# Extra Ordinary Part - VI / 1996

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| Extra No.1 | 14-02-1996 | Legislative & Parliamentary Affairs Department |
| Extra No.2 | 15-02-1996 | Legislative & Parliamentary Affairs Department |
| Extra No.3 | 15-02-1996 | Legislative & Parliamentary Affairs Department |
| Extra No.4 | 15-02-1996 | Legislative & Parliamentary Affairs Department |
| Extra No.5 | 03-04-1996 | Legislative & Parliamentary Affairs Department |
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| Extra No.22 | 25-07-1996 | Legislative & Parliamentary Affairs Department |
| Extra No.23 | 03-08-1996 | Legislative & Parliamentary Affairs Department |

Extra No. 1

REGISTERED NO. G/GNR/2

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII ] WEDNESDAY, FEBRUARY 14, 1996/MAGHA 25, 1917

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

GOVERNMENT OF GUJARAT
LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 14th February, 1996.

No. RP/53/Ord.11/95/7/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 20th September, 1995 is republished for general information :—

GOVERNMENT OF INDIA
**THE DEPOSITORIES ORDINANCE, 1995**

**(No. 11 of 1995)** **(20th September, 1995)**

*Promulgated by the President in the Forty-sixth Year of the Republic of India.*

An Ordinance to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I
PRELIMINARY

1. (*1*) This Ordinance may be called the Depositories Ordinance, 1995. Shor ttitle, extent and commencement.

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

(*3*) It shall come into force at once.



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2. (*1*) In this Ordinance, unless the context otherwise requires,—

(*a*) "Beneficial owner" means a person whose name is recorded as such with a depository;

(*b*) "Board" means Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(*c*) "bye-laws" means bye-laws made by a depository under section 26;

(*d*) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956; 1 of 1956.

(*e*) "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992; 1 of 1956. 15 of 1992.

(*f*) "issuer" means any person making an issue of securities;

(*g*) "participant" means a person registered as such under sub-section (*1A*) of section 12 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(*h*) "prescribed" means prescribed by rules made under this Ordinance;

(*i*) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

(*j*) "registered owner" means a depository whose name is entered as such in the register of the issuer;

(*k*) "regulations" means regulations made by the Board;

(*l*) "security" means such security as may be specified by the Board;

(*m*) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts. 1 of 1956. 42 of 1956. 15 of 1992.

## CHAPTER II

### CERTIFICATE OF COMMENCEMENT OF BUSINESS

Certificate of commencement of business by depositories.

3. (*1*) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(*2*) A certificate granted under sub-section (*1*) shall be in such form as may be specified by the regulations.

(*3*) The Board shall not grant a certificate under sub-section (*1*) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

## CHAPTER III

### RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

Agreement between depository and participant.

4. (*1*) A depository shall enter into an agreement with one or more participants as its agent.

(*2*) Every agreement under sub-section (*1*) shall be in such form as may be specified by the bye-laws.

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**5.** Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services. Services of depository.

**6.** (*1*) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations. Surrender of certificate of security.

(*2*) The issuer, on receipt of certificate of security under sub-section (*1*), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(*3*) A depository shall, on receipt of information under sub-section (*2*), enter the name of the person referred in sub-section (*1*) in its records as the beneficial owner.

**7.** (*1*) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee. Registration of transfer of securities with depository.

(*2*) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

**8.** (*1*) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository. Options to receive security certificate or hold securities with depository.

(*2*) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

**9.** (*1*) All securities held by a depository shall be dematerialised and shall be in a fungible form. Securities in depositories to be in fungible form.

1 of 1956 (*2*) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

**10.** (*1*) Notwithstanding anything contained in any other law for the time-being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner. Rights of depositories and beneficial owner.

(2) Save as otherwise provided in sub-section (*1*), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(*3*) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

1 of 1956 **11.** Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956. Register of beneficial owner.

**12.** (*1*) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository. Pledge or hypothecation of securities held in a depository.

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(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

Furnishing of information and records by depository and issuer.

**13.** (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

Option to opt out in respect of any security.

**14.** (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations issue the certificate of securities to the beneficial owner or the transferee as the case may be.

Bankers' Books Evidence Act to apply to depositories.

**15.** The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act. 18 of 1891.

Depositories to indemnify loss in certain cases.

**16.** (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository shall have the right to recover the same from such participant.

Rights and obligations of depositories etc.

**17.** (1) Subject to the provisions of this Ordinance the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

## CHAPTER IV

### Enquiry and Inspection

Power of Board to call for information and enquiry.

**18.** (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

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*(2)* Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other decuments in his custody having a bearing on the subject matter of such enquiry or inspection.

Power of Board to give direction in certain cases.

**19.** Save as provided in this Ordinance, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

*(i)* in the interest of investors, or orderly development of securities market; or

*(ii)* to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions,—

*(a)* to any depository or participant or any person associated with the securities market; or

*(b)* to any issuer,

as may be appropriate in the interest of investors or the securities market.

## CHAPTER V

### PENALTY

Offences.

**20.** Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Ordinance or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years or with a fine, or with both.

Offences by companies.

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

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

*(2)* Notwithstanding anything contained in sub-section *(1)*, where an offence under this Ordinance 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 the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

*(a)* "Company" means any body corporate and includes a firm or other association of individuals; and

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

## CHAPTER VI

### MISCELLANEOUS

Cognizance of offences by courts.

**22.** *(1)* No court shall take cognizance of any offence punishable under this Ordinance or any regulations or bye-laws made thereunder, save on a complaint made by the Board.



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(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 Ordinance.

Appeals.

23. (1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Power of Central Government to make rules.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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

(a) the time within which an appeal may be preferred under sub-section (1) of section 23;

(b) the form in which an appeal may be preferred, under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) the procedure for disposing of an appeal under sub-section (4) of section 23.

Power of Board to make regulations.

25. (1) Without prejudice to the provisions of section 30 of the Securities and Exchange Board of India Act, 1992, the Board may by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance. 15 of 1992.

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

(a) any other form in which record is to be maintained under clause (i) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

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*(d)* the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section *(1)* of section 12;

*(e)* the conditions and the fee payable with respect to the issue of certificate of securities under sub-section *(3)* of section 14;

*(f)* the rights and obligations of the depositories, participants and the issuers under sub-section *(1)* of section 17;

*(g)* the eligibility criteria for admission of securities into the depository under sub-section *(2)* of section 17.

Power of depositories to make bye-laws.

**26.** *(1)* A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

*(2)* In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

*(a)* the eligibility criteria for admission and removal of securities in the depository;

*(b)* the conditions subject to which the securities shall be dealt with;

*(c)* the eligibility criteria for admission of any person as a participant;

*(d)* the manner and procedure for dematerialisation of securities;

*(e)* the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

*(g)* the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

*(h)* the conditions of admission into and withdrawal from a participant by a beneficial owners;

*(i)* the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

*(j)* the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

*(k)* the manner of creating pledge or hypothecation in respect of securities held with a depository;

*(l)* inter-se rights and obligations among the depository, issuer, participants, and beneficial owners;

*(m)* the manner and the periodicity of furnishing information to the Board, issuer and other persons;

*(n)* the procedure for resolving disputes involving depository, issuer, company or a beneficial owners;

*(o)* the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

*(p)* the internal control standards including procedure for auditing, reviewing and monitoring.

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*(3)* Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

*(4)* If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

Rules and regulations to be laid before Parliament.

**27.** Every rule and every regulation made under this Ordinance 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 sessions immediatley following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulations should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of other laws not barred.

**28.** The Provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

Removal of difficulties.

**29.** *(1)* If any difficulty arises in giving effect to the provisions of this Ordinance, the Central government may by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments to certain enactments.

**30.** The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein.

## THE SCHEDULE

(*See* section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

### PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:—

Securities not liable to stamp duty.

'8A. Notwithstanding anything contained in this Act,—

*(a)* an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped:

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*(b)* where an issuer issues certificate of security under sub-section *(3)* of section 14 of the Depositories Ordinance, 1995, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

*(c)* transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

*(d)* the transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

*Explanation.*— For the purposes of this section the expressions "beneficial owner", "depository", "issued" and "records" shall have the meanings respectively assigned to them in clause *(a)*, clause *(e)*, clause *(f)* and clause *(i)* of sub-section *(l)* of section 2 of the Depositories Ordinance, 1995.'.

## PART II

### AMENDMENTS TO THE COMPANIES ACT, 1956

(1 OF 1956)

AMENDMENTS

1. In section 2, after clause (*45A*), the following clause shall be inserted, namely:—

"(*45B*) 'Securities and Exchange Board of India' means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.".

2. After section 2, the following section shall be inserted, namely:—

"2A. words and expressions used and not defined in this Act but defined in the Depositories Ordinance, 1995 shall have the same meaning respectively assigned to them in that Ordinance.".

3. In section 41, after sub-section *(2)*, the following sub-section shall be inserted, namely:—

"*(3)* Every person holding equity share capital of company and whose name is entered as beneficiall owner in the records of the depository shall be deemed to be a member of the concerned company.".

4. In section 49; in sub-section *(5)*, after clause *(b)*, the following clause shall be inserted, namely:—

"*(c)* from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.".

5. In section 51, the following proviso shall be inserted, namely:—

"Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.".

6. Section 83 shall be omitted.



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7. In section 108, after sub-section *(2)*, the following sub-section shall be inserted, namely:—

"*(3)* Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.".

8. In section 111, after sub-section *(13)*, the following sub-section shall be inserted, namely:—

"*(14)* In this section 'company' means a private company and includes a private company which had become a public company by virtue of section 43A of the Companies Act, 1956.".

9. After section 111, the following section shall be inserted, namely:—

"111A. *(1)* In this section, unless the context otherwise requires, 'company' means a company other than a company referred to in sub-section *(14)* of section 111 of this Act.

(*2*) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(*3*) The Company Law Board may on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company as the case may be, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(*4*) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(*5*) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(*6*) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(*7*) The provisions of sub-sections (*5*), (*7*), (*9*), (*10*) and (*12*) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under the section.".

10. In section 113, the following sub-section shall be inserted at the end:—

"(4) Notwithstanding anything contained in sub-section (*1*), where the securities are dealt in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.".

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11. In section 150, in sub-section (*1*), in clause (*b*), the words "distinguishing each share by its number" shall be omitted.

12. In section 152, in sub-section (*1*), in clause (*b*), the words "distinguishing each debenture by its number" shall be omitted.

13. After section 152, the following section shall be inserted, namely:—

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Ordinance, 1995, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.".

14. In Schedule II, in Part II, in clause C, after sub-section 9, the following sub-clause shall be inserted, namely:—

"9A. The details of option to subscribe for securities to be dealt in a depositroty.".

## PART III

### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 (42 OF 1956)

### AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:—

"(*i*) spot delivery contract means a contract which provides for,—

(*a*) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(*b*) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.".

2. Section 22A shall be omitted.

## PART IV

### AMENDMENT TO THE INCOME TAX ACT, 1961 (43 OF 1961)

### AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

"(*2A*) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Ordinance, 1995, and for the purposes of —

(*i*) section 48; and

(*ii*) proviso to clause (*42A*) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

*Explanation.*—For the purposes of this sub-section, the expressions "beneficial owner", "depository", and "security" shall have the

meanings respectively assigned to them in clauses (*a*), (*e*) and (*l*) of sub-section (*1*) of section 2 of the Depositories Ordinance, 1995.".

