

LABOUR CODE ON INDUSTRIAL RELATIONS BILL, 2015

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LABOUR CODE ON INDUSTRIAL RELATIONS BILL, 2015

A

BILL

to consolidate and amend the law relating to registration of Trade Unions, conditions of employment, investigation and settlement of disputes, and the matters related therewith or incidental thereto.

CHAPTER I PRELIMINARY

1. Short title, Extent, Commencement and Application -

- (1) This Code may be cited as the Labour Code on Industrial Relations, 2015.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may by notification appoint.

2. Definitions

(1) In this Code unless the context otherwise requires -

(a) 'appropriate Government' means –

(i) in relation to an establishment carried on by or under the authority of the Central Government, railways, mines, oil field, major ports, air transport service, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking, subsidiary companies set up by the principal undertakings or autonomous bodies owned or controlled by the Central Government including establishments of the contractors for the purposes of such establishment, corporation, other authority, public sector undertakings or the subsidiary companies, as the case may be, the Central Government;

(ii) in relation to any other establishment, the state Government, and

(iii) in relation to Trade Unions the State Government where the registered office of the Trade Union is situated.

(b) "average pay" means the average of the wages payable to a worker,

(i) in the case of monthly paid worker, in the three preceding calendar months;

(ii) in the case of weekly paid worker, in the four preceding weeks;

(iii) in the case of daily paid worker, in the preceding twelve full working days;

(c) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Industrial Tribunal or National Tribunal and includes an arbitration award made under section 61;

(d) "Certifying Officer" means any officer appointed by the appropriate Government, by notification, to perform all or any of the functions of a Certifying Officer under Chapter IV;

(e) "closure" means the permanent closing down of a place of employment or part thereof;

(f) "Conciliation Officer" means a conciliation officer appointed under this Code;

(g) "conciliation proceedings" means any proceedings held by a conciliation officer under this Code;

(h) "employer" means a person who employs directly or indirectly employees in his establishment and where the establishment is carried on by any department of Central Government or State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority and includes -

(i) in relation to an establishment which is a factory, the occupier of the factory as defined under clause (n) of section 2 of the Factories Act, 1948 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 (63 of 1948), the person so named; and

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

(i) 'executive' means the body by whatever name called, to which the management of the affairs of a trade union is entrusted;

(j) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; in the case of termination of individual worker by way of discharge, dismissal, retrenchment will also be termed as industrial dispute;

(k) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

PROVIDED that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,-

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

(l) "industry" means any systematic activity carried on by co-operation between an employer and his worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,-

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit;

but does not include-

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

(m) "insurance company" means an insurance company as defined in section 2 of the Insurance Act, 1938 (4 of 1938).

(n) "lay-off", means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a worker whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;

(o) "lock-out" means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

(p) "mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the mines Act, 1952 (35 of 1952);

(q) "National Tribunal" means a National Industrial Tribunal constituted under section 12;

(r) 'notification' means a notification published in the Official Gazette of India or the Official Gazette of a State, as the case may be, and the expression notify with its grammatical variation and cognate expressions shall be construed accordingly;

(s) "office bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;

(t) 'prescribed' means prescribed by rules or regulations made under this Code;

(u) "registered office" means that office of a trade union which is registered under this Code as the head office thereof;

(v) "registered trade union" means a trade union registered under this Code;

(w) "Registrar" means a Registrar of Trade Unions appointed by the state Government under section 4;

(x) "retrenchment" means the termination by the employer of the service of a worker for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the worker; or

(b) retirement of the worker on reaching the age of superannuation if the contract of employment between the employer and the worker concerned contains a stipulation in that behalf; or

(c) termination of the service of the worker as a result of the non-renewal of the contract of employment between the employer and the worker concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or

(d) termination of the service of a worker on the ground of continued ill-health;

(y) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and worker arrived at otherwise than in the course of conciliation proceeding where such

agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer;

(z) "standing orders" means rules relating to matters set-out in the First Schedule;

(za) "strike" means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal, under; a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment and includes the casual leave on a given day by the fifty per cent or more workers employed in an industry.

(zb) "trade union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workers and employers or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions:

Provided that this Code shall not affect -

- (i) any agreement between partners as to their own business; or
- (ii) any agreement between an employer and those employed by him as to such employment; or
- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

(zc) "Tribunal" means an Industrial Tribunal constituted under section

(zd) "unfair labour practice" means any of the practices specified in the Third Schedule;

(ze) '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 any service excluded from the computation of wages by a general or special order of the State 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(d).

(zf) "worker" means any person (except an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages as notified by Central Government from time to time per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

CHAPTER II **Bi-partite Forums**

3. Works Committee - (1) In the case of any industry in which one hundred or more workers are employed or have been employed on any day in the preceding twelve months, the employer shall constitute in the prescribed manner a Works Committee consisting of representatives of employer and workers engaged in the establishment, so however, that the number of representatives of workers on the Committee shall not be less than the number of representatives of the employer. The representatives of the workers shall be chosen in the prescribed manner from among the workers engaged in the establishment and in consultation with their Trade Union, if any, registered under Indian Trade Union Act 1926 of this Code, as a case may be.

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workers and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

4. Grievance Redressal Committee – (1) Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal Committees for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workers.

(3) The Chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workers alternatively on rotational basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the numbers of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workers to raise industrial dispute on the same matter under the provisions of this Code.

(6) The Grievance Redressal Committee may complete its proceedings within forty-five days of receipt of a written application by or on behalf of the aggrieved party.

(7) The worker who is aggrieved by the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the worker concerned.

CHAPTER III **Registration of Trade Unions**

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

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

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

(b) In the case of unions or association of workers in unorganised sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10% membership in an establishment or undertaking or industry shall not apply.

(2) In the case of a Trade Union of employers not less than 7 employers shall be required for making an application for registration.

6. Application for Registration - (1) Every application for registration of a Trade Union shall be accompanied by -

(a) a statement showing –

(i) the names, occupations and addresses of the persons making the application, the name and address of the establishment, undertaking or industry, and where the establishment has two or more units, branches or offices, the name and address of the unit, branch or office, wherein such persons are employed;

(ii) the name of the Trade Union and the address of its head office;

(iii) the title, name, age, residential address and occupation of each of the office bearers of the Trade Union;

(iv) in the case of a Trade Union, being a federation or central organisation of trade unions, the names, addresses of registered offices and registration numbers of the member Trade Unions;

(b) three copies of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;

(c) a copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and

(d) in the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

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

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

(3) The application referred to in sub-section (1) and the statement referred to in sub-section (2) may be sent to the Registrar electronically or otherwise.

7. Registrar of Trade Unions - (1) State Government may, by notification, appoint a person to be the Registrar of Trade Unions, and other person as Additional Registrar of Trade Union, Joint registrar of Trade Union and Deputy registrar of Trade Unions who shall exercise such powers and perform such duties of the Registrar as the appropriate Government may, by notification, specify from time to time.

