be maintained under section 26.

(c) the powers which may be exercised by an inspector under clause (e) of sub-section (2) of section 27

(d) any other matter which is to be, or maybe prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session [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.

**39. Application of certain law not barred. –**

Save as otherwise expressly provided, the provisions of this Act shall be in addition to and not in derogation of the Industrial Disputes Act, 1947 , or any corresponding law relating to investigation and settlement of industrial disputes in force in a State.

**40. Repeal and saving. –**

(1) The Payment of Bonus Ordinance, 1965 (3 of 1965), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 29<sup>th</sup> May, 1965.

# THE PAYMENT OF WAGES ACT, 1936

## 1. Introduction:

- i. The payment of Wages Act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry.
- ii. It is essentially meant for the benefit of the industrial employees not getting very high salaries and the provisions of the Act were enacted to safeguard their interest.
- iii. It also provides against irregularities in payment of wages and unauthorized deductions there form by the employers.
- iv. Further. It ensures payment of wages in a particular form and at regular intervals without unauthorized deductions.

## Objectives:

- i. Regulating payment of wages, imposition of fines and deductions from wages.  
Eliminating all malpractices by laying down wage periods and time and mode of payment of wages.
- ii. The act, therefore ensures payment of wages in a particular form at regular intervals without unauthorized deductions.

An Act to regulate the payment of wages of certain classes of employed persons. Where as it is expedient to regulate the payment of wages to certain classes of employed persons.

## 2. Definitions:

### a. **Appropriate Government:**

In relation to railways, air transport services , mines and oil fields ,the Central Government and, in relation to all other cases, the State Government.

### b. **Employed person:**

Includes the legal representative of a deceased employed person;

### c. **Employer:**

Includes the legal representative of a deceased employer;

### d. **Factory:**

A factory as defined in clause(m) of Section 2 of the Factories Act, 1948 and includes any place to which the provisions of that Act have been applied under sub-section of Section 85.

### e. **Industrial or other establishment:**

Any services-

- i. tramway service ,or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- ii. air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- iii. dock, wharf or jetty;
- iv. inland vessel, mechanically propelled
- v. mine, quarry or oil-field;
- vi. plantation: has the meaning assigned to it in clause (f) of Section 2 of the Plantations Labour Act, 1951 workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale establishment, in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating

to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

vii. any other establishment or class of establishments which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette.

f. **Wages** means all remuneration whether by way of salary, allowances or otherwise expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

- (a) Any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) Any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) Any additional remuneration payable under the terms of employment whether called a bonus or by any other name
- (d) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made
- (e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force; but does not include
  - (1) Any bonus whether under a scheme of profit sharing or otherwise which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
  - (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government
  - (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
  - (4) any travelling allowance or the value of any travelling concession;
  - (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
  - (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause

### 3. **Responsibility for payment of wages.-**

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

- (a) in factories, if a person has been named as the manager of the factory
- (b) in industrial or other establishments, if there is a person responsible for the supervision and control of the industrial or other establishments.
- (c) Upon railways otherwise than in factories if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.
- (d) In the case of contractor, a person designated by such contractor who is directly under his charge
- (e) In any other case, a person designated by the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

The person so named, and the person so responsible to the employer, or the person so nominated, as the case may be, shall also be responsible for such payment.

2. it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

#### **4. Fixation of wage-periods.-**

(1) Every person responsible for the payment of wages under Section 3 shall fix periods in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

#### **5. Time of payment of wages.-**

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

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

(b) Any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable. In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagon loaded or unloaded, as the case may be, shall be paid before the expiry of these seventh day from the day of such completion.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.: where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

(3) The appropriate Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any, railway otherwise than in a factory or to persons employed as daily- daily-rated workers in the Public Works Department of the appropriate Government from the operation of this section in respect of the wages of any such persons or class of such persons: In the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government.

(4) All payments of wages shall be made on a working day.

#### **6. Wages to be paid in current coin or currency notes.-**

All wages shall be paid in current coin or currency notes or in both : the employer may , after obtaining the written authorization of the employed person , pay him the wages either by cheque or by crediting the wages in his bank account.

#### **7. Deductions which may be made from wages.-**

(1) The wages of an employed person shall be paid to him without deduction of any kind except those authorized by or under this Act.

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

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

- (i) the withholding of increment or promotion including the stoppage of increment at an efficient grade;
- (ii) the reduction to a lower post or time-scale or to a lower stage in a time-scale; or
- (iii) suspension;

Shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the Requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

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

- (a) fines;
- (b) deduction for absence from duty;