## PART V

### AMENDMENT TO THE *BENAMI* TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

AMENDMENT

In section 3, for sub-section *(2)*, the following sub-section shall be substituted, namely:—

"*(2)* Nothing in sub-section *(1)* shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter",

*(b)* the securities held by a—

*(i)* depository as registered owner under sub-section *(1)* of section 10 of the Depositories ordinance, 1995;

*(ii)* participant as an agent of a depository.

*Explanation.*—The expressions "depository" and "participants" shall have the meanings respectively assigned to them in clauses *(e)* and *(g)* of sub-section *(1)* of section 2 of the Depositories ordinance, 1995.".

## PART VI

### AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

AMENDMENTS

1. In section 2, in sub-section *(2)*, for the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956", the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956 or the Depositories Ordinance, 1995" shall be substituted.

2. In section 11, in clause *(ba)*, for for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section *(1A)*, for the words "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section *(1)*, for the words "this Act", the words "this Act or the Depositories Ordinance, 1995" shall be substituted.

Sd/-
SHANKER DAYAL SHARMA,
President

Sd/-
K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR

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Extra No, 2 REGISTERED NO.G/GNR/2

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII] THURSDAY, FEBRUARY 15, 1996/ MAGHA 26,, 1917

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## PART VI

### Acts of Parliament and Ordinances promulgated by the President.

GOVERNMENT OF GUJARAT

**LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT**

Sachivalaya, Gandhinagar, 15th February, 1996.

No. RP/4/ord-7/96/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 27th June, 1995 is republished for general information :—

GOVERNMENT OF INDIA

**THE SICK TEXTILE UNDERTAKINGS (NATIONALISATION) AMENDMENT ORDINANCE, 1995**

(No. 7 of 1995) (27th June, 1995).

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to amend the Sick Textile Undertakings (Nationalisation) Act, 1974 and the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986.

WHEREAS a Bill to amend the Sick Textile Undertakings (Nationalisation) Act, 1974 and the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—



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Short title and commencement.

**1.** (1) This Ordinance may be called the Sick Textile Undertakings (Nationalisation) Amendment Ordinance, 1995.

(2) It shall come into force at once.

Amendment of Act 57 of 1974.

**2.** In the Sick Textile Undertakings (Nationalisation) Act, 1974, after section 11, the following section shall be inserted, namely:—

Special provision for disposal of assets of the sick textile undertakings in certain circumstances.

"11A. If the National Textile Corporation considers it necessary or expedient for the better management, modernisation, restructuring or revival of a sick textile undertaking so to do, it may, with the previous sanction of the Central Government, transfer, mortgage, sell or otherwise dispose of any land plant, machinery or any other assets of any of the sick textile undertakings :

Provided that the proceeds of no such transfer, mortgage, sale or disposal shall be utilised or any purpose other than the purpose for which the sanction of the Central Government has been obtained.".

Amendment of Act 30 of 1986.

**3.** In the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986, after section 10, the following section shall be inserted, namely:—

Special provision for disposal of assets of the textile undertakings in certain circumstances.

"10A. If the National Textile Corporation considers it necessary or expedient for the better management, modernisation, restructuring or revival of a textile undertakings so to do, it may, with the previous sanction of the Central Government, transfer, mortgage, sell or otherwise dispose of any land, plant, machinery or any other assets of any of the textile undertakings :

Provided that the proceeds of no such transfer, mortgage, sale or disposal shall be utilised for any purpose other than the purpose of which the sanction of the Central Government has been obtained.".

Sd/—
SHANKER DAYAL SHARMA,
*President.*

Sd/—
K. L. MOHANPURIA,
*Secretary to the Government of India.*

By order and in the name of the Governor of Gujarat,

Smt. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR

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Extra No. 3 REGISTERED NO. G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVII] THURSDAY, FEBRUARY 15, 1996/MAGHA 26, 1917

**Separate paging is given to this Part in order that it may be filed as a Separate Compilation.**

## PART—VI

## Acts of Parliament and Ordinances promulgated by the President.

GOVERNMENT OF GUJARAT

**LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT,**

Sachivalaya, Gandhinagar, Dated 15th February, 1996

NO: RP/2/96/Ord/15/96/ /E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-Ordinary, Part II, Section 1, dated the 3rd November, 1995 is republished for general information:—

GOVERNMENT OF INDIA

### THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ORDINANCE, 1995

**(No. 15 Of 1995)** **(3rd November, 1995)**

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augment the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995.

WHEREAS, Parliament is not in session and President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

**Short title, extent and commencement.**

1. (*1*) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Ordinance, 1995.

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

(*3*) It shall come into force at once.



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Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(*a*) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (*1*) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995;

(*b*) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board ;

(*c*) "prescribed" means prescribed by rules made under this Ordinance;

(*d*) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 shall have the meanings respectively assigned to them in that Ordinance.

Levy and collection of cess.

3. (*1*) There shall be levied and collected as a cess for the purposes of the Building and Other Construction Workers (Regulation and Employment and Conditions of Service) Ordinance, 1995, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (*1*) shall be collected from every employer in such manner and at such time as may be prescribed.

(3) The proceeds of the cess levied under sub-section (*1*) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995, and to the State Government such sum of money, not exceeding one percent, of the amount collected towards the cost of collection of such cess.

Furnishing of returns.

4. (*1*) Every employer shall furnish such return, to such officer or authority in such manner and at such time as may be prescribed.

(*2*) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (*1*), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

Assessment of cess.

5. (*1*) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payabe by the employer.

(*2*) If the return has not been furnished to the officer or authority under sub-section (*2*) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(*3*) An order of assessment made under sub-section (*1*) or sub-section (*2*) shall specify the date within which the cess shall be paid by the employer.

Power to exempt.

6. Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such construction work may be spectted in such notification.

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Power of entry.

**7.** Any officer or authority of the State Government specially empowered in this behalf by that Government may----

(*a*) with such assisatance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(*b*) do within such place anything necessary for the proper discharge of his or its duties under this Ordinane; and

(*c*) exercise such other powers as may be prescribed.

Interest payable on delay in payment of cess.

**8.** If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two percent, for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

Penalty for non-payment of cess within the specified time.

**9.** If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

Recovery of amount due under the Ordinance.

**10.** Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

Appeals.

**11.** (*1*) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under ection 9 may, within such time as may be prescribed, appeal to such authority insuch form and in such manner as may be prescribed.

(*2*) Every appeal preferred under sub-section (*1*) shall be accompanied by such fees as may be prescribed.

(*3*) After the receipt of any appeal under sub-section (*1*), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expenditiously as possible.

(*4*) Every order passed in apeal under this section shall be final and shall not be called in question in any court of law.

Penalty.

**12.** (*1*) Whoever, being under an obligation to furnish a return under this Ordinance. furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(*2*) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both;

(*3*) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

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Offences by companies.

**13.** (*1*) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Ordinance 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 purpose of this section,—

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

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

Power to make rules.

**14.** (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(*2*) Without prejudice to the generality of the foregoing power, such rules may provide for all on any of the following matters, namely:—

(*a*) the manner in which and the time within which the cess shall be collected under sub-section (*2*) of section 3;

(*b*) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (*1*)of section 4;

(*c*) the powers which may be exercised by the officer or authority under section 7;

(*d*) the authority which may impose penalty under section 9;

(*e*) the authority to which an appeal may be filed under sub-section (*1*) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(*f*) the fees which shall accompany an appeal under sub-section (*2*) of section 11; and

(*g*) any other matter which has to be or may, be, prescribed.

(3) Every rule made under this Ordinane shall be laid, as soon as may be after it is made, before each House of Parliament while it is in section 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 ef 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 or anything previously done under that rule.

Sd/-
SHANKERDAYAL SHARMA,
*President.*

Sd/--

K. L. MOHANPURIA,
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/-
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS GANDHINAGAR

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REGISTERED NO. G/GNR/2

Extra No. 4

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII ] THURSDAY, FEBRUARY 15, 1996/MAGHA 26, 1917

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 15th February, 1996.

No. RP/3/96/Ord.14/96/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 3rd November, 1995 is republished for general information :—

GOVERNMENT OF INDIA

### THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ORDINANCE, 1995

**(No. 14 of 1995)** **(3rd November, 1995)**

*Promulgated by the President in the Forty-sixth Year of the Republic of India.*

An Ordinance regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

Whereas a bill to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith has been introduced in Parliament but has not yet been passed;

And whereas it is considered necessary in the interest of the welfare of the employees engaged in building and other construction works to give them social security.

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following ordinance:—

CHAPTER I

PRELIMINARY

Short title, extent, commencement and application.

**1.** (*1*) This Ordinance may be called the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995.

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



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(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and any reference in this Ordinance to the commencement of this Ordinance shall, in relation to a State, be construed as a reference to the coming into force of this Ordinance in that State.

(*4*) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

*Explanation.*—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Definitions.

**2.** (*1*) In this Ordinance, unless the context otherwise requires—

(*a*) "appropriate Government" means—

(*i*) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government; 14 of 1947.

(*ii*) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

*Explanation.*—For the purposes of sub-clause (*ii*), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government; 1 of 1956.

(*iii*) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(*b*) "beneficiary" means a building worker registered under section 12;

(*c*) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (*1*) of section 18;

(*d*) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government by notification, but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply; 63 of 1948. 35 of 1952.

(*e*) ) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(*i*) who is employed mainly in a managerial or administrative capacity, or

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(*ii*) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(*f*) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (*2*) of section 42;

(*g*) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workes or who supplies building workers for any work of the establishment, and includes a sub-contractor;

(*h*) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;

(*i*) "employers", in relation to an establishment, means the owner thereof, and includes,—

(*i*) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(*ii*) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(*iii*) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(*j*) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(*k*) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;

(*l*) "notification" means a notification published in the Official Gazette;

(*m*) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government;

(*n*) "wages" shall have the same meaning as assigned to it in clause

4 of 1936. (vi) of section 2 of the Payment of Wages Act, 1936.

(*2*) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

## CHAPTER II

### The Advisory Committees and Expert Committees

Central Advisory Committee.

**3.** (*1*) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(*2*) The Central Advisory Committee shall consist of—

(*a*) a Chairperson to be appointed by the Central Government;

(*b*) the Director-General—member *ex officio;*

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(*c*) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Adviosry Committee.

(*3*) The number of persons to be appointed as members from each of the categories specified in sub-section (*2*) the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

State Advisory Committee.

**4.** (*1*) The State Government shall constitute a committee to be called the State Building and other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(*2*) The State Advisory Committee shall consist of—

(*a*) a Chairperson to be appointed by the State Government;

(*b*) a member to be nominated by the Central Government;

(*c*) the Chief Inspector—member, *ex officio;*

(*d*) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(*3*) The number of persons to be appointed as members from each of the categories specified in sub-section (*2*), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

Expert Committees.

**5.** (*1*) The appropriate Government may constiitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Ordinance.

(*2*) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

## CHAPTER III

### Registration of Establishments

Appointment of registering officers.

**6.** The appropriate Government may, by order notified in the Offical Gazette,—

(*a*) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Ordinance; and

(*b*) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

Registration of establishments.

**7.** (*1*) Every employer shall,—

(*a*) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and

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(*b*) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(*2*) Every Application under sub-section (*1*) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(*3*) After the receipt of an application under sub-section (*1*), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(*4*) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

Revocation of registration in certain cases.

**8.** If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

Appeal.

**9.** (*1*) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(*2*) On receipt of an appeal under sub-section (*1*), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

Effect of non-registration.

**10.** No employer of an establishment to which this Ordinance applies shall,—

(*a*) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(*b*) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (*a*) or clause (*b*) of sub-section (*1*) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.