(2) Subject to the provisions of any order made by the appropriate Government, where an Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated, such Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Deputy Registrar of Trade Unions, as the case may be, shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Code.

8. Power to call for further information or alternation of name - (1) The Registrar may call for further information from the persons making application for registration with a view to satisfy himself that the application made for registration of the Trade Union complies with the provisions of this Code and it is otherwise entitled for registration under this Code and may refuse to register the Trade Union until such information is furnished.

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

9. Provisions to be contained in the Constitution and Rules of the Trade Union

- (1) A Trade Union shall not be entitled to registration under this Code, unless the executive thereof is constituted in accordance with the provisions of this Code, and the rules of the Trade Union provide for the following matters, namely: -

- (a) the name of the trade union;
- (b) the whole of the objects for which the trade union has been established;
- (c) the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Code;
- (d) the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office bearers and members of the trade union;
- (e) the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the establishment, undertaking or industry, or units, branches or offices, of an establishment as the case may be, with which the trade union is connected, and also the admission of such number of honorary or temporary members, who are not such workers, as are not permitted under section 41 to be office bearers to form the executive of the trade union;

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

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

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

(2) Where the Registrar makes an order for registration of a trade union he shall issue a certification of registration to the applicant trade union in the prescribed form which shall be the conclusive evidence that the trade union has been registered under this Code.

(3) If the Registrar has issued a registration certificate to a trade union he shall enter the name and other particulars of the trade union in a register maintained in this behalf in the prescribed form.

11. Deemed Registration in Certain Cases - (1) Every trade union registered under the Trade Unions Act, 1926 having valid registration before the commencement of this Code shall be deemed to be registered under this Code:

(2) If the Registrar fails to issue certificate of registration or does not communicate any defects in the application for registration within sixty days, the registration shall automatically deemed to have been issued.

12. Cancellation of Registration - (1) Certificate of registration of a trade union may be withdrawn or cancelled by the Registrar -

(a) on the application of the trade union to be verified in such manner as may be prescribed;

(b) if the union had obtained the registration by misrepresentation or fraud or mistake;

(c) if the union has failed to maintain the accounts or to submit the annual return in the prescribed manner or within the prescribed period or the annual return submitted by it is false or defective and the defect is not rectified within the prescribed period;

(d) if the trade union has wilfully after the notice from the Registrar contravened any provision of this Code or rules made thereunder or has contravened its constitution and rules;

(e) if the trade union has not held its elections as prescribed under this Code within the prescribed period;

(f) if the trade union has made or allowed to continue any provision in its constitution and rules which is inconsistent with this Code or rules made thereunder or has rescinded any of its rules providing for any matter, provision for which is required to be made by section 22.

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

(g) if the trade union no longer fulfills the requirements of registration as prescribed under section 18.

(2) A certificate of registration of a trade union shall be cancelled by the Registrar where a Tribunal has made an order for cancellation of registration of such union.

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

13. Appeal against Non-Registration or Cancellation of Registration - (1) Any person aggrieved by the refusal of the Registrar to grant registration to a trade union under section 23 or by cancellation of a certificate of registration under section 26 or if the Registrar has not acted within 60 days on the application for registration may within such period as may be prescribed prefer an appeal to the Industrial Tribunal whose decision shall be final.

(2) The Industrial Tribunal may after giving the parties concerned an opportunity to be heard dismiss the appeal or pass an order directing the Registrar to register the trade union and to issue a certificate of registration or set aside the order of cancellation of certificate of registration as the case may be and forward a copy of the order to the Registrar.

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

15. Change in Address and other Particulars of the Trade Union - It shall be incumbent on a trade union to inform the Registrar by a registered post if any change in the particulars of the trade union as contained in section 18 and 22 has occurred or there is change in the address of the registered office of the trade union within 14 days of occurring of such change.

16. Incorporation of a Registered Trade Union - Every registered trade union shall be a body corporate by the name under which it is registered, and shall have

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

17. Certain Acts not to Apply to Registered Trade unions - The following Acts, namely: –

- (a) the Societies Registration Act, 1860 (21 of 1860);
- (b) the Cooperative Societies enactment of the Central Government and similar enactments of the State Governments for the time being in force, and
- (c) the Companies Act, 2013 (18 of 2013) shall not apply to any registered trade union and the registration of any such trade union under any such Code shall be void.

18. Objects on Which General Funds of a Trade Union may be spent - The general funds of a registered trade union shall not be spent on any objects other than the following, namely: -

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

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

18A. Constitution of a separate fund for political purposes - (1) A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

(2) The objects referred to in sub-section (1) are:

- (a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority, before, during or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under the Constitution or for any local authority; or

(d) the registration of electors or the selection of a candidate for any legislative body constituted under the Constitution or for any local authority ;
or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

(3) In its application to the State of Jammu and Kashmir, references in sub-section(2) to any legislative body constituted shall be construed as including references to the Legislature of that State.

(4) No member shall be compelled to contribute to the fund constituted under sub-section (1); and a member who does not contribute to the said fund shall not be excluded from any benefits of the trade union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the trade union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the trade union.

19. Immunity from Civil Suit in Certain Cases - (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of an individual dispute, industrial dispute or trade union dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he desires.

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

20. Criminal Conspiracy in Industrial Disputes - No office bearer or member of the registered trade union shall be liable to punishment under sub section (2) of Section 120-B of Indian Penal Code (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Section 32, unless the agreement is an agreement to commit an offence.

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

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

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

23. Rights of Minor to Membership of Trade Union - Any person who has attained the age of fifteen years may be a member of a registered trade union subject to any rules of the trade union, and may, subject to as aforesaid enjoy all

the rights of a member and execute all instruments and given all acquittances necessary to be executed or given under the rules.

24. Membership Fee and Mode of Its Collection - (1) The subscriptions payable by the members of the trade union shall be –

(i) in case of a trade union of persons employed in agricultural operations or rural establishments or workers employed in the establishment in the unorganised sector not less than five rupees per month per member; and

(ii) in other cases not less than one rupee per month per member;

(2) Workers who are members of a trade union shall give a written authorisation in the prescribed manner in favour of the trade union of which they are members authorising the employer to deduct their subscription from their wages and to pay that over to the trade union concerned in the prescribed manner.

(3) Where any worker is not a member of any trade union he shall be liable to pay subscription to the welfare fund established by the State Government for securing welfare of workers in general at a rate equal to the membership fee of the sole negotiating agent or the highest subscription of any union included in the negotiating college and where there is no general fund of the State Government to the fund established by employer with the approval of the State Government for the welfare of workers of the establishment or undertaking.

25. Disqualification of Office Bearers of Trade Unions - (1) A person shall be disqualified for being chosen as, and for being, a member of the executive or any other office bearer of a registered trade union if—

(i) he has not attained the age of 18 years;

(ii) he has been convicted by a court in India of any offence involving moral turpitude and sentenced to imprisonment unless a period of 5 years has elapsed since his release after undergoing such imprisonment;

(iii) he is already office bearer of 10 trade unions;

(iv) the Industrial Tribunal has directed that he shall be disqualified for being chosen or for being office bearer of a trade union for a period specified therein.