- (c) deductions for damage to or loss of good sex presley entrusted to the employed person or 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 setup under any law for the time being inforce (whether the Government or the board is the employer or not) or any other authority engaged in the business of sub sidising 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 State Government or any officer specified by it in this behalf may, by general or special order authorize.
- (f) Deductions for recovery of advances of whatever nature including advances for travelling allowance or conveyance allowance, and the interest due in respect thereof, or for adjustment of over-payments of wages.
- (ff) Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
- (fff) Deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;]
- (g) deductions of income-tax payable by the employed person;
- (h) deductions required to be made by order of a Court or other authority competent to make such order;
- (i) Deductions for subscriptions to, and for payment of advances from any provident fund to which the Provident Funds Act, 1925, applies.
- (j) deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;
- (k) Deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established undertheLifeInsuranceCorporationAct, 1956or for the purchase of securities of the Government of India or of anyStateGovernmentorforbeingdepositedinanyPostOffice SavingsBankinfurtheranceofanysavingssschemeofanysuch Government.
- (kk) Deductions made, with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926for the welfare of the employed persons or the members of their families, or both ,and approved by the appropriate Government, or any officer specified by it in this behalf, during the continuance of such approval;
- (kkk) deductions made, with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 .
- (l) Deductions for payment of insurance premia on Fidelity Guarantee Bonds
- (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed erson to invoice, to bill, to collect or to account for the appropriate charges due to the administration, whether in respect offers, freight ,demurrage, what refage 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 rebatesorre funds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default
- (p) Deductions, made with the written authorization of the employed person, for contribution

to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify.

(q) Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

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

- (i) in cases where such deductions are wholly or partly made for payment co-operative societies under clause(j)of sub-section (2), seventy-five per cent of such wages, and
- (ii) in any other case, fifty percent of such wages:

Provided that where the total deductions authorized under sub-section(2) exceedseventy-fivepercentor,asthecasemaybe,fiftypercentofthewages, the excess may be recovered in such manner as may be prescribed.

(4) Nothing contained in this section shall be construed as precluding the employerfromrecoveringfromthewagesoftheemployedpersonorotherwise any amount payable by such person under any law for the time being in force other than the Railways Act, 1989.

### **8. Fines.-**

(1) No fine shall be imposed on any employed person save in respect of such acts and omissions onh is partastheemployerwiththepreviousapproval of the appropriate Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribedmanneronthepremisesinwhichtheemploymentiscarriedonorin thecaseofpersonsemployeduponarailway(otherwisethaninafactory),atthe prescribed place orplaces.

(3) Nofineshallbeimposedonanyemployedpersonuntilhehasbeengiven an opportunity of showing cause against the fine, or otherwise than in accordancewithsuchprocedureasmaybeprescribedfortheimpositionoffines.

(4) Thetotalamountoffinewhichmaybeimposedinanyonewage-period onanyemployedpersonshallnotexceedanamountequivalenttothreepercentof thewagespayabletohiminrespectofthatwage-period.

(5) Nofineshallbeimposedonanyemployedpersonwhoisundertheageof fifteen years.

(6) Nofineimposedonanyemployedpersonshallberecoveredfromhimby instalments or after the expiry of ninety days from the day on which it was imposed.

(7) Everyfineshallbedeemedtohavebeenimposedonthedayoftheactor omission in respect of which it was imposed.

(8) Allfinesandallrealisationsthereofshallberecordedinaregistertobe keptbythepersonresponsibleforthepaymentofwagesunderSection3insuch formasmaybeprescribed;andallsuchrealisationsshallbeappliedonlytosuch purposes beneficial to the persons employed in the factory or establishmentas approved by the prescribedauthority.

*Explanation.*-Whenthepersonsemployeduponorinanyrailway,factoryor industrial or other establishmentarepart only of a staff employed under the same management, all such realisations may be credited to a common fund maintainedforthestaffasawhole,providedthatthefundshallbeappliedonly tosuchpurposesasareapprovedbytheprescribedauthority.

### **9. Deductions for absence from duty.-**

(1)Deductions maybemadeunder clause (b) of sub-section (2) of Section 7 only on account of the absence of an employedpersonfromtheplaceorplaceswhere,bythetermsofhisemployment, heisrequiredtowork,suchabsencebeingforthewholeoranypartoftheperiod during which he is so required towork.

(2)Theamountofsuchdeductionshallinnocasebeartothewagespayable totheemployedpersoninrespectofthewage-periodforwhichthedeductionis made a larger proportion than the period for which he was absent bears tothe total period, within such wage-period, during which by the terms of his employment, he was required towork:

Providedthat,subjecttoanyrulesmadeinthisbehalfbytheappropriate Government, if ten or more



employed persons acting in concert, absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

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

#### **10. Deductions for damage or loss.-**

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

(1-A) A deduction shall not be made under clause (c) or clause (m) or clause (n) or clause (o) of sub-section (2) of Section 7 until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.]

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

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

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

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

5[(aa) recovery of an advance of money given after employment began shall be subject to such conditions as the appropriate Government, may impose.

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

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

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

**13A. Maintenance of registers and records.-** (1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

**14. Inspectors.-**(1) An Inspector of Factories appointed under sub-section (1) of Section 8 of the

Factories Act, 1948, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) the appropriate Government, may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway or otherwise than in a factory to whom this Act applies. the appropriate Government, may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial or other establishments in respect of which they shall exercise their functions.