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## CHAPTER IV

### REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

Beneficiaries of the Fund.

**11.** Subject to the provisions of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

Registration of building workers as beneficiaries.

**12.** (*1*) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(*2*) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(*3*) Every application under sub-section (*2*) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(*4*) If the officer authorised by the Board under sub-section (*2*) is satisfied that the applicant has complied with the provisions of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(*5*) Any person aggrieved by the decision under sub-section (*4*) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(*6*) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

Identity cards.

**13.** (*1*) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(*2*) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(*3*) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

Cessation as a beneficiary.

**14.** (*1*) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year.

(*2*) Notwithstanding anything contained in sub-section (*1*), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Register of beneficiaries.

**15.** Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work under taken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

Contribution of building workers.

**16.** (*1*) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

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*(2)* A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

Effect of non-payment of contribution.

**17.** When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker has remitted the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

## CHAPTER V

### BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

Constitution of State Welfare Boards.

**18.** *(1)* Every State Government shall, with effect from such date as it may by notification in the Official Gazette appoint, constitute a Board to be known as the ..... (name of the State) Building and other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

*(2)* The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

*(3)* The Board shall consist of a chairperson and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

*(4)* The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

Secretary and other officers of Boards.

**19.** *(1)* The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

*(2)* The Secretary of the Board shall be its chief executive officer.

*(3)* The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

Meetings of Boards.

**20.** *(1)* The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

*(2)* The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

*(3)* All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

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Vacancies, etc., not to invalidate proceedings of the Boards.

**21.** No act or proceedings of a Board shall be invalid merely by reason of—

*(a)* any vacancy in, or any defect in the constitution of, the Board; or

*(b)* any defect in the appointment of a person acting as a member of the Board; or

*(c)* any irregularity in the procedure of the Board not affecting the merits of the case.

Functions of the Boards.

**22.** *(a)* The Board may—

*(i)* provide immediate assistance to a beneficiary in case of accident;

*(ii)* make payment of pension to the beneficiaries who have completed the age of sixty years;

*(iii)* sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

*(iv)* pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

*(v)* give such financial assistance for the education of children of the beneficiaries as may be prescribed;

*(vi)* meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

*(vii)* make payment of maternity benefit to the female beneficiaries; and

*(viii)* make provision and improvement of such other welfare measures and facilities as may be prescribed.

*(b)* The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

*(c)* The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

*(i)* the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

*(ii)* such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

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Grants and loans by the Central Government.

**23.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

Building and other Construction Workers' Welfare Fund and its application.

**24.** *(1)* There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

*(a)* any grants and loans made to the Board by the Central Government under section 23;

*(b)* all contributions made by the beneficiaries;

*(c)* all sums received by the Board from such other sources as may be decided by the Central Government.

*(2)* The Fund shall be applied for meeting—

*(a)* expenses of the Board in the discharge of its functions under section 22; and

*(b)* salaries, allowances and other remuneration of the members, officers and other employees of the Board;

*(c)* expenses on objects and for purposes authorised by this Ordinance.

Budget.

**25.** The Board shall prepare in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

Annual Report.

**26.** The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

Accounts and Audit.

**27.** *(1)* The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

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

*(3)* The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

*(4)* The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

*(5)* The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.



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## CHAPTER VI

### HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

Fixing hours for normal working day, etc.

**28.** *(1)* The appropriate Government may, by rules,—

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

*(b)* provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

*(c)* provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

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

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

*(b)* persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

*(c)* persons engaged in any work which for technical reasons has to be completed before the day is over;

*(d)* persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

Wages for over-time work.

**29.** *(1)* Where any building workers is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

*(2)* For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

Maintenance of registers and records.

**30.** *(1)* Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

*(2)* Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

*(3)* The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

Prohibition

**31.** No person about whom the employer knows or has reason to believe that

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he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

of employment of certain persons in certain building or other construction work.

**32.** (*1*) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

Drinking water.

(*2*) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be siutated within six metres of any washing place, urinal or latrine.

**33.** In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed by the State Government and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Latrines and urinals.

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

**34.** (*1*) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

Accommodation.

(*2*) The temporary accommodation provided under sub-section (*1*) shall have separate cooking place, bathing, washing and lavatory facilities.

(*3*) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (*1*) and restore the ground in good level and clean condition.

(*4*) In case an employer is given any land by a Municipal Board or any other local authority for the pruposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

**35.** (*1*) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

Creches.

(*2*) Such rooms shall—

(*a*) provide adequate accommodation;

(*b*) be adequately lighted and ventilated;

(*c*) be maintained in a clean and sanitary condition;

(*d*) be under the charge of women trained in the care of children infants.

**36.** Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

First-aid.

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Canteens, etc.

**37.** The appropriate Government may, by rules, require the employer—

(*a*) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;

(*b*) to provide such other welfare measures for the benefit of building workers as may be prescribed.

## CHAPTER VI

### Safety and Health Measures

Safety Committee and Safety Officers.

**38.** (*1*) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(*2*) In every establishment referrred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

Notice of certain accidents.

**39.** (*1*) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(*2*) On receipt of a notice under sub-section (*1*) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(*3*) Where a notice given under sub-section (*1*) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

Power of appropriate Government to make rules for the safety and health of building workers.

**40.** (*1*) The apporpriate Govefnment may, after previous publication, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

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

(*a*) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

(*b*) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(*c*) the handling or use of explosive under the control of competent pesons so that there is no exposure to the risk of injury from explosion or from flying material;

(*d*) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

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(*e*) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(*f*) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(*g*) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(*h*) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(*i*) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;

(*j*) the safe handling and use of plant, including tools and equipment operated by compressed air;

(*k*) the precautions to be taken in case of fire;

(*l*) the limits of weight to be lifted or moved by workers;

(*m*) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(*n*) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(*o*) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(*p*) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving euipments and floating operational equipments;

(*q*) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;

(*r*) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;

63 of 1986. (*s*) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in a building or other construction work;

(*t*) the provision and maintenance of medical facilities for building workers;

(*u*) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

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Framing of model rules for safety measures

**41.** The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

## CHAPTER VIII

### INSPECTING STAFF

Appointment of Director-General, Chief Inspector and Inspectors.

**42.** (*1*) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(*2*) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the state Government is the appropriate Government.

(*3*) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(*4*) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector;

(*5*) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860

Power of Inspectors.

**43.** (*1*) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(*a*) enter, at all reasonable hours with such assistants (if any) being persons in the service of the government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;

(*b*) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(*c*) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(*d*) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and

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

(*2*) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed by the State Government.

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(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code. 45 of 1860.

(4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code. 2 of 1974.

## CHAPTER IX

### SPECIAL PROVISIONS

Responsibility of employers.

**44.** An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

Responsibility for payment of wages and compensation

**45.** (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed by the State Government.

(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. 8 of 1923.

Notice of commencement of building or other construction work.

**46.** (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

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## CHAPTER X

### PENALTIES AND PROCEDURE

Penalty for contravention of provisions regarding safety measures.

**47.** (*1*) Whoever contranvenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(*2*) If any person who has been convicted of any offence punishable under sub-section (*1*) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisinment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:

Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

Penalty for failure to give notice of the commencement of the building or other construction work.

**48.** Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Penalty for obstructions.

**49.** (*1*) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(*2*) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Penalty for other offences.

**50.** (*1*) Whoever contravenes any other provision of this Ordinance or any rules made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(*2*) A penalty under sub-section (*1*) may be imposed—

(*a*) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

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*(b)* by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

*(3)* No penalty shall be imposed unless the person concerned is given a notice in writing—

*(a)* informing him of the grounds on which it is proposed to impose a penalty; and

*(b)* giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

*(4)* Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:— 5 of 1908

*(a)* summoning and enforcing the attendance of witnesses;

*(b)* requiring the discovery and production of any document;

*(c)* requisitioning any public record or copy thereof from any court or office;

*(d)* receiving evidence on affidavits; and

*(e)* issuing commissions for the examination of witnesses or documents.

*(5)* Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

**51.** *(1)* Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal— Appeal.

*(a)* where the penalty has been imposed by the Director-General, to the Central Government;

*(b)* where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

*(2)* The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

**52.** Where any penalty imposed on any person under section 50 is not paid,— Recovery of penalty.

*(i)* the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or



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*(ii)* the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or

*(iii)* if the amount cannot be recovered from such person in the manner provided in clause *(i)* or clause *(ii)*, the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

Offences by companies.

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

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

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

*Explanation.*—For the purposes of this section,—

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

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

Cognizance of offences.

**54.** *(1)* No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

*(a)* made by, or with the previous sanction in writing of, the Chief Inspector; or

*(b)* made by, an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or 21 of 1860

*(c)* made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926. 16 of 1926.

*(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 Ordinance.

Limitation of prosecutions.

**55.** No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

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## CHAPTER X

### MISCELLANEOUS

Delegation of powers.

**56.** A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem fit necessary.

Returns.

**57.** Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

Application of Act 8 of 1923 to building workers.

**58.** The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.

Protection of action taken in good faith.

**59.** *(1)* 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 ordinance or any rule or order made thereunder.

*(2)* No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Ordinance or any member of such Board or any officer or employee of the Government or the board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

Power of Central Government to give directions.

**60.** The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

Power to remove difficulties.

**61.** *(1)* If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

*(2)* Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

**62.** *(1)* The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

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

*(a)* the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section *(3)* of section 3 or, as the case may be under sub-section *(3)* of section 4;

*(b)* the fees and allowances that may be paid to the members of the expert committee for attending its meeting under sub-section *(2)* of section 5;

*(c)* the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section *(2)* of section 7;

*(d)* the form of certificate of registration, the time within which and

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the conditions subject to which such certificate may be issued under sub-section *(3)* of section 7;

*(e)* the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

*(f)* the form in which an application for registration as a beneficiary shall be made under sub-section *(2)* of section 12;

*(g)* the document and the fee which shall accompany the application, under sub-section *(3)* of section 12;

*(h)* the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;

*(i)* the benefits which may be given under sub-section *(2)* of section 14;

*(j)* the form in which register of beneficiaries shall be maintained under section 15;

*(k)* the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the chairperson and other members of the Board under sub-section *(4)* of section 18;

*(l)* the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section *(3)* of section 19;

*(m)* the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section *(1)* of section 20 including quorum necessary for the transaction of business;

*(n)* the amount payable as house building loans or advances, the terms and conditions of such payment under sub-clause *(iii)*, educational assistance under sub-clause *(v)*, medical expenses payable and the persons who shall be the dependent of the beneficiaries under sub-clause *(vi)*, and the other welfare measures for which provision may be made under sub-clause *(viii)* of clause *(a)* of section 22;

*(o)* the limits of grants-in-aid payable to the local authorities and employers under sub-clause (ii) of clause *(c)* of section 22;

*(p)* the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

*(q)* the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

*(r)* the form of annual statement of accounts under sub-section *(1)*, and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section *(4)*, of section 27;

*(s)* the matters required to be provided under sub-section *(1)* of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section *(2)* of that section;

*(t)* the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section *(1)* of section 30;

*(u)* the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section *(2)* of section 30;

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(*v*) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-sections (*3*) of section 30;

(*w*) the types of latrines and urinals required to be provided under section 33;

(*x*) the first-aid facilities which are to be provided under section 36;

(*y*) the canteen facilities which are to be provided under clause (*a*) of section 37;

(*z*) the welfare measures which are to be provided under clause (*b*) of section 37;

(*za*) the number of representatives of the employer and the building workers under sub-section (*1*) of Section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (*2*) of that section;

(*zb*) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (*1*) of section 39;

(*zc*) the rules to be made for the safety and health of building workers and section 40;

(*zd*) the powers that may be exercised by an Inspector under clause (*e*) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (*2*) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(*ze*) the date on or before which wages shall be paid to a building worker under section 45;

(*zf*) the matters which are required to be prescribed under clause (*i*) of sub-section (*1*) of section 46;

(*zg*) any other matter which is required to be or may be, prescribed.