26. Adjudication of Disputes of Trade Unions - (1) Where a dispute arises between –

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

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

- (i) where the dispute is between one trade union and another by the principal office bearer of any one of the trade union; or
- (ii) where the dispute is between a worker and a trade union on account of non admission as a member by the worker himself; or
- (iii) where the dispute is between one group of members and another groups of members of the union or between one or more members of the union and the union, by any person who is a member of the trade union; or
- (iv) where a dispute is in respect of a trade union which is a federation of trade unions by principal office bearer authorised in this behalf by the trade union.

(2) Notwithstanding anything contained in sub section (1) where the appropriate Government is of the opinion that any trade union dispute is of considerable importance the appropriate Government may make an application to the Industrial Tribunal for seizing the trade union dispute in adjudication.

(3) Notwithstanding anything contained in sub section (1) and sub section (2) where the Central Government is of the opinion that the dispute involves any question of national importance or the party to the dispute is a registered trade union having offices in more than one state the office bearer of the trade union, the Central Government may make an application to the Tribunal for seizing the trade union dispute in adjudication for resolution of such dispute.

(4) The order or award of of the Tribunal shall be final.

(5) No civil court shall have power to entertain any suit or other proceedings in relation to any dispute referred to in sub section (1).

27. Proportion of Office Bearers not engaged in the Establishment or Industry-

(1) Not more than two of the office bearers of every registered trade union in an unorganised sector shall be the persons who are not actually engaged or employed in the establishment or industry with which the trade union is connected:

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

Provided further that out of President and Secretary of such registered company at least the President or the Secretary shall be held by the worker employed in such sector.

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

(2) Save as otherwise provided in sub-section (1), all office bearers of a registered trade union shall be persons actually engaged or employed in the establishment or industry with which the trade union is concerned.

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

28. Change of Name - Any registered trade union may, with the consent of not less than two thirds of the total number of its members and subject to the provisions of Section 46, change its name.

29. Amalgamation of Trade Unions - Any two or more registered trade unions may be amalgamated as one trade union with or without dissolution or division of the funds of such trade unions or either or any of them, provided that the votes of

at least one-half of the members of each or every such trade union entitled to vote are recorded, and that at least 60% of the votes recorded are in favour of the proposal.

30. Notice of Change of Name or Amalgamation - (1) Notice in writing of every change of name and of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the trade union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every trade union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated trade union is situated in a different state to the Registrar of such state.

(2) If the proposed name is identical with that by which any other existing trade union has been registered or in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either trade union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub section (2) the Registrar shall, if he is satisfied that the provisions of this Code in respect of change of name have been complied with, register the change of name in the register referred to in sub-section (3) of section 23, and the change of name shall have effect from the date of such registration.

(4) The Registrar of the State in which the head office of the amalgamated trade union is situated shall, if he is satisfied that the provisions of this Code in respect of amalgamation have been complied with and that the trade union formed thereby is entitled to registration under section 46, register the trade union and the amalgamation shall have effect from the date of such registration.

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

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

32. Dissolution - (1) When a registered trade union is dissolved, notice of the dissolution signed by seven members and by the secretary of the trade union shall, within fourteen days of the dissolution, be sent to the Registrar, and such Union shall be deregistered by him if he is satisfied that the dissolution has been affected in accordance with the rules of the trade union, and the dissolution shall have effect from the date of such deregistration.

(2) Where the dissolution of a registered trade union has been registered and the rules of the trade union do not provide for the distribution of funds of the trade union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

33. Annual Returns - (1) Every registered trade union shall forward annually to the Registrar, on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of such registered trade union during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union, existing on such 31st day of December.

(2) The general statement shall be prepared in such form, and shall contain such particulars, as may be prescribed.

(3) Together with the general statement referred to in sub-section (1) every registered trade union shall forward to the Registrar a statement showing all changes of office bearers made by the trade union during the year to which such general statement relates, along with a copy of the rules of the trade union corrected up to the date of despatch thereof to the Registrar.

(4) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.

(5) For the purpose of examining the documents referred to in sub-sections (1), (3) and (4), the Registrar or any officer authorised by him by general or special order, may at all reasonable time inspect the certificate of registration, account books,

registers and other documents, relating to a trade union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than fifteen kilometres from the registered office of such trade union.

CHAPTER IV STANDING ORDERS

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

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

(1) The provisions of this section and sections 36, 37 and 44 shall apply to all such establishments or undertakings as have employed not less than 100 or more workers on any day during preceding 12 months.

Provided that where the provisions of this section and sections 36, 37 and 44 have become applicable to an establishment they shall continue to apply to such establishment notwithstanding the fact that less than 100 workers are employed at any time thereafter.

(2) The central Government shall make rules and Model Standing Orders to provide for the following matters, namely: -

(a) classification of workers, that is to say, whether permanent, temporary, apprentice, probationers, badlies;

(b) conditions of service of workers, including matters relating to the hours of work, holidays, pay day, wage rates, attendance and late coming, entry and exit from specified gates, liability for search, closing and opening or reopening of sections and shops of establishment, temporary stoppage of work and rights and obligations of

employer and workers arising therefrom, issue of orders of appointment of workers, procedure to be followed by workers in applying for, and the authority which may grant, leave and holidays and issue of service certificate;

(c) acts of misconduct on the part of the workers, classification between minor and major acts of misconduct, enquiry to miscondacts, suspension pending enquiry, graded punishment such as suspension, stoppage of increment, reduction to lower rank, removal or dismissal from service depending on the nature and gravity of misconduct;

(d) the list of miscondacts which shall be either exhaustive or be treated as illustrative and should include inter-alia sexual harassment of female workers, go slow, work rule, refusal to undergo training organised by employer at his cost without sufficient cause;

(e) superannuation of workers;

(f) shift working of workers,

(g) method of filling vacancies, transfers, confirmation, secrecy to be maintained by the workers, supply of copies of standing orders;

(h) production norms and productivity, multi stuffing, job enrichment

(i) medical aid in case of accident; and

(j) any other matter as may be deemed appropriate by the Central Government.

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

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

Certification - (1) The employer shall prepare draft the standing orders based on the rules and model standing orders and on any other matter considered necessary by him for incorporation in the standing orders for his establishment or undertaking considering the nature of activity in his establishment or undertaking provided such provision is not inconsistent with any of the provision of this Code and covers every matters set out in the Schedule and discuss and decide the same by agreement with the negotiating agent and forward a copy of the same for being certified by the certifying officer.