(4) An Inspector may, -

- (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder are being observed;
- (b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act;
- (c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment
- (d) require by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act;
- (e) seize or take copies of such registers or documents of portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;
- (f) exercise such other powers as may be prescribed:

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

(4-A) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search or seizure under this sub-section as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the said Code.

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

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

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

(1) the appropriate Government may, by notification in the Official Gazette, appoint

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as,
  - (i) Regional Labour Commissioner; or
  - (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years experience; or
- (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate,

as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area, including all matters incidental to such claims.

Provided that where the State Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or

any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within <sup>1</sup>[twelve months] from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

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

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

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

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

Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence, or
- (c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing an application under this section is satisfied—

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

(4-A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

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

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

- (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

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

(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if deductions have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods or if their wages for the same wage-period or periods have remained unpaid after the day fixed by Section 5.

(2) A single application may be presented under Section 15 on behalf for in respect of any number of employed persons belonging to the same unpaid group, and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in sub-section (3) of Section (15).

(3) The authority may deal with any number of separate pending applications, presented under Section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

## **17. Appeal.-**

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

(a) by the employer or other person responsible for the payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees <sup>4</sup>[or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty- rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

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

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

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

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

(4) The court referred to in sub-section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.

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

(1) Where at any time after an application has been made under sub-section (2) of Section 15 the authority, or where at any

time after an appeal has been filed under Section 17 by an employed person or <sup>1</sup>[any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf for any Inspector under this Act or any other person permitted by the authority to make an application under sub-section (2) of Section 15, the Court referred to in that section, is satisfied that the employer or other person responsible for the

payment of wages under Section 3 is likely to evade payment of any amount that may be directed to be paid under Section 15 or Section 17, the authority or the Court, as the case may be, except in cases, where the authority or Court is of the opinion that the ends of justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.

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

**18. Powers of authorities appointed under Section 15.-** Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

**19. Power to recover from employer in certain cases-** Repealed by the Payment of Wages Amendment Act, 1964, sec. 17

**20. Penalty for offences under the Act.-**

(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, Section 5 except sub-section (4) thereof, Section 7, Section 8 except sub-section (8) thereof, Section 9, Section 10, except sub-section (2) thereof, and Sections 11 to 13, both inclusive, shall be punishable with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees.

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

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

(3) Whoever being required under this Act to maintain any records or registers or to furnish any information or return,-

- (a) fails to maintain such register or record; or
- (b) wilfully refuses or without lawful excuse neglects to furnish such information or return; or
- (c) wilfully furnishes or causes to be furnished any information or return which he knows to be false; or
- (d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act,

shall for each such offence, be punishable with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees.

(4) Whoever-

- (a) wilfully obstructs an Inspector in the discharge of his duties under this Act; or
- (b) refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorised by or under this Act in relation to any railway, factory or industrial or other establishment; or
- (c) wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or
- (d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act,

shall be punishable with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees.

(5) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than three thousand seven hundred fifty rupees but which may extend to twenty two thousand five hundred rupees or with both:

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

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

## **21. Procedure in trial of offences.-**

(1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of Section 20 unless an application in respect of the facts constituting the offence has been presented under Section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

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

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

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

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

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

**22. Bar of suits.-** No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sums so claimed—

- (a) forms the subject of an application under Section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under Section 17; or
- (b) has formed the subject of a direction under Section 15 in favour of the plaintiff; or
- (c) has been adjudged in any proceeding under Section 15, not to be owed to the plaintiff; or
- (d) could have been recovered by an application under Section 15.

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

**23. Contracting out.-** Any contract or agreement, whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void

insofar as it purports to deprive him of such right.

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

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

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

**25A. Payment of undisbursed wages in cases of death of employed person.-**

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

- (a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
- (b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

(2) Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages-

- (a) are paid by the employer to the person nominated by the employed person; or
- (b) are deposited by the employer with the prescribed authority, the employers shall be discharged of his liability to pay those wages.

**26. Rule-making power.-**

(1) The appropriate Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in Sections 15 and 17.

(2) The appropriate Government may by notification in the Official Gazette make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may-

- (a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act prescribe the form thereof and the particulars to be entered in such registers or records
- (b) require the display in a conspicuous place or premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
- (c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them.
- (d) prescribe the manner of giving notice of the day on which wages will be paid;
- (e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;
- (f) prescribe the procedure for the imposition of fines under Section 8 and for the making of the deductions referred to in Section 10;
- (g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of Section 9;

- (h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;
- (i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of Section 12;

8[(i-a) prescribe the extent to which loans may be granted and the rate of interest payable thereon with reference to Section 12-A;

(i-b) prescribe the powers of Inspectors for the purposes of this Act;

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

(k) prescribe the amount of court-fees payable in respect of any proceedings under this Act;

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

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

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

(m) provide for any other matter which is to be or may be prescribed

(4) In making any rule under this section the State Government may provide that a contravention of the rules shall be punishable with fine which shall not be less than seven hundred fifty rupees but which may extend to one thousand and five hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of Section 23 of the General Clauses Act, 1897 shall not be less than three months from the date on which the draft of the proposed rules was published.

(6) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the

session<sup>8</sup>[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.]

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