(*3*) Every rule made by the Central Government under this Ordinance 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.

(*4*) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

Sd/–
SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

SMT. K. R. TRIVEDI,
Secretary to Government.

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REGISTERED NO. G/GNR/2

Extra No. 5




# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/14/ORD/5/96/22/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 5th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)*

## THE COAL MINES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1996

No. 5 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance further to amend the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

WHEREAS the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Bill, 1995 has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (*1*) This Ordinance may be called the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996. Short title and commencement.



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(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of long title of Act 46 of 1948.

2. In the long title to the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as the principal Act), for the words "Family Pension Scheme", the words "Pension Scheme" shall be substituted.

Amendment of section 2.

3. In section 2 of the principal Act,—

(*a*) clause (*ee*) shall be omitted;

(*b*) after clause (*g*), the following clauses shall be inserted, namely:—

'(*h*) "Pension Fund" means the Pension Fund established under sub-section (*2*) of section 3E;

(*i*) "Pension Scheme" means the Coal Mines Pension Scheme framed under sub-section (*1*) of section 3E;

(*j*) "superannuation", in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment.'.

Substitution of references to certain expressions by certain other expressions.

4. In the principal Act, for the expressions "Family Pension", "Family Pension Fund", "Family Pension Scheme" and "Coal Mines Family Pension Scheme", wherever they occur, the expressions "Pension", "Pension Fund", "Pension Scheme" and "Coal Mines Pension Scheme" shall respectively be substituted.

Substitution of new section for section 3E.

5. For section 3E of the principal Act, the following section shall be substituted, namely:—

Coal Mines Pension Scheme.

"3E. (*1*) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for—

(*a*) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(*b*) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees.

(*2*) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(*a*) such sums, not exceeding one-fourth, of the amount payable to the Fund under sub-section (*1*) of section 10D as the employer's contribution as well as the employees' contribution, as may be specified in the Pension Scheme;

(*b*) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify;

(*c*) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and

(*d*) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(*3*) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

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(*4*) The Pension Fund shall vest in and be administered by the Board in such manner as may be specified in the Pension Scheme.

(*5*) Any Scheme framed under the provisions of sub-section (*1*) may provide for all or any of the matters specified in the Second Schedule.".

Substitution of new section for section 4.

**6.** For section 4 of the principal Act, the following section shall be substituted, namely:—

Fund to be recognised under Act 43 of 1961.

"4. For the purposes of the Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund within the meaning of Part A of the Fourth Schedule to that Act.".

Amendment of section 10.

**7.** In section 10 of the principal Act, in sub-section (*2B*),—

5 of 1898. 2 of 1974.

(*a*) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

(*b*) for the word and figures "section 98", the word and figures "section 94" shall be substituted.

Amendment of section 11.

**8.** In section 11 of the principal Act, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted.

7 of 1913. 1 of 1956.

Substitution of new Schedule for the Second Schedule.

**9.** For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

"THE SECOND SCHEDULE

[*See* section 3E(*5*)]

MATTERS TO BE PROVIDED FOR IN THE COAL MINES PENSION SCHEME

1. The employees or class of employees to whom the Coal Mines Pension Scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 3E as it stood before the commencement of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution and employees' contribution to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The Central Government's contribution and other contributions to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

5. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 3E as it stood before the commencement of the amending Ordinance.

6. The regulation of the period of service for which no contribution is received.

7. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

8. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

9. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

10. The forms, registers and records to be maintained in respect of employees required for the administration of the Pension Scheme.

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11. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, the amount of life assurance payable under the Pension Scheme and the manner of such payment.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses incurred in connection with the administration of the Pension Scheme may be paid by the Central Government to the Board.

14. Nomination of persons for receiving pension and assurance amounts in the case of death of an employee.

15. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.".

Sd/–
**SHANKER DAYAL SHARMA,**
*President.*

Sd/–
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/–
**Smt. K. R. TRIVEDI,**
*Secretary to Government.*

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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REGISTERED NO. G/GNR/2

Extra No. 6

# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART—VI

## Acts of Parliament and Ordinances promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/11/96/ORD/2/21/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 5th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
### (Legislative Department)

*New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)*

## THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1996

No. 2 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 has been introduced in Parliament but has not yet been passed;

Ord. 13 of 1995.

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995, to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 17th October, 1995;

AND WHEREAS the said Bill with the amendments for replacing the said Ordinance has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of



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the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

**1.** *(1)* This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996.

(2) It shall be deemed to have come into force on the 16th day of November, 1995.

Amendment of long title.

**2.** In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words "family pension fund", the words "pension fund" shall be substitued.

Amendment of section 2.

**3.** In section 2 of the principal Act,—

*(a)* clauses *(gg)* and (ggg) shall be omitted;

*(b)* after clause *(k)*, the following clauses shall be inserted, namely:—

*'(kA)* "pension Fund" means the Employees' Pension Fund established under sub- section *(2)* of section 6A;

*(kB)* "Pension Scheme" means the Employees' Pension Scheme framed under sub- section *(1)* of section 6A;';

*(c)* after clause *(l)*, the following clause shall be inserted, namely:—

*'(ll)* "superannuation", in relation to an employee who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years;".

Substitution of the word "Pension" for the words "Family Pension".

**4.** In the principal Act, for the words "Family Pension", wherever they occur, the word "Pension" shall be substituted.

Substitution of a new section for sections 6A and 6B.

**5.** For sections 6A and 6B of the principal Act, the following section shall be substituted, namely:—

Employees' Pension Scheme.

"6A. *(1)* The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

*(a)* Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

*(b)* widow or widowever's pension, children pension or orphan pension payable to the beneficiaries of such employees.

*(2)* Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension scheme,—

*(a)* such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent. of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

*(b)* such sums as are payable by the employers of exempted establishments under sub-section *(6)* of section 17;

*(c)* the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

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*(d)* such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

*(3)* On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

*(4)* The Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

*(5)* Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

*(6)* The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

*(7)* A Pension Scheme framed under sub-section *(1)* shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme 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 Scheme."

**6.** In section *6C* of the principal Act,— Amendment of section 6C.

*(a)* clause *(3)* shall be omitted;

*(b)* clause *(b)* of sub-section *(4)* shall be omitted.

**7.** In section 17 of the principal Act,— Amendment of section 17

*(a)* for sub-section *(1c)*, the following sub-section shall be substituted, namely:—

"*(1C)* The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.";

*(b)* in sub-section *(6)*, the words as well "as the employees' contribution" shall be omitted.

**8.** For Schedule III to the principal Act, the following Schedule shall be substituted, namely:— Substitution of new Schedule for Schedule III.

"SCHEDULE III

[*See* section 6A(*5*)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME

1. The employees or class of employees to whom the Pension Scheme shall apply.

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2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Ordinance.

5. The regulation of the period of service for which no contribution is received.

6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.".

Repeal and saving.

9. *(1)* the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 is hereby repealed. Ord. 13 of 1995.

*(2)* Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

Sd/–
**SHANKER DAYAL SHARMA,**
*President.*

Sd/–
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/–
**Smt. K. R. TRIVEDI,**
*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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REGISTERED NO. G/GNR/2

Extra No. 7

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# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

## Acts of Parliament and Ordinances promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/15/ORD/6/96/20/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 11 th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

*New Delhi, the 7th January, 1996/Pausa 17, 1917 (Saka)*

## THE DEPOSITORIES ORDINANCE, 1996

No. 6 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

WHEREAS the Depositories Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 20th day of September, 1995;

AND WHEREAS the Depositories Bill, 1995, to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—



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## CHAPTER I

### PRELIMINARY

Short title, extent and commencement.

**1.** *(1)* This Ordinance may be called the Depositories Ordinance, 1996.

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

*(3)* It shall be deemed to have come into force on the 20th day of September, 1995.

Definitions

**2.** *(1)* In this Ordinance, unless the context otherwise requires,—

*(a)* "beneficial owner" means a person whose name is recorded as such with a depository;

*(b)* "Board" means Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992

*(c)* "bye-laws" means bye-laws made by a depository under section 26;

*(d)* "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956; 1 of 1956

*(e)* "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section *(1A)* of section 12 of the Securities and Exchange Board of India Act, 1992; 1 of 1956 15 of 1992

*(f)* "issuer" means any person making an issue of securities;

*(g)* "participant" means a person registered as such under sub-section *(1A)* of section 12 of the Securities and Exchange Board of India Act, 1992; 15 of 1992

*(h)* "prescribed" means prescribed by rules made under this Ordinance;

*(i)* "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

*(j)* "registered owner" means a depository whose name is entered as such in the register of the issuer;

*(k)* "regulations" means regulations made by the Board;

*(l)* "security" means such security as may be specified by the Board;

*(m)* "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

*(2)* Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts. 1 of 1956 42 of 1956 15 of 1992

## CHAPTER II

### CERTIFICATE OF COMMENCEMENT OF BUSINESS

Certificate of commencement of business by depositories.

**3.** *(1)* No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

*(2)* A certificate granted under sub-section *(1)* shall be in such form as may be specified by the regulations.

*(3)* The Board shall not grant a certificate under sub-section *(1)* unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

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## CHAPTER III

### RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

Agreement between depository and participant.

**4.** *(1)* A depository shall enter into an agreement with one or more participants as its agent.

*(2)* Every agreement under sub-section *(1)* shall be in such form as may be specified by the bye-laws.

Services of depository.

**5.** Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

Surrender of certificate of security.

**6.** *(1)* Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

*(2)* The issuer, on receipt of certificate of security under sub-section *(1)*, shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

*(3)* A depository shall, on receipt of information under sub-section *(2)*, enter the name of the person referred in sub-section *(1)* in its records, as the beneficial owner.

Registration of transfer of securities with depository.

**7.** *(1)* Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

*(2)* If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

Options to receive security certificate or hold securities with depository.

**8.** *(1)* Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

*(2)* Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

Securities in depositories to be in fungible form.

**9.** *(1)* All securities held by a depository shall be dematerialised and shall be in a fungible form.

1 of 1956

*(2)* Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

Rights of depositories and beneficial owner.

**10.** *(1)* Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

*(2)* Save as otherwise provided in sub-section *(1)*, the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

*(3)* The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

Register of beneficial owner.

**11.** Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956.

1 of 1956

Pledge or hypothecation of securities held in a depository.

**12.** *(1)* Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

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(2) Every beneficial owner shall give intimation of such pledge of hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

Furnishing of information and records by depository and issuer.

**13.** (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

Option to opt out in respect of any security

**14.** (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

Act 18 of 1891 to apply to depositories.

**15.** The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

Depositories to indemnify loss in certain cases

**16.** (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

Rights and obligations of depositories, etc.

**17.** (1) Subject to the provisions of this Ordinance, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a despository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

## CHAPTER IV

### ENQUIRY AND INSPECTION

Power of Board to call for information and enquiry.

**18.** (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

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Power of Board to give direction in certain cases.

**19.** Save as provided in this Ordinance, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

(*i*) in the interest of investors, or orderly development of securities market; or

(*ii*) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

it may issue such directions—

(*a*) to any depository or participant or any person associated with the securities market; or

(*b*) to any issuer,

as may be appropriate in the interest of investors or the securities market.