(2) Where no agreement is reached between the employer and the negotiating agent on the standing orders proposed by the employer in the draft or where there is no recognised negotiating agent in the establishment or undertaking the employer shall forward the draft of proposed standing orders to the certifying officer appointed by appropriate Government in respect of the establishment or in case of an undertaking the certifying officer appointed by the appropriate Government in respect of the Head office of the undertaking requesting the certifying officer to intervene in the matter.

(3) Where the employer has requested the certifying officer to intervene in the matter, as mentioned in sub-section (2), the certifying officer shall issue notice to the negotiating agent, if any, of the establishment or undertaking and where there is no certified negotiating agent to all the unions operating in the establishment or undertaking for seeking their comments in the matter and after receipt of their comments give an opportunity to be heard to the negotiating agent or as the case may be to the unions and decide whether or not any modification or addition to the draft standing orders is necessary to render the draft standing order certifiable and shall make an order in writing in this regard.

(4) Standing orders shall be certifiable under this Code if -

- (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and
- (b) the standing orders are otherwise in conformity with the provisions of this Code,

and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

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

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

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

(6) The Certifying Officer shall certify the draft standing orders under sub-section (3) and, after making any modification therein under sub-section (5), as the case may be, and shall within seven days thereafter send copies of the standing orders so certified authenticated in the prescribed manner to the employer and to the trade union or other prescribed representatives of the workers.

37. Appeals - An employer or the negotiating agent or where there is no negotiating agent in an establishment or undertaking any union if not satisfied with the order of the certifying officer given under sub section (3) of section 36 may file an appeal within 60 days of receipt of the order of the certifying officer to the Industrial Tribunal having jurisdiction over the establishment.

38. Date of operation of standing orders - Standing orders or modified standing orders, as the case may be, shall, unless an appeal is preferred under section 37, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (6) of section 36, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent.

39. Register of standing orders - A copy of all standing orders as finally certified under this Code shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

40. Posting of standing orders - The text of the standing order as finally certified under this Code shall be prominently posted by the employer in English and in the language understood by the majority of his workers on special boards to be maintained for the purpose at or near the entrance through which the majority of

the workers enter the industrial establishment and in all departments thereof where the workers are employed.

41. Duration and modification of standing orders - (1) Standing orders certified under sub-section (6) of section 36 shall not, except on agreement between the employer and the workers, or a trade union or other representative body of the workers be liable to be modification or further modifications until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) Subject to the provisions of sub-section (1), an employer or worker or a trade union or other representative body of the workers may apply to the Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workers or a trade union or other representative body of the workers, a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Code shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

42. Oral evidence in contradiction of standing orders not admissible - No oral evidence having the effect of adding to or otherwise varying or contradicting standing order as finally certified under this chapter shall be admitted in any Court.

43. Temporary application of model standing orders - (1) Notwithstanding anything contained in sections 36 to 42, for the period commencing on the date on which this Code becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Code come into operation under section 38 in that establishment, the prescribed model standing

order shall be deemed to be adopted in that establishment, and the provisions of section 40 and section 44 shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

44. Interpretation, etc. of Standing Orders - If any question arises as to the application, or interpretation, of the Standing orders certified under sub-section (6) of section 36 or the modification made therein by an agreement entered into under sub section (4) of that section, the employer or any worker or workers concerned or the negotiating agent in relation to the workers employed in the establishment or undertaking, wherein the question has arisen, may apply to the Industrial Tribunal, within the local limits of whose territorial jurisdiction such establishment or the office, section or branch of the undertaking is situated, to decide the question and the Industrial Tribunal shall, after giving all the parties concerned a reasonable opportunity of being heard, decide the question and such decision shall be final.

45. Time Limit for Completing Disciplinary Proceedings and Liability to Pay Subsistence Allowance - (1) Where any worker is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, such investigation or enquiry, or where there is an investigation followed by an enquiry both the investigation and enquiry shall be completed ordinarily within a period of ninety days from the date of suspension.

(2) The Standing Orders certified under sub section (1) or sub section (3) of section 36 or modified under sub-section (4) of that section shall provide that where a worker is suspended as aforesaid the employer in relation to an industrial establishment or undertaking shall pay to such worker employed in such establishment or undertaking subsistence allowance at the rates specified in sub-section (3) of this section for the period during which such worker is placed under suspension pending investigation or enquiry into complaints or charges of misconduct against such worker.

(3) The amount of subsistence allowance payable under sub-section (2) shall be-

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

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

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

46. Power to exempt - The appropriate Government may, by notification, exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this chapter.

CHAPTER V NOTICE OF CHANGE

47. Notice of change - No employer, who proposes to effect any change in the conditions of service applicable to any worker in respect of any matter specified in the Second Schedule, shall effect such change,-

(a) without giving to the workers likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workers likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

48. Terms of Employment, etc. to remain unchanged under Certain

Circumstances - (1) Where an industrial dispute pertaining to an establishment or undertaking is already pending before a Conciliation Officer or an Arbitrator or a Industrial Tribunal or National Tribunal as the case may be, with regard to matters not covered by the notice of change issued by an employer under section 48, no employer shall –

(a) in regard to such matter connected with the dispute alter to the prejudice of the workers concerned in such dispute the terms of employment or conditions of labour applicable to them immediately before the commencement of the proceedings of such dispute ; or

(b) for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise any worker concerned with such dispute, save with the express permission in writing of the Conciliation Officer, Arbitrator or Industrial Tribunal or National Tribunal before which the proceeding is pending.

(2) During the pendency of any proceeding referred to in sub section (1) the employer may, subject to the other provisions of this Code –

(a) alter, in regard to any matter not connected with the dispute, the terms of employment or conditions of labour applicable to the workers concerned immediately before the commencement of the proceedings of such dispute; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workers concerned:

Provided that no such workers shall be discharged or dismissed unless they have been paid wages for one month and an application has been made by the employer

to the Conciliation Officer, Arbitrator or Industrial Tribunal or National Tribunal before which the dispute is pending for the approval of the action to be taken by the employer and such application is approved.

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

49. Power of Government to exempt - Where the appropriate Government is of opinion that the application of the provisions of section 47 to any class of industrial establishments or to any class of worker employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of worker employed in any industrial establishment.

CHAPTER VI VOLUNTARY REFERENCE OF DISPUTES TO ARBITRATION

50. Voluntary reference of disputes to arbitration - (1) Where any industrial dispute exists or is apprehended and the employer and the workers agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(2) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are

equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Code.

(3) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(4) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(5) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (4), issue a notification in such manner as maybe prescribed; and when any such notification is issued, the employers and workers who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(6) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(7) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (5), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which maybe in existence on the date of the reference.

(8) Nothing in the Arbitration and Conciliation Act, 1996 (26 of 1996), shall apply to arbitrations under this section.

CHAPTER VII PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

51. Conciliation officers – (1) The appropriate Government may, by notification, appoint such number of persons, as it thinks fit to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

52. Tribunal - (1) The appropriate Government may, by notification, constitute one or more Tribunal for the adjudication of industrial disputes and for performing such other functions as may be assigned to them under this Code.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be, qualified for appointment as the Presiding Officer of a Tribunal, unless -

- (a) he is, or has been, a judge of a High Court; or
- (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
- (c) he has held any judicial office in India for not less than seven years; or
- (d) he has been the Presiding Officer of a Industrial Tribunal constituted under any State Act for not less than five years; or
- (e) he is or has been a Grade III Officer of Central Labour Service or Joint or Deputy Commissioner of the State Labour Department , having a degree in law and at least seven years' experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer; or
- (f) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.

53. Application to the Tribunal – (1) Any person aggrieved may file application in the prescribed form in the Tribunal having jurisdiction -

- (i) for the adjudication of the industrial dispute within three years from the date on which the industrial dispute arises; or
- (ii) for the adjudication any issue before the conciliation officer under this Code within 45 days from the date on which conciliation proceedings began under this Code:

Provided that the Tribunal may entertain any application filed after the limitation specified under this sub-section, if the applicant satisfies the Tribunal that such delay has been caused due to sufficient reason.

(2) Any application in sub-section (1) shall be disposed of by the Tribunal after giving notice to the opposite party in the prescribed manner and after giving opportunity to the parties the opportunity of being heard and endeavour shall be made to dispose of the application and give award within three months from the date of its filing in the Tribunal.

54. National Tribunals - (1) The Central Government may, by notification, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal unless he is, or has been, a Judge of a High Court.

55. Disqualifications for the Presiding Officers of Tribunal and National Tribunals - No person shall be appointed to, or continue in, the office of the Presiding Officer of a Tribunal or National Tribunal, if-

- (a) he is not an independent person; or
- (b) he has attained the age of sixty-five years.

56. Filling of vacancies - If, for any reason a vacancy (other than a temporary absence) occurs in the office of the Presiding Officer of a Tribunal or National Tribunal in the case of a National Tribunal or Tribunal constituted by the Central Government, the Central Government and in any other case, the appropriate Government shall appoint another person in accordance with the provisions of this Code to fill the vacancy, and the proceeding may be continued before the Tribunal, National Tribunal as the case may be, from the stage at which the vacancy is filled.

57. Procedure and Powers of Conciliation Officers, Tribunal and National Tribunals -

(1) Subject to any provisions of this Code and rules that may be made in this behalf, an arbitrator, Conciliation Officer, Tribunal or National Tribunal shall follow such procedure as the arbitrator, Conciliation Officer, Tribunal or National Tribunal may deem fit.

(2) A conciliation officer, the Presiding Officer of a Tribunal or National Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Conciliation officer, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed, and every inquiry or investigation by Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him or it under this Code, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of enforcing the attendance of any person and examining him or of compelling the production of documents .

(5) Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as an assessor or assessors to advise it in the proceeding before it.

(6) All conciliation officers and the presiding officers of a Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(7) Subject to any rules made under this Code the costs of, and incidental to, any proceeding before Tribunal or National Tribunal shall be in the discretion of that Tribunal or National Tribunal and the Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and, subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same manner as an arrear of land revenue.

(8) Every Tribunal or National Tribunal shall be deemed to be civil court for the purposes of sections 345, 346, and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

(9) Every award made, order issued or settlement arrived at by or before a Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order XXI of the Code of Civil Procedure, 1908 and for that purpose the Tribunal or National Tribunal shall be deemed to be a Civil Court.

(10) The Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it and such Court shall endeavour to execute such award, order or settlement within six months from the date on which such award, order or settlement is received by such court.

58. Powers of Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of worker - Where an industrial dispute relating to the discharge or dismissal of a worker has been filed in the Tribunal relating to discharge or dismissal of a worker or an industrial dispute relating to the discharge or dismissal of a worker has been referred to National Tribunal for adjudication and, in the course of the adjudication proceedings, the Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the worker on such terms and conditions, if any, as it thinks fit, or give such other relief to the worker including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

PROVIDED that in any proceeding under this section the Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

59. Duties of conciliation officers - (1) Where any industrial dispute exists or is apprehended and a notice under section 71 has been given, the Conciliation officer shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the parties a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof.

60. Duties of National Tribunals - Where an industrial dispute has been referred by the Central Government to a National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or further period extended by the Central Government submits its award to such Government.

61. Form of report or award - The award of a Tribunal or National Tribunal on reference shall be in writing and shall be signed by Presiding Officer.

62. Publication of reports and awards - (1) Every arbitration award and every award of Industrial Tribunal or National Tribunal on reference shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of appeal under this Code and the provisions of section 66, the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever.

63. Commencement of the award - (1) An award (including an arbitration award) under this Code become enforceable on the expiry of thirty days from the date of its publication under section 62:

Provided that-

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Tribunal in appeal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it shall be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 62, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from

such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.

64. Payment of full wages to worker pending proceedings in higher courts -

Where in any case, a Tribunal or National Tribunal by its award directs reinstatement of any worker and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such worker, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the worker had not been employed in any establishment during such period and an affidavit by such worker had been filed to that effect in such court:

PROVIDED that where it is proved to the satisfaction of the High Court or the Supreme Court that such worker had been employed and had been receiving adequate remuneration during any such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part, as the case may be.

65. Persons on whom settlements and awards are binding - (1) A settlement arrived at by agreement between the employer and worker otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Code or an arbitration or an award of a Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the arbitrator, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workers, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

66. Period of operation of settlements and awards - (1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 63:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government, may, before expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or part of it to a Tribunal if the award was that of a Tribunal in appeal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Tribunal on such reference shall be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

67. Persons on Whom Awards are Binding - Every award of the Tribunal in any proceeding under this Chapter shall be binding –

(a) on the parties to the proceeding; and

(b) in the case of a party to the proceeding being an employer, on his successors or assignees in respect of the establishment to which such proceeding relates.

68. Recovery of Money under an Award - (1) Where any money is due to a worker from an employer under a settlement or an award or under the provisions of

Chapter IX or Chapter X, the worker himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the worker, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

PROVIDED that every such application shall be made within one year from the date on which the money became due to the worker 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.

(2) Where any worker is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Code, be decided by such Tribunal as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

PROVIDED that where the presiding officer of a Tribunal considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Tribunal may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Tribunal and the Tribunal shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Tribunal shall be forwarded by it to the appropriate Government and any amount found due by the Tribunal may be recovered in the manner provided for in sub-section (1).

(5) Where workers employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workers.

69. Commencement and conclusion of proceedings - (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out is received by the Conciliation Officer.

(2) A conciliation proceeding shall be deemed to have concluded-

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or;

(c) when a reference is made to a National Tribunal, under this Code, then, during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator or before a Tribunal or National Tribunal under this Code shall be deemed to have commenced on the date of filing application or appeal or on the date of reference the reference of the dispute for arbitration or adjudication, as the case maybe, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable.