## CHAPTER V

### PENALTY

Offences.

**20.** Whoever contravenes or attempts to cntravene or abets the contravention of the provisions of this Ordinance or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Offences by companies.

**21.** (*1*) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (*1*), where an offence under this Ordinance 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 the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

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

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

## CHAPTER VI

### MISCELLANEOUS

Cognizance of offences by courts.

**22.** (*1*) No court shall take cognizance of any offence punishable under this Ordinance or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(*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 Ordinance.



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Appeals.

**23.** *(1)* Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

*(2)* No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

*(3)* Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

*(4)* The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Power of Central Government to make rules.

**24.** *(1)* The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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

*(a)* The time within which an appeal may be preferred under sub-section *(1)* of section 23;

*(b)* The form in which an appeal may be preferred under sub-section *(3)* of section 23 and the fees payable in respect of such appeal;

*(c)* The procedure for disposing of an appeal under sub-section *(4)* of section 23.

Power of Board to make regulations.

**25.** *(1)* Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance. 15 of 1992

*(2)* In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

*(a)* any other form in which record is to be maintained under clause *(i)* of sub-section *(1)* of section 2;

*(b)* the form in which the certificate of commencement of business shall be issued under sub-section *(2)* of section 3;

*(c)* the manner in which the certificate of security shall be surrendered under sub-section *(1)* of section 6;

*(d)* the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section *(1)* of section 12;

*(e)* the conditions and the fee payable with respect to the issue of certificate of securities under sub-section *(3)* of the section 14;

*(f)* the rights and obligations of the depositories, participants and the issuers under sub-section *(1)* of section 17;

*(g)* the eligibility criteria for admission of securities into the depository under sub-section *(2)* of section 17.

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Power of depositories to make bye-laws.

**26.** *(1)* A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

*(2)* In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

*(a)* the eligibility criteria for admission and removal of securites in the depository;

*(b)* the conditions subject to which the securities shall be dealt with;

*(c)* the eligibility criteria for admission of any person as a participant;

*(d)* the manner and procedure for dematerialisation of securities;

*(e)* the procedure for transactions within the depository;

*(f)* the manner in which securities shall be dealt with or withdrawn from a depository;

*(g)* the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

*(h)* the conditions of admission into and withdrawal from a participant by a beneficial owner;

*(i)* the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

*(j)* the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

*(k)* the manner of creating pledge or hypothecation in respect of securities held with a depository;

*(l) inter se* rights and obligations among the depository, issuer, participants and beneficial owners;

*(m)* the manner and the periodicity of furnishing information to the Board, issuer and other persons;

*(n)* the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

*(o)* the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

*(p)* the internal control standards including procedure for auditing, reviewing and monitoring.

*(3)* Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

*(4)* If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

Rules and regulations to be laid before Parliament.

**27.** Every rule and every regulation made under this Ordinance 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 sessions immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of other laws not barred.

**28.** The provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

Removal of difficulties.

**29.** *(1)* If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

*(2)* Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments to certain enactments.

**30.** The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein. Ord. 11 of 1995.

Repeal and saving.

**31.** *(1)* The Depositories Ordinance, 1995 is hereby repealed.

*(2)* Nothwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

## THE SCHEDULE

(*See* section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

### PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:—

Securities not liable to stamp duty.

'**8A.** Notwithstanding anything contained in this Act,—

(*a*) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(*b*) where an issuer issues certificate of security under sub-section (*3*) of section 14 of the Depositories Ordinance, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(*c*) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(*d*) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

*Explanation.*—For the purposes of this section, the expressions "beneficial owner", "depository", and "issuer" shall have the meanings respectively assigned to them in clauses (*a*), (*e*) and (*f*) of sub-section (*1*) of section 2 of the Depositories Ordinance, 1996.'.

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## PART II

### AMENDMENTS TO THE COMPANIES ACT, 1956

(1 OF 1956)

### AMENDMENTS

1. In section 2, after clause (*45A*), the following clause shall be inserted, namely:—

'(*45B*) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.'.

2. After section 2, the following section shall be inserted, namely:— Interpretation of certain words and expressions.

"2A. Words and expressions used and not defined in this Act but defined in the Depositories Ordinance, 1996 shall have the same meanings respectively assigned to them in that Ordinance.".

3. In section 41, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.".

4. In section 49, in sub-section (*5*), after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.".

5. In section 51, the following proviso shall be inserted, namely:—

"Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.".

6. Section 83 shall be omitted.

7. In section 108, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository."

8. In section 111, after sub-section (*13*), the following sub-section shall be inserted, namely:—

'(*14*) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.'.

9. After section 111, the following section shall be inserted, namely:—

'111A. (*1*) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (*14*) of section 111 of this Act. Rectification of register on transfer.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(*3*) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission

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was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985. 15 of 1992 1 of 1986

(*4*) The Company Law Board while acting under sub-section (*3*), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(*5*) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(*6*) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(*7*) The provisions of sub-sections (*5*), (*7*), (*9*), (*10*) and (*12*) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.".

10. In section 113, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Notwithstanding anything contained in sub-section (*1*), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.".

11. In section 150, in sub-section (*1*), in clause (*b*), the words "distinguishing each share by its number" shall be omitted.

12. In section 152 in sub-section (*1*), in clause (*b*), the words "distinguishing each debenture by its number" shall be omitted.

Register and index of beneficial owners.

13. After section 152, the following section, shall be inserted, namely:—

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Ordinance, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be for the purposes of this Act.".

14. In Schedule II, in Part II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:—

"9A. The details of option to subscribe for securities to be dealt with in a depository.".

## PART III

### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 of 1956)

### AMENDMENTS

1. In section 2, for clause (*i*), the following clause shall be substituted, namely:—

'(*i*) "spot delivery contract" means a contract which provides for—

(*a*) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

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(*b*) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

2. Section 22A shall be omitted.

## PART IV

### AMENDMENT TO THE INCOME TAX ACT, 1961

(43 OF 1961)

AMENDMENT

In section 45, after sub-section (*2*), the following sub-section shall be inserted, namely:—

'(*2A*) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (*1*) of section 10 of the Depositories Ordinance, 1996, and for the purposes of—

(*i*) section 48; and

(*ii*) proviso to clause (*42A*) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

*Explanation.*— For the purposes of this sub-section, the expressions "beneficial owner", "depository" and "security" shall have the meanings respectively assigned to them in clauses (*a*), (*e*) and (*l*) of sub-section (*1*) of section 2 of the Depositories Ordinance, 1996.'.

## PART V

### AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

AMENDMENT

In section 3, for sub-section (*2*), the following sub-section shall be substituted, namely:—

'(*2*) Nothing in sub-section (*1*) shall apply to—

(*a*) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(*b*) the securities held by a—

(*i*) depository as a registered owner under sub-section (*1*) of section 10 of the Depositories Ordinance, 1996.

(*ii*) participant as an agent of a depository.

*Explanation.*— The expressions "depository" and "participant" shall have the meanings respectively assigned to them in clauses (*e*) and (*g*) of sub-section (*1*) of section 2 of the Depositories Ordinance, 1996.'.

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## PART VI

### AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956", the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956 or the Depositories Ordinance, 1996" shall be substituted

42 of 1956

2. In section 11, in clause (*ba*), for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section *(1A)*, for the words, "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section *(1)*, for the words "this Act", the words and figures "this Act or the Depositories Ordinance, 1996" shall be substituted.

Sd/–
**SHANKER DAYAL SHARMA,**
*President.*

Sd/–
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/–
**Smt. K. R. TRIVEDI,**
*Secretary to Government.*

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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REGISTERED NO. G/GNR/2

Extra No. 8

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The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/12/ORD/3/96/19/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 5th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

*New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)*

# THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ORDINANCE, 1996

No. 3 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

WHEREAS the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 to provide for the aforesaid matters was promulgated by the President on the 3rd November, 1995;

AND WHEREAS the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS it is considered necessary in the interest of the welfare of the workers engaged in the building and other construction works to give them social security;



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AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (*1*) of article 123 of the Constitution, the President is pleased to promulgate the following ordinance:—

## CHAPTER I

### PRELIMINARY

Short title, extent, commencement and application.

1. (*1*) This Ordinance may be called the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.

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

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in this Ordinance to the commencement of this Ordinance shall, in relation to a State, be construed as a reference to the coming into force of this Ordinance in that State.

(*4*) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

*Explanation.*—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Definitions.

2. (*1*) In this Ordinance, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government; 14 of 1947.

(*ii*) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

*Explanation.*—For the purposes of sub-clause (*ii*), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government; 1 of 1956.

(*iii*) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(*b*) "beneficiary" means a building worker registered under section 12;

(*c*) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (*1*) of section 18;

(*d*) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses

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tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

63 of 1948.
35 of 1952.

(*e*) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(*i*) who is employed mainly in a managerial or administrative capacity, or

(*ii*) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(*f*) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;

(*g*) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;

(*h*) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;

(*i*) "employer", in relation to an establishment, means the owner thereof, and includes,—

(*i*) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(*ii*) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(*iii*) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(*j*) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(*k*) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;

(*l*) "notification" means a notification published in the Official Gazette;

(*m*) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government;

(*n*) "wages" shall have the same meaning as assigned to it in clause(vi) of section 2 of the payment of Wages Act, 1936.

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(2) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area:

## CHAPTER II

### The Advisory Committees and Expert Committees

Central Advisory Committee.

3. (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The Central Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the Central Government;

(b) the Director-General—member *ex officio;*

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2) the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

State Advisory Committee.

4. (1) The State Government shall constitute a committee to be called the State Building and other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The State Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the State Government;

(b) a member to be nominated by the Central Government;

(c) the Chief Inspector—member, *ex officio;*

(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

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Expert Committees.

5. (*1*) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Ordinance.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

## CHAPTER III

### REGISTRATION OF ESTABLISHMENTS

Appointment of registering officers.

6. The appropriate Government may, by order notified in the Offical Gazette,—

(*a*) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Ordinance; and

(*b*) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

Registration of establishments.

7. (*1*) Every employer shall,—

(*a*) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and

(*b*) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every Application under sub-section (*1*) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (*1*), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(*4*) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

Revocation of registration in certain cases.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

Appeal.

9. (*1*) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:



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Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

Effect of non-registration.

**10.** No employer of an establishment to which this Ordinance applies shall,—

(*a*) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(*b*) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (*a*) or clause (*b*) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

## CHAPTER IV

### REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

Beneficiaries of the Fund.

**11.** Subject to the provisions of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

Registration of building workers as beneficiaries.

**12.** (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

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Identity cards.

**13.** (*1*) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(*2*) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(*3*) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

Cessation as a beneficiary.

**14.** (*1*) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(*2*) Notwithstanding anything contained in sub-section (*1*), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

*Explanation.*—For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

Register of beneficiaries.

**15.** Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work under taken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

Contribution of building workers.

**16.** (*1*) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(*2*) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

Effect of non-payment of contribution.

**17.** When a beneficiary has not paid his contribution under sub-section (*1*) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

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## CHAPTER V

### Building and other Construction Workers' Welfare Boards

Constitution of State Welfare Boards.

**18.** *(1)* Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the ..... (name of the State) Building and other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

*(2)* The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

*(3)* The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

*(4)* The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

Secretary and other officers of Boards.

**19.** *(1)* The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

*(2)* The Secretary of the Board shall be its chief executive officer.

*(3)* The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

Meetings of Boards.