70. Certain matters to be kept confidential - There shall not be included in any report or award under this Code, any information obtained by a Conciliation Officer, Industrial Tribunal or National Tribunal or an arbitrator, in the course of any investigation or inquiry as to a trade union or as to any individual business (whether

carried on by a person, firm or company) which is not available otherwise than through the evidence given before such officer, Industrial Tribunal, National Tribunal or arbitrator, if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Industrial Tribunal, National Tribunal or arbitrator, as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or the presiding officer of the Industrial Tribunal or National Tribunal or the arbitrator or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be:

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code (45 of 1860).

CHAPTER VIII STRIKES AND LOCKOUTS

71. Prohibition of Strikes and Lockouts - (1) No worker employed in an industrial establishment shall go on strike in breach of contract-

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (e) during the pendency of proceedings before a Industrial Tribunal or National Tribunal and two months, after the conclusion of such proceedings;
- (f) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 50; or

(g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(2) No employer of an industrial establishment shall lock-out any of his workers-

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid. or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(e) during the pendency of proceedings before a Industrial Tribunal, Tribunal or National Tribunal and two months, after the conclusion of such proceedings;

(f) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 50; or

(g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as maybe prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

(7) No worker who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such worker shall declare a lock-out.

(8) No worker shall stage, encourage or instigate such forms of coercive actions as willful, "go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff during conciliation proceedings and no worker shall stage demonstrations at the residence of the employers or the managerial staff members during conciliation proceedings and adjudication proceedings before the Tribunal and National Tribunal.

72. Illegal Strikes and Lockouts - (1) A strike or lock-out shall be illegal if-

(i) it is commenced or declared in contravention of section 71; or

(ii) it is continued in contravention of an order made under sub-section (7) of Section 50.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the filing of the application relating to such industrial dispute in the Tribunal or of the reference of such industrial dispute to an arbitrator or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (7) of section 50.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

73. Prohibition of financial aid to illegal strikes or lock outs - No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

**CHAPTER IX
LAY OFF, RETRENCHMENT AND CLOSURE**

74. Application of the Chapter- (1) This chapter shall not apply to industrial establishments to which Chapter X applies, or-

(a) to industrial establishments in which less than fifty workers on an average per working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

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

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

(a) for a period of one year, if the worker during a period of twelve calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a worker employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the worker during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than -

- (i) ninety five days in the case of worker employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case

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

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

76. Rights of Workers Laid off for Compensation etc. - Whenever a worker (other than a *badli* worker or a casual worker) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

PROVIDED that if during any period of twelve months, a worker is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the worker and the employer:

PROVIDED FURTHER that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the worker in accordance with the provisions contained in section 79 at any time after the expiry of the first forty five days of the lay off and when he does so, any compensation paid to the worker for

having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchments

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

77. Duty of an employer to maintain muster rolls of workers -

Notwithstanding that workers in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workers who may present themselves for work at the establishment at the appointed time during normal working hours.

78. Workers not entitled for compensation in certain cases - No compensation shall be paid to a worker who has been laid-off-

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the worker, provided that the wages which would normally have been paid to the worker are offered for the alternative employment also;

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

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

79. Conditions precedent to retrenchment of workers - No worker employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the worker has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice;

(b) the worker has been paid, at the time of retrenchment, compensation which shall be equivalent to forty five days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification.

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

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

82. Compensation to Workers in Case of Transfer of Establishment - Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer, every worker who has been in continuous service for not less than one year in that establishment immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 79 as if the worker had been retrenched:

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

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

83. Sixty days' notice to be given of intention to close down any undertaking- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

PROVIDED that nothing in this section shall apply to –

- (i) an industrial establishment in which less than 50 workers are employed or were employed on any day in the preceding 12 months.
- (ii) an industrial establishment set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

84. Compensation to workers in case of closing down of undertakings - (1) Where an undertaking is closed down for any reason whatsoever, every worker who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 79, as if the worker had been retrenched:

PROVIDED that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the worker under clause (b) of section 79, shall not exceed his average pay for three months:

Explanation: An industrial establishment which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisputed off stocks; or

(iii) the expiry of the period of the lease or license granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(2) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no worker referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 79, if-

(a) the employer provides the worker with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the worker has not been interrupted by such alternative employment; and

(c) the employer is , under the terms of such alternative employment or otherwise, legally liable to pay to the worker, in the event of his

retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(3) For the purposes of sub-sections (1) and (2), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

(4) Where any undertaking set up for the construction of buildings, bridges, roads, canals, dams, or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set up, no worker employed therein shall be entitled to any compensation under clause (b) of section 79, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

CHAPTER X SPECIAL PROVISIONS RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

85. Application of this Chapter - (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workers were employed on an, average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

86. Prohibition of lay-off - (1) No worker (other than a '*badli*' worker or a casual worker) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by

that Government by notification (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workers concerned in the prescribed manner.

(3) Where the workers (other than '*badli*' workers or casual workers) of industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workers and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workers.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any worker, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workers had been laid-off and the workers shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

(10) The provisions of section 76 (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation : For the purposes of this section, a worker shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience

and can be done by the worker) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the worker having regard to the facts and circumstances of his case, subject to the condition that the wages which would normally have been paid to the worker are offered for the alternative appointment also.

87. Conditions precedent to retrenchment of workers -(1) No worker employed in any industrial establishment to which this Chapter applies , who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the worker has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workers concerned in the prescribed manner.

(3) Where an application for permission under sub-section(1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workers and all other relevant factors, by order and

for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workers.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any worker, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the worker and the worker shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall

not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every worker who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to forty five days average pay for every completed year of continuous service or any part thereof in excess of six months.

88. Procedure for closing down an undertaking - (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workers in the prescribed manner:

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

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workers and the persons interested in such closure may, having regards to the, genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workers.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant

permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any worker, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

PROVIDED that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workers shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every worker who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive

compensation which shall be equivalent to forty five days average pay for every completed year of continuous service or any part thereof in excess of six months.

CHAPTER XI MISCELLANEOUS

89. Prohibition of unfair labour practice - No employer or worker or a trade union, whether registered under this Code, or not, shall commit any unfair labour practice specified in the Vth Schedule.

90. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings (1) During the pendency of any conciliation proceeding before a conciliation officer or of any proceeding before an arbitrator or a Industrial Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workers concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workers concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending;

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a worker concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the worker-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that worker immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that worker:

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

(3) Notwithstanding anything contained in sub-section (2) no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected worker concerned in such dispute-

(a) by altering, to the prejudice of such protected worker, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected worker, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation: For the purposes of this sub-section a "protected worker" in relation to an establishment, means a worker who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workers to be recognized as protected workers for the purposes of sub-section (3) shall be one per cent of the total number of workers employed therein subject to a minimum number of five protected workers and a maximum number of one hundred protected workers and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workers among various trade unions, if any, connected with the establishment and the manner in which the workers may be chosen and recognized as protected workers.

(5) Where an employer makes an application to conciliation officer, an arbitrator, a Industrial Tribunal or National Tribunal under the proviso to sub-section (2) for

approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further periods as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

91. Special provision for adjudication as to whether conditions of service, etc, changed during pendency of proceedings - Where an employer contravenes the provisions of section 95 during the pendency of proceedings before a conciliation officer, an arbitrator, Industrial Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner-

(a) to such conciliation officer, and the conciliation officer shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Industrial Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Industrial Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Code and shall submit his or its award to the appropriate Government and the provisions of this Code shall apply accordingly.

92. Power to transfer certain proceedings - (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Code pending before a Industrial Tribunal or National Tribunal and transfer the same to another Industrial Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Industrial Tribunal or National Tribunal to which the proceedings is so transferred may, subject to special directions

in the order of transfer, proceed either de novo or from the stage at which it was so transferred:

Provided that where a proceeding before a Tribunal or National Tribunal, the proceeding may also be transferred to a Industrial Tribunal.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorized by the appropriate Government, may transfer any proceeding under section 90 or section 91 pending before it to any one of the Industrial Tribunal specified for the disposal of such proceedings by the appropriate Government by notification and the Industrial Tribunal to which the proceedings is so transferred shall dispose of the same.

93. Recovery of money due from an employer - (1) Where any money is due to a worker from an employer under a settlement or an award or under the provisions of Chapter IX and X, the worker himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the worker, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the worker 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 with in the said period.

(2) Where any worker is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Code, be decided by such Industrial Tribunal as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Industrial Tribunal considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Industrial Tribunal may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Industrial Tribunal and the Industrial Tribunal shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Industrial Tribunal shall be forwarded by it to the appropriate Government and any amount found due by the Industrial Tribunal may be recovered in the manner provided for in sub-section (1).

(5) Where workers employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workers.

Explanation: In this section "Industrial Tribunal" includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

94. Protection of persons - (1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Code shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of dispute in any manner shall apply to any proceeding for enforcing any right or exemption

secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

95. Representation of parties - (1) A worker who is a party to a dispute shall be entitled to be represented in any proceeding under this Code by-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union by any member of the executive or other office bearer of any trade union connected with, or by any other worker employed in the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Code by-

(a) an officer of an association of employer of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is, affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Code or in any proceedings before a Court.

(4) In any proceeding before a Industrial Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Industrial Tribunal or National Tribunal, as the case may be.

96. Power to remove difficulties - (1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Industrial Tribunal or National Tribunal as it may think fit.

(2) The Industrial Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

97. Power to exempt - Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workers employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification, exempt, conditionally or unconditionally such establishment or undertaking or, class of establishments or undertakings from all or any of the provisions of this Code.

98. Protection of action taken under the Code - No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Code or any rules made thereunder.

99. Power to make rules - (1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Code.

(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) additional matters to be included in the First Schedule, and the procedure to be followed in modifying standing orders certified under this Code in accordance with any such addition;
- (b) set out model standing orders for the purposes of this Code;
- (c) the procedure of Certifying Officers and appellate authorities;
- (d) the fee which may be charged for copies of standing orders entered in the register of standing orders;
- (e) the powers and procedure of conciliation officer, Court, Industrial Tribunal and National Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;
- (f) the form of arbitration agreement, the manner in which it may be signed by the parties, the manner in which a notification may be issued, the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;
- (g) the appointment of assessors in proceedings under this Code;
- (h) the constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties;
- (i) the allowances admissible to members of Courts and presiding officers of Industrial Tribunal and National Tribunals and to assessors and witnesses;
- (j) the ministerial establishment which may be allotted to a Court, Industrial Tribunal or National Tribunal and the salaries and allowances payable to members of such establishments;

(k) the manner in which and the person by and to whom notice of strike or lock-out may be given and the manner in which such notice shall be communicated;

(l) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Code before a Court, Industrial Tribunal or National Tribunal;

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

Provided that before any rule are made under clause (a), representatives of both employers and workers shall be consulted by the appropriate Government.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding five thousand rupees.

(4) 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.

(5) 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 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.

100. Power to make regulations - (1) The appropriate Government may make regulations for the purpose of carrying into effect the provisions of this Code.

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

(a) the manner in which trade unions and the rules of trade unions shall be registered and the fees payable on registration;

(b) the transfer of registration in the case of any registered trade union which has changed its head office from one State to another ;

(c) the manner in which, and the qualifications of persons by whom, the accounts of registered trade unions or of any class of such unions shall be audited;

(d) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections, and

(e) any matter which is to be or may be prescribed.

(3) Every notification made by the Central Government under this Code and every regulation made by it 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 notification or regulation, or both Houses agree that the notification or regulation should not be made, the notification or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; aforesaid, both Houses agree in making a modification in the notification or regulation, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or regulation.

(4) Every notification made by the State Government under this Code and every regulation made by it under this section shall be laid, as soon as may be after it is made, before the State Legislature.

101. Delegation of powers - The appropriate Government may, by notification, direct that any power exercisable by it under this Code or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-

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

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

102. Power to amend Schedules - (1) The Central Government may, by notification, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(2) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.

CHAPTER XII PENALTIES

103. Penalty - (1) An employer who contravenes the provisions of section 86 or section 87 or section 88 shall be punishable with a fine which shall not be less than rupees five lakhs but which may extend to rupees ten lakhs.

(2) An employer who after conviction for an offence under section 86 or section 87 or section 88 afterwards commits the same offence under section 86 or section 87 or section 88, then, he shall for the second or subsequent offence shall be punishable with fine which shall not be less than rupees ten lakhs but which may be extended up to rupees twenty lakhs or with imprisonment which shall not be less than three months but which may be extended up to one year, or with both.

(3) An employer who contravenes the provisions of section 76 or section 79 or section 82 or section 84 shall be punishable with a fine which shall not be less than rupees one lakh but which may extend to rupees five lakhs.

(4) An employer who after conviction for an offence under section 76 or section 79 or section 82 or section 84 afterwards commits the same offence under section 80 or section 79 or section 82 or section 84, then, he shall for the second or subsequent offence shall be punishable with fine which shall not be less than rupees five lakhs but which may be extended up to rupees ten lakhs or with imprisonment which shall not be less than one month but which may be extended up to six months, or with both.

(5) Any person who commits any unfair labour practice as specified in the Third Schedule shall be punishable with a fine which shall not be less than rupees fifty thousand but which may extend to rupees two lakhs.

(6) Any person who after conviction for any unfair labour practice afterwards commits the same offence, then, he shall for committing the second or subsequent offence shall be punishable with fine which shall not be less than rupees one lakh but which may be extended up to rupees three lakhs or with imprisonment extendable up to three months, or with both.