**20.** *(1)* The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

*(2)* The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

*(3)* All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

Vacancies, etc., not to invalidate proceedings of the Boards.

**21.** No act or proceedings of a Board shall be invalid merely by reason of—

*(a)* any vacancy in, or any defect in the constitution of, the Board; or

*(b)* any defect in the appointment of a person acting as a member of the Board; or

*(c)* any irregularity in the procedure of the Board not affecting the merits of the case.

Functions of the Boards.

**22.** *(a)* The Board may—

(*a*) provide immediate assistance to a beneficiary in case of accident;

(*b*) make payment of pension to the beneficiaries who have completed the age of sixty years;

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(*c*) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(*d*) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(*e*) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(*f*) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

(*g*) make payment of maternity benefit to the female beneficiaries; and

(*h*) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(*2*) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

(*3*) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(*a*) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(*b*) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

Grants and loans by the Central Government.

**23.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

Building and other Construction Workers' Welfare Fund and its application.

**24.** (*1*) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

(*a*) any grants and loans made to the Board by the Central Government under section 23;

(*b*) all contributions made by the beneficiaries;

(*c*) all sums received by the Board from such other sources as may be decided by the Central Government.

(*2*) The Fund shall be applied for meeting—

(*a*) expenses of the Board in the discharge of its functions under section 22; and

(*b*) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(*c*) expenses on objects and for purposes authorised by this Ordinance.



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*(3)* No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employes and for meeting the other administrative expenses exceeding five per cent of its total expenses during that year.

Budget.

**25.** The Board shall prepare in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

Annual Report.

**26.** The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

Accounts and Audit.

**27.** *(1)* The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

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

*(3)* The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

*(4)* The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

*(5)* The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

## CHAPTER VI

### HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

Fixing hours for normal working day, etc.

**28.** *(1)* The appropriate Government may, by rules,—

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

*(b)* provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

*(c)* provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

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

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

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*(b)* persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

*(c)* persons engaged in any work which for technical reasons has to be completed before the day is over;

*(d)* persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

Wages for overtime work.

**29.** *(1)* Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

*(2)* For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

Maintenance of registers and records.

**30.** *(1)* Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

*(2)* Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

*(3)* The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

Prohibition of employment of certain persons in certain building or other construction work.

**31.** No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

Drinking water.

**32.** *(1)* The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be siutated within six metres of any washing place, urinal or latrine.

Latrines and urinals.

**33.** In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

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Accommodation.

**34.** (*1*) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(*2*) The temporary accommodation provided under sub-section (*1*) shall have separate cooking place, bathing, washing and lavatory facilities.

(*3*) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (*1*) and restore the ground in good level and clean condition.

(*4*) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

Creches.

**35.** (*1*) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(*2*) Such rooms shall—

(*a*) provide adequate accommodation;

(*b*) be adequately lighted and ventilated;

(*c*) be maintained in a clean and sanitary condition;

(*d*) be under the charge of women trained in the care of children infants.

First-aid.

**36.** Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

Canteens, etc.

**37.** The appropriate Government may, by rules, require the employer—

(*a*) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;

(*b*) to provide such other welfare measures for the benefit of building workers as may be prescribed.

## CHAPTER VII

### Safety and Health Measures

Safety Committee and Safety Officers.

**38.** (*1*) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(*2*) In every establishment referrred to in sub-section (*1*), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

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Notice of certain accidents.

**39.** (*1*) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(*2*) On receipt of a notice under sub-section (*1*) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(*3*) Where a notice given under sub-section (*1*) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

Power of appropriate Government to make rules for the safety and health of building workers.

**40.** (*1*) The apporpriate Government may, after previous publication, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

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

(*a*) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

(*b*) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(*c*) the handling or use of explosive under the control of competent pesons so that there is no exposure to the risk of injury from explosion or from flying material;

(*d*) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

(*e*) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(*f*) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(*g*) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(*h*) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(*i*) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;



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(*j*) the safe handling and use of plant, including tools and equipment operated by compressed air;

(*k*) the precautions to be taken in case of fire;

(*l*) the limits of weight to be lifted or moved by workers;

(*m*) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(*n*) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(*o*) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(*p*) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving euipments and floating operational equipments;

(*q*) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;

(*r*) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;

(*s*) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in a building or other construction work; 63 of 1986.

(*t*) the provision and maintenance of medical facilities for building workers;

(*u*) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

Framing of model rules for safety measures.

**41.** The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

## CHAPTER VIII

### INSPECTING STAFF

Appointment of Director-General, Chief Inspector and Inspectors.

**42.** (*1*) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(*2*) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the State Government is the appropriate Government.

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(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Power of Inspectors.

**43.** (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and

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

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code. 45 of 1860.

(4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code. 2 of 1974.

## CHAPTER IX

### SPECIAL PROVISIONS

Responsibility of employers.

**44.** An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

Responsibility for payment of wages and compensation.

**45.** (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

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(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. 8 of 1923.

Notice of commencement of building or other construction work.

46. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

## CHAPTER X

### Penalties and Procedure

Penalty for contravention of provisions regarding safety measures.

47. (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:

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Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

Penalty for failure to give notice of the commencement of the building or other construction work.

48. Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Penalty for obstructions.

49. (*1*) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Penalty for other offences.

50. (*1*) Whoever contravenes any other provision of this Ordinance or any rules made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(2) A penalty under sub-section (*1*) may be imposed—

(*a*) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

(*b*) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(*3*) No penalty shall be imposed unless the person concerned is given a notice in writing—

(*a*) informing him of the grounds on which it is proposed to impose a penalty; and

(*b*) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.



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*(4)* Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:— 5 of 1908

*(a)* summoning and enforcing the attendance of witnesses;

*(b)* requiring the discovery and production of any document;

*(c)* requisitioning any public record or copy thereof from any court or office;

*(d)* receiving evidence on affidavits; and

*(e)* issuing commissions for the examination of witnesses or documents.

*(5)* Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

**Appeal.**

51. *(1)* Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

*(a)* where the penalty has been imposed by the Director-General, to the Central Government;

*(b)* where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

*(2)* The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

**Recovery of penalty.**

52. Where any penalty imposed on any person under section 50 is not paid,—

*(i)* the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or

*(ii)* the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or

*(iii)* if the amount cannot be recovered from such person in the manner provided in clause (*i*) or clause (*ii*), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

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Offences by companies.

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

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

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

*Explanation.*—For the purposes of this section,—

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

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

Cognizance of offences.

**54.** *(1)* No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

*(a)* made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or

*(b)* made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or

21 of 1860.

*(c)* made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

16 of 1926

*(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 Ordinance.

Limitation of prosecutions.

**55.** No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

## CHAPTER XI

## MISCELLANEOUS

Delegation of powers.

**56.** A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem necessary.

Returns.

**57.** Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

Application of Act 8 of 1923 to building workers.

**58.** The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.

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Protection of action taken in good faith.

**59.** *(1)* 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 ordinance or any rule or order made thereunder.

*(2)* No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Ordinance or any member of such Board or any officer or employee of the Government or the board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

Power of Central Government to give directions.

**60.** The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

Power to remove difficulties.

**61.** *(1)* If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

*(2)* Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

**62.** *(1)* The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

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

*(a)* the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section *(3)* of section 3 or, as the case may be under sub-section *(3)* of section 4;

*(b)* the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section *(2)* of section 5;

*(c)* the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section *(2)* of section 7;

*(d)* the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section *(3)* of section 7;

*(e)* the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

*(f)* the form in which an application for registration as a beneficiary shall be made under sub-section *(2)* of section 12;

*(g)* the document and the fee which shall accompany the application, under sub-section *(3)* of section 12;

*(h)* the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;

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*(i)* the benefits which may be given under sub-section *(2)* of section 14;

*(j)* the form in which register of beneficiaries shall be maintained under section 15;

*(k)* the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section *(4)* of section 18;

*(l)* the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section *(3)* of section 19;

*(m)* the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section *(1)* of section 20 including quorum necessary for the transaction of business;

*(n)* the amount payable as house building loans or advances, the terms and conditions of such payment under clause *(c)*, educational assistance under clause *(e)*, medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause *(f)*, and the other welfare measures for which provision may be made under clause *(h)*, of sub-section *(1)* of section 22;

*(o)* the limits of grants-in-aid payable to the local authorities and employers under sub-clause (b) of sub-section *(3)* of section 22;

*(p)* the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

*(q)* the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

*(r)* the form of annual statement of accounts under sub-section *(1)*, and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section *(4)*, of section 27;

*(s)* the matters required to be provided under sub-section *(1)* of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section *(2)* of that section;

*(t)* the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section *(1)* of section 30;

*(u)* the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section *(2)* of section 30;



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(*v*) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-sections (*3*) of section 30;

(*w*) the types of latrines and urinals required to be provided under section 33;

(*x*) the first-aid facilities which are to be provided under section 36;

(*y*) the canteen facilities which are to be provided under clause (*a*) of section 37;

(*z*) the welfare measures which are to be provided under clause (*b*) of section 37;

(*za*) the number of representatives of the employer and the building workers under sub-section (*1*) of Section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (*2*) of that section;

(*zb*) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (*1*) of section 39;

(*zc*) the rules to be made for the safety and health of building workers under section 40;

(*zd*) the powers that may be exercised by an Inspector under clause (*e*) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (*2*) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(*ze*) the date on or before which wages shall be paid to a building worker under section 45;

(*zf*) the matters which are required to be prescribed under clause (*i*) of sub-section (*1*) of section 46;

(*zg*) any other matter which is required to be or may be, prescribed.

(*3*) Every rule made by the Central Government under this Ordinance 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.

(*4*) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

Repeal and saving.

**63.** (*1*). The Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1995, is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance. Ord. 14 of 1995.

Sd/–

**SHANKER DAYAL SHARMA,**

*President.*

Sd/–

**K. L. MOHANPURIA,**

*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/–

**Smt. K. R. TRIVEDI,**

*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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REGISTERED NO. G/GNR/2

Extra No. 9

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

## LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/10/96/ORD/1/23/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 5th January, 1996 is republished for general information :—

### GOVERNMENT OF INDIA

### MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
**(Legislative Department)**

*New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)*

### THE INDUSTRIAL DISPUTES (AMENDMENT) ORDINANCE, 1996

No. 1 OF 1996.

Promulgated by the President in the Forty-sixth year of the Republic of India.

An Ordinance further to amend the Industrial Disputes Act, 1947.

WHEREAS the Industrial Disputes (Amendment) Ordinance, 1995, further to amend the Industrial Disputes Act, 1947, was promulgated by the President on the 11th day of October, 1995;

AND WHEREAS the Industrial Disputes (Amendment) Bill 1995 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill has been passed by the Council of States and is pending in the House of the people;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;



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Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

**1.** (*1*) This Ordinance may be called the Industrial Disputes (Amendment) Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of October, 1995.

Amendment of section 2.

**2.** In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act), in clause (*a*), in sub-clause (*i*),— 14 of 1947.

(*i*) for the words and figures "the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948", the words and figures "the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956" shall be substituted; 15 of 1948. 1 of 1956.

(*ii*) the words and figures 'or the "Indian Airlines" and "Air India" Corporations established under section 3 of the Air Corporations Act, 1953' shall be omitted; 27 of 1953.

(*iii*) for the words and figures "the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959", the words and figures "the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956" shall be substituted; 43 of 1959. 1 of 1956.

(*iv*) for the words and figures "the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971", the words and figures "the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994" shall be substituted; 43 of 1971. 55 of 1994.

(*v*) for the words "a banking or an insurance company", the words "an air transport service, or a banking or an insurance company" shall be substituted.

Repeal and saving.

**3.** (*1*) The Industrial Disputes (Amendment) Ordinance, 1995 is hereby repealed. Ord. 12 of 1995.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

Sd/–
**SHANKER DAYAL SHARMA,**
*President.*

Sd/–
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/–
**Smt. K. R. TRIVEDI,**
*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVII ] WEDNESDAY, APRIL 3, 1996 / CAITRA 14, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 3rd April, 1996.

No. RP/13/ORD/4/96/24/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 5th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)*

## THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ORDINANCE, 1996

No. 4 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.

WHEREAS the Building and Other Construction Workres' Welfare Cess Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 3rd November, 1995;

AND WHEREAS the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;



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NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title, extent and commencement.

**1.** (*1*) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Ordinance, 1996.

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

(*3*) It shall be deemed to have come into force on the 3rd day of November, 1995.

Definitions.

**2.** In this Ordinance, unless the context otherwise requires,—

(*a*) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996;

(*b*) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(*c*) "prescribed" means prescribed by rules made under this Ordinance;

(*d*) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

Levy and collection of cess.

**3.** (*1*) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(*2*) The cess levied under sub-section (*1*) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(*3*) The proceeds of the cess levied under sub-section (*1*) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, and to the State Governments such sum of money, not exceeding one per cent, of the amount collected, towards the cost of collection of such cess.

(*4*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), the cess leviable under this Ordinance including payment of such cess in advance may, subject final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

Furnishing of returns.

**4.** (*1*) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

(*2*) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (*1*), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

Assessment of cess.

**5.** (*1*) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

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*(2)* If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

*(3)* An order of assessment made under sub-section (*1*) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

Power to exempt.

**6.** Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

Power of entry.

**7.** Any officer or authority, of the State Government specially empowered in this behalf by that Government may—

(*a*) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(*b*) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance; and

(*c*) exercise such other powers as may be prescribed.

Interest payable on delay in payment of cess.

**8.** If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

Penalty for non-payment of cess within the specified time.

**9.** If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

Recovery of amount due under the Ordinance.

**10.** Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

Appeals.

**11.** *(1)* Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

*(2)* Every appeal preferred under sub-section (*1*) shall be accompanied by such fees as may be prescribed.

(*3*) After the receipt of any appeal under sub-section (*1*), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(*4*) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

Penalty.

**12.** (*1*) Whoever, being under an obligation to furnish a return under this Ordinance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

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(2) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

Offences by companies.

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

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance 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 any body corporate and includes a firm or other association of individuals; and

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

Power to make rules.

**14.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(*b*) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(*c*) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(*d*) the powers which may be exercised by the officer or authority under section 7;

(*e*) the authority which may impose penalty under section 9;

(*f*) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(*g*) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(*h*) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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Ord. 15 of 1995.

**15.** (*1*) The Building and other Construction Workers' Welfare Cess Ordinance, 1995, is hereby repealed. Repeal and saving.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

Sd/-
**SHANKER DAYAL SHARMA,**
*President.*

Sd/-
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Sd/-
**Smt. K. R. TRIVEDI,**
*Secretary to Government.*

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.



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REGISTERED NO. G/GNR/2

Extra No. 11

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVI] FRIDAY, APRIL 19, 1996/CAITRA 30, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 19th April, 1996.

No. : RP/22/96/Act 43/27/E : The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAERS

(Legislative Department)

New Delhi, the 22nd November, 1995/Agrahayana 1, 1917 (Saka)

The following Act of Parliament received th assent of the President on the 22nd November, 1995/Agrahayana 1, 1917 (Saka) and is hereby published for general information :

# THE WAKF ACT, 1995

(No. 43 OF 1995)

[22*nd November*, 1994.]

An Act to provide for the better administration of Wakfs and for matters connected therwith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows :—

## CHAPTER I

### PRELIMINARY

Short title, extent and commencement.

**1.** (*1*) This Act may be called the Wakf Act, 1995.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.



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Application of the Act.

2. Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act:

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 applies. 36 of 1955.

Definitions.

3. In this Act, unless the context otherwise requires —

(*a*) "beneficiary" means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law;

(*b*) "benefit" does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(*c*) "Board" means a Board of Wakf established under sub-section (*1*), or as the case may be, under sub-section (*2*) of section 13 and shall include a common Wakf Board established under section 106;

(*d*) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (*1*) of section 23;

(*e*) "Council" means the Central Wakf Council established under section 9;

(*f*) "Executive Officer" means the Executive Officer appointed by the Board under sub-section (*1*) of section 38;

(*g*) "list of wakfs" means the list of wakfs published under sub-section (*2*) of section 5;

(*h*) "member" means a member of the Board and includes the Chairperson;

(*i*) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property:

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation;

(*j*) "net annual income", in relation to a wakf, means net annual income determined in accordance with the provisions of the *Explanations* to sub-section (*1*) of section 72;

(*k*) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes —

(*i*) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

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(*ii*) the wakif and any descendant of the wakif and the mutawalli;

(*l*) "prescribed", except in Chapter III, means prescribed by rules made by the State Government;

(*m*) "regulations" means the regulations made by the Board under this Act;

(*n*) "Shia wakf" means a wakf governed by Shia law;

(*o*) "Sunni wakf" means a wakf governed by Sunni law;

(*p*) "Survey Commissioner" means the Survey Commissioner of Wakf appointed under sub-section (*1*) of section 4 and includes any Additional or Assistant Survey Commissioners of Wakfs under sub-section (*2*) of section 4;

(*q*) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (*1*) of section 83, having jurisdiction in relation to that area;

(*r*) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(*i*) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(*ii*) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(*iii*) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

and "wakf" means any person making such dedication;

(*s*) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied;

(*t*) "Wakf Fund" means a wakf fund formed under sub-section (*1*) of section 77.

## CHAPTER II

### SURVEY OF WAKFS

Preliminary survey of wakfs.

4. (*1*) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

(*2*) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(*3*) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date

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of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

(a) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs separately;

(b) the nature and objects of each wakf;

(c) the gross income of the property comprised in each wakf;

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf;

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and

(f) such other particulars relating to each wakf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— 5 of 1908.

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

Publication of list of wakfs.

5. (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakf or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

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Disputes regarding wakfs.

6. (*1*) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

*Explanation.*—For the purposes of this section and section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

(*2*) Notwithstanding anything contained in sub-section (*1*), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(*3*) The Survey Commissioner shall not be made a party to any suit under sub-section (*1*) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(*4*) The list of wakfs shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (*1*), be final and conclusive.

(*5*) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (*1*).

Power of Tribunal to determine disputes regarding wakfs.

7. (*1*) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that—

(*a*) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(*b*) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application



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may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).".

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

Recovery of costs of survey.

8. (1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the Survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

## CHAPTER III

### Central Wakf Council

Establishment and constitution of Central Wakf Council.

9. (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of—

(a) the Union Minister in charge of wakfs—ex officio Chairperson;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(i) three persons to represent Muslim organisations having all India character and national importance;

(ii) four persons of national eminence of whom two shall

be from amongst persons having administrative and financial expertise;

(*iii*) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(*iv*) chairpersons of three Boards by rotation;

(*v*) two persons who have been Judges of the Supreme Court or a High Court;

(*vi*) one advocate of national eminence;

(*vii*) one person to represent the mutawallis of the wakf having a gross annual income of rupees five lakhs and above;

(*viii*) three persons who are eminent scholars in Muslim Law.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

Finance of Council.

**10.** (*1*) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the wakfs in respect of which contribution is payable under sub-section (*1*) of section 72:

Provided that where the Board, in the case of any particular wakf has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (*1*) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (*1*) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

Accounts and audit.

**11.** (*1*) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central Wakf Fund.

Power of Central Government to make rules.

**12.** (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

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

(*a*) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(*b*) control over and application of the Central Wakf Fund;

(*c*) the form and manner in which accounts of the Council may be maintained.

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

## CHAPTER IV

### ESTABLISHMENT OF BOARDS AND THEIR FUNCTIONS

Incorporation.

13. (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(2) Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent. of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

Composition of Board.

14. (1) The Board for a State and the Union territory of Delhi shall consist of—

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the Bar Council of the State, and

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed;

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Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clauses (*i*) to (*iii*) of clause (*b*) of sub-section (*1*), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(*3*) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (*i*) to (*iii*) of clause (*b*) of sub-section (*1*), the State Government may nominate such persons as the members of the Board as it deems fit.

(*4*) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (*3*).

(*5*) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (*1*), shall be a Shia Muslim.

(*6*) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(*7*) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (*1*):

Provided that there shall be one mutawalli as the member of the Board.

(*8*) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(*9*) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

Term of office.

**15.** The members of the Board shall hold office for a term of five years.

Disqualification for being appointed, or for continuing as, a member of the Board.

**16.** A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

(*a*) he is not a Muslim and is less than twenty-one years of age;

(*b*) he is found to be a person of unsound mind;

(*c*) he is an undischarged insolvent;



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(*d*) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(*e*) he has been on a previous occasion—

(*i*) removed from his office as a member or as a mutawalli, or

(*ii*) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

Meetings of the Board.

17. (*1*) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(*2*) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(*3*) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

Committees of the Board.

18. (*1*) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(*2*) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

Resignation of Chairperson and members.

19. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

Removal of Chairperson and member.

20. (*1*) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he—

(*a*) is or becomes subject to any disqualifications specified in section 16; or

(*b*) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or

(*c*) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(*2*) Where the Chairperson of the Board is removed under sub-section (*1*), he shall also cease to be a member of the Board.

Filling of a vacancy.

21. When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose

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place he fills would have been entitled to hold office, if such vacancy had not occurred.

Vacancies, etc., not to invalidate proceedings of the Board.

22. No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Appointment of Chief Executive Officer and his term of office and other conditions of service.

23. (1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the Official Gazette.

(2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

(3) The Chief Executive Officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

Officers and other employees of the Board.

24. (1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

Duties and powers of Chief Executive Officer.

25. (1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include—

(a) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time, for accounts, returns and information from mutawallis;

(b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;

(c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any wakf, the Board shall act in conformity with the directions by the wakif in the deed of the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

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Powers of Chief Executive officer in respect of orders or resolutions of Board.

26. Where the Chief Executive Officer considers that an order or resolution passed by the Board—

(*a*) has not been passed in accordance with the law; or

(*b*) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or

(*c*) if implemented, is likely to—

(*i*) cause financial loss to the Board or to the concerned wakf or to the wakfs generally; or

(*ii*) lead to a riot or reach of peace; or

(*iii*) cause danger to human life, health or safety; or

(*d*) is not beneficial to the Board or to any wakf or to wakfs generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Govrernment along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

Delegation of powers by the Board.

27. The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

Chief Executive Officer to exercise powers through Collectors, etc.

28. (*1*) Subject to the provisions of this Act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time revoke the delegations so made by him.

(*2*) Where any delegation of powers is made by the Chief Executive Officer under sub-section (*1*), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

Powers of Chief Executive Officer to inspect records, registers, etc.

29. The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be wakf properties.

Inspection of records.

30. (*1*) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

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(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872. 1872

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.

Prevention of disqualification for membership of Parliament.

31. It is hereby declared that the offices of the Chairperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament.

Powers and function of the Board.

32. (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established for the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

*Explanation.*—For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

(*a*) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

(*b*) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created;

(*c*) to give directions for the administration of wakfs;

(*d*) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(*e*) to direct—

(*i*) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(*ii*) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;



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(*iii*) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community;

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

*Explanation*.—For the purposes of this clause, the powers of the Board shall be exercised—

(*i*) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(*ii*) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

(*f*) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;

(*g*) to appoint and remove mutawallis in accordance with the provisions of this Act;

(*h*) to take measures for the recovery of lost properties of any wakf;

(*i*) to institute and defend suits and proceedings relating to wakfs;

(*j*) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction;

(*k*) to administer the Wakf Fund;

(*l*) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;

(*m*) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;

(*n*) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;

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(*c*) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under clause (*d*) or given any direction under clause (*e*) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a shopping centre, market, housing flats and the like it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board, is necessary for execution of the works and execute such works from Wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

Powers of inspection by Chief Executive Officer or persons authorised by him.

33. (1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

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(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-sectoin (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

Recovery of the amount determined under section 33.

34. Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.

Conditional attachment by Tribunal.

35. (1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent to defeat or delay the execution of the said order,—

(a) is about to dispose of the whole or any part of his property; or

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(*b*) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

5 of 1908. (5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were an order for attachment made under the provision of the said Code.

## CHAPTER V

### Registration of Wakfs

Registration. 36. (1) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli:

Provided that such applications may be made by the wakf or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(*a*) a description of the wakf properties sufficient for the identification thereof;

(*b*) the gross annual income from such properties;

(*c*) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties;

(*d*) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties;

(*e*) the amount set apart under the wakf for—

(*i*) the salary of the mutawalli and allowances to the individuals;

(*ii*) purely religious purposes;

(*iii*) charitable purposes: and



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(*iv*) any other purposes;

(*j*) any other particulars provided by the Board by regulations.

(*4*) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(*5*) Every application made under sub-section (*2*) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 for the signing and verification of pleadings. 5 of 1908.

(*6*) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(*7*) On receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf proprety, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(*8*) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf:

Provided that where there is no board at the time of creation of a wakf, such application will be made within three months from the date of establishment of the Board.

Register of wakfs.

37. The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:—

(*a*) the class of the wakf;

(*b*) the name of the mutawalli;

(*c*) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage;

(*d*) particulars of all wakf properties and all title deeds and documents relating thereto;

(*e*) particulars of the scheme of administration and the scheme of expenditure at the time of registration;

(*f*) such other particulars as may be provided by regulations.

Powers of Board to appoint Executive Officer.

38. (*1*) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any wakf having a gross annual income of not less than five lakhs rupees:

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those powers and discharge those duties under the direction, control and supervision of the Board :

Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the wakf, the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the wakf and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the Wakf Fund and, if the wakf generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the wakf concerned.

(6) The Board may, for sufficient reasons, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter, and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

Powers of Board in relation to wakfs which have ceased to exist.

39. (1) The Board shall, if it is satisfied that the objects or any part thereof, of a wakf have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such wakf.

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order—

(a) specifying the property and funds of such wakf;

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(*b*) directing that any property or funds pertaining to such wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause (*iii*) of clause (*e*) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place—

(*a*) is wakf property;

(*b*) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force relating to land reforms; and

(*c*) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—

(*i*) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and

(*ii*) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (*iii*) of clause (*e*) of sub-section (2) of section 32.

Decision if a property is wakf property.

40. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 or under the Societies Registration Act, 1860 or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, 2 of 1882 21 of 1860

call upon the trust or society, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

Power to cause registration of wakf and to amend register.

41. The Board may direct a mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

Change in the management of wakfs to be notified.

42. (1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

Wakfs registered before the commencement of this Act deemed to be registered.

43. Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

## CHAPTER VI

### MAINTENANCE OF ACCOUNTS OF WAKFS

Budget.

44. (1) Every mutawalli of a wakf shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the mutawalli atleast ninety days before the beginning of the financial year to the Board and shall make adequate provision for the following: —

(i) for carrying out the objects of the wakf;

(ii) for the maintenance and preservation of the wakf property;

(iii) for the discharge of all liabilities and subsisting commitments binding on the wakf under this Act or any other law for the time being in force.

(3) The Board may give such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions of this Act.

(4) If in the course of the financial year the mutawalli finds it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

Preparation of budget of wakfs under direct management of the Board.

45. (1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the wakfs under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, references therein to the mutawalli of the wakf shall be construed as prereferences to the Chief Executive Officer.

(5) The audit of accounts of every wakf under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) Where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the wakf to the Board:

Provided that the Chief Executive Officer shall not collect more than ten per cent. of the gross annual income of the wakf under the direct management of the Board as administrative charges.

Submission of accounts of wakfs.

46. (1) Every mutawalli shall keep regular accounts.

(2) Before the 1st day of May next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the wakf:

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

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Audit of accounts of wakfs.

47. (1) The accounts of wakfs submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a wakf having no income or a net annual income not exceeding ten thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent. of such wakfs shall be audited annually by an auditor appointed by the Board;

(b) the accounts of the wakf having net annual income exceeding ten thousand rupees shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, at any time cause the account of any wakf audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government;

(2) The auditor shall submit his report to the Board and the report of the auditor shall among otherthings, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf:

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than ten thousand rupees but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1):

Provided further that where the audit of the accounts of any wakf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent. of the net annual income of such wakf and such costs shall be met from the funds of the wakfs concerned.

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Board to pass orders on auditor's report.

48. (1) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

Sums certified to be due recoverable as arrears of land revenue.

49. (1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

Duties of mutawalli.

50. It shall be the duty of every mutawalli—

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

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Aliena-tion of wakf property without sanction of Board to be void.

51. (*1*) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

(*2*) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (*1*) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

(*i*) necessary or beneficial to the wakf;

(*ii*) consistent with the objects of the wakf;

(*iii*) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(*3*) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board, and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(*4*) Every approval given by the Board under sub-section (*3*) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(*5*) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (*3*), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision, and, thereupon, the Tribunal may, after giving the appellant and the Board, a reasonable opportunity of being heard, confirm, modify or set aside such decision.

Recovery of wakf property transferred in contravention of section 51.

52. (*1*) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(*2*) On receipt of a requisition under sub-section (*1*), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.



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(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

Restriction on purchase of property on behalf of wakf.

53. Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefor is adequate and reasonable:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the wakf, make such orders as it may think fit.

Removal of encroachment from wakf property.

54. (1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

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(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

Enforcement of orders made under section 54.

55. Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situated for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

Restriction on power to grant lease of wakf property.

56. (1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of immovable property which is wakf property shall, not withstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

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Mutawalli entitled to pay certain costs from income of wakf property.

57. Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

Power of Board to pay dues in case of default by mutawalli.

58. (1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent. of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

Creation of reserve fund.

59. For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

Extension of time

60. The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

Penalties.

61. (1) If a mutawalli fails to—

(a) apply for the registration of a wakfs;

(b) furnish statements of particulars or accounts or returns as required under this Act;

(c) supply information or particulars as required by the Board;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal;

(f) carry out the directions of the Board;

(g) discharge any public dues; or

(h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure, be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (*1*), if—

(*a*) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under his Act,—

(*i*) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (*8*) of section 36;

(ii) in the case of any wakf created after such commencement; within three months from the date of the creation of the wakf; or

(*b*) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(*3*) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

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

2 of 1974 (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the fine imposed under sub-section (*1*), when realised, shall be credited to the Wakf Fund.

(*6*) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (*1*) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

Mutawalli not to spend any money belonging to wakf for self defence.

62. No mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.



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Power to appoint mutawallis in certain cases.

63. When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

Removal of Mutawalli.

64. (1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli—

(a) has been convicted more than once of an offence punishable under section 61; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

(c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(d) is an undischarged insolvent; or

(e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs; or

(f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or

(g) has failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts, as required by sub-section (2) of section 46; or

(h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf; or

(i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or

(j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;

(k) misappropriates or fradulently deals with the property of the wakf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights, if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

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(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.

5 of 1908.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.

(8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

65. (1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

Assumption of direct management of certain wakfs by the Board.

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(2) The State Government, may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every wakf under its direct management, giving therein—

(a) the details of the income of the wakf for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the wakf;

(c) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

Powers of appointment and removal of mutawalli when to be exercised by the State Government.

66. Whenever a deed of wakf or any decree or order of a court of any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then notwithstanding anything contained in such deed of wakf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government:

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

Supervision and supersession of committee of management.

67. (1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakf, whichever is earlier:

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time:

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or with the directions of the wakf,

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it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the wakf or of the provisions of this Act and the rules made thereunder.

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, in so far as it relates to the constitution of the committee, shall cease to have any force:

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final:

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal:

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections, the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interests of the wakf, and every such order for the removal of any member shall be served upon him by registered post:

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action:

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to



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the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

Duty of mutawalli, etc., to deliver possession of records, etc.

58. (1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situated and, thereupon, such Magistrate may after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the wakf to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by the Magistrate under sub-section (2), the Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or committee, shall be called in question in the proceedings before the Magistrate under this section.

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(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by the Magistrate under sub-section (2).

Power of Board to frame scheme for administration of wakf.

**69.** (1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the mutawalli or the applicant in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force:

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the wakf.

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the wakf:

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the Tribunal may confirm, reverse or modify the order:

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the wakf, the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

Inquiry relating to administration of wakf.

**70.** Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

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Manner of holding inquiry.

71. (1) The Board may, either on an application received under section 73 or on its own motion,—

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for enforcing the attendance of witnesses and production of documents. 5 of 1908

## CHAPTER VII

### FINANCE OF THE BOARD

Annual contribution payable to Board.

72. (1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

*Explanation I.*—For the purposes of this Act, "net annual income" shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom the following, namely:—

(i) the land revenue paid by it to the Government;

(ii) the rates, cessers, taxes and licence fees, paid by it to the Government or any local authority;

(iii) expenditure incurred for all or any of the following purposes, namely:—

(a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;

(b) seeds or seedlings;

(c) manure;

(d) purchase and maintenance of agricultural implements;

(e) purchase and maintenance of cattle for cultivation;

(f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent. of the income derived from lands belonging to the wakf;

(iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;

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(*v*) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the wakf:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:—

(*a*) advances and deposits recovered and loans taken or recovered;

(*b*) deposits made as security by employees, lessees or contractors and other deposits, if any;

(*c*) withdrawals from banks or of investments;

(*d*) amounts recovered towards costs awarded by courts;

(*e*) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(*f*) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf:

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(*g*) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;

(*h*) audit recoveries.

*Explanation II.*—In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(*2*) The Board may in the case of any mosque or orphanage or any particular wakf reduce or remit such contribution for such time as it thinks fit.

(*3*) The mutawalli of a wakf may realise the contributions payable by him under sub-section (*1*) from the various persons entitled to receive any pecuniary or other material benefit from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (*1*), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(*4*) The contribution payable under sub-section (*1*) in respect of a wakf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or the in-



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come thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of this section:

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

Power of Chief Executive Officer to direct banks or other person to make payments.

73. (1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall when-

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no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

Deduction of contribution from perpetual annuity payable to the wakf.

74. (1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct, before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

Power of Board to borrow.

75. (1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

Mutawalli not to lend or borrow moneys without sanction.

76. (1) No mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of wakf for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other wakf property.

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(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,—

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

Wakf Fund.

77. (1) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Wakf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Wakf Fund shall be applied to—

(a) repayment of any loan incurred under section 75 and payment of interest thereon;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(c) payment of the salary and allowances to the officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson, members, of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

Budget of Board.

78. (1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the

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State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

Accounts of Board.

**79.** The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