(7) If default is made on the part of any registered trade union in giving any notice or sending any statement or other document as required by or under any provisions of this Code, every office-bearer or other person bound by the rules of the trade union to give or send the same, or, if there is no such office-bearers or person, every member of the executive of the trade union, shall be punishable with fine which shall not be less than rupees ten thousand but which may extend to rupees fifty thousand. The continuing default would attract an additional penalty of rupees hundred per day so long as the default continues.

(8) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 33 or in or form any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to twenty five thousand rupees.

(9) Any person who, with intent to deceive, gives to any member of a registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or

of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are the rules of a registered trade union, shall be punishable with fine which may be extended up to rupees twenty five thousand.

(10) An employer who fails to submit draft standing orders as required by section 36, or who modifies his standing orders otherwise than in accordance with section 41, shall be punishable with a minimum fine of rupees fifty thousand which may extend to rupees two lakh and in the case of a continuing offence with a further fine of rupees two thousand per day till the offence continues.

(11) An employer who does any act in contravention of the standing orders finally certified under this Code or his industrial establishment shall be punishable with fine which shall not be less than rupees one lakh which may extend to rupees two lakh. Any second or subsequent offence would attract a penalty in terms of fine which shall not be less than rupees two lakh which may extend to rupees four lakh or with imprisonment up to three months or with both.

(12) No prosecution for an offence punishable under sub-section (10) or sub-section (11) shall be instituted except with the previous sanction of the appropriate Government.

(13) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence under sub-section (10) or sub-section (11).

(14) Any worker who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Code, shall be punishable with a fine which shall not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both.

(15) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Code, shall be punishable with a fine which shall

not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both.

(16) Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Code, shall be punishable with a fine which shall not be less than rupees twenty thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both.

(17) Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with a fine which shall not be less than rupees twenty five thousand but which may be extended up to rupees fifty thousand or with imprisonment up to one month, or with both.

(18) Any person who commits a breach of any term of any settlement or award, which is binding on him under this Code, shall be punishable with a fine which shall not be less than rupees one lakh but which may be extended up to rupees three lakh or with imprisonment of a minimum term of one month extendable up to three months, or with both.

(19) Where the breach under sub-section (18) is a continuing one, the offender would be punishable with a further fine which may extend to rupees five thousand for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

(20) Any person who wilfully discloses any such information as is referred to in section 70 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to one months, or with fine which may extend to rupees twenty thousand, or with imprisonment extendable up to one month, or with both.

(21) Any employer who contravenes any other provision of this Code not covered under sub-section (1) to (20) shall be punishable with a fine up to rupees fifty thousand.

104. Compounding of offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), on the application of the accused concerned, any offence under this code shall be compounded, by such officer being a gazetted officer of the appropriate Government in such manner and on payment of such amount to such government as may be prescribed and if the accused does not agree to pay such amount for composition of the offence, then, the proceedings shall be initiated against such accused in accordance with law.

(2) The offence referred to in sub-section (1) may be compounded before or pending the trial of the offence and when the offence is compounded during the trial of the offence, the officer compounding the offence under sub-section (1) shall file a report in the court in which the trial of the offence is pending and the court shall on filing of such report discharge the accused with whom the offence has been compounded and such composition shall have the effect of an acquittal of the accused.

(3) No offence under this section shall be compounded if the accused has previously been convicted by a Court for committing same offence.

(4) No offence under this code shall be compounded, except as provided under this section.

105. Offences by companies: (1) If the person committing an offence under this Code 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 Code 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.

Explanation : For the purposes of this section,-

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

106. Cognizance of offences - (1) No court shall take cognizance of any offence punishable under this Code or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

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

CHAPTER XIII REPEAL AND SAVINGS

107. Repeal and Savings - (1) The Trade Union Act, 1926 (16 of 1926), the Industrial Employment (Standing Order) Act, 1946 (20 of 1946) and the Industrial Disputes Act, 1947 (14 of 1947) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the enactments so repealed (including any rule, regulation, notification, nomination, appointment, order or direction made thereunder) shall be deemed to have been done or taken under the corresponding provisions of this Code and shall be in force to the extent they are not contrary to the provisions of this code till they are repealed by the Central Government.

(3) Without prejudice to the provisions of sub-section (2), provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply to the repeal of such enactments.

THE FIRST SCHEDULE

[See Section 2(zk)]

MATTERS TO BE PROVIDED IN STANDING ORDERS UNDER THIS CODE

1. Classification of workers, e.g., whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workers periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, an liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workers arising there from.
8. Termination of employment, and the notice thereof to be given by employer and workers.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workers against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

THE SECOND SCHEDULE : Conditions of Service for Change of which notice is to be given

(See Section 47)

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workers under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage.

9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;

10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workers;

11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

THE THIRD SCHEDULE : Unfair Labour Practices

(See Section 2(zd))

I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

(1) To interfere with, restrain from, or coerce, workers in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say, -

(a) threatening workers with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organized;

(c) granting wage increase to workers at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.

(2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,

(a) an employer taking an active interest in organizing a trade union of his workers; and

(b) an employer showing partiality or granting favor to one of several trade unions attempting to organize his workers or to its members, where such a trade union is not a recognized trade union.

(3) To establish employer sponsored trade unions of workers.

(4) To encourage or discourage membership in any trade union by discriminating against any worker, that is to say,

(a) discharging or punishing a worker, because he urged other workers to join or organize a trade union;

(b) discharging or dismissing a worker for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Code);

(c) changing seniority rating of workers because of trade union activities;

(d) refusing to promote workers of higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workers with a view to creating discord amongst other workers, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

(5) To discharge or dismiss workers-

(a) by way of victimization;

(b) not in good faith, but in the colorable exercise of the employer's rights;

(c) by falsely implicating a worker in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the worker, thereby leading to a disproportionate punishment.

(6) To abolish the work of a regular nature being done by workers, and to give such work to contractors as a measure of breaking a strike.

(7) To transfer a worker mala fide from one place to another, under the guise of following management policy.

(8) To insist upon individual workers, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

(9) To show favoritism or partiality to one set of workers regardless of merit.

(10) To employ workers as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.

(11) To discharge or discriminate against any worker for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

(12) To recruit worker during a strike which is not an illegal strike.

(13) Failure to implement award, settlement or agreement.

(14) To indulge in acts of force or violence.

(15) To refuse to bargain collectively, in good faith with the recognized trade unions.

(16) Proposing or continuing a lock-out deemed to be illegal under this Code.

II. ON THE PART OF WORKERS AND TRADE UNIONS OF WORKERS

(1) To advise or actively support or instigate any strike deemed to be illegal under this Code.

(2) To coerce workers in the exercise of their right to self-organization or to join a trade union or refrain from, joining any trade union, that is to say-

(a) for a trade union or its members to picketing in such a manner that non-striking workers are physically debarred from entering the work places;

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workers or against managerial staff.

(3) For a recognized union to refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as willful, "go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

(7) To incite or indulge in willful damage to employer's property connected with the industry.

(8) To indulge in acts of force or violence or to hold out threats of intimidation against any worker with a view to prevent him from attending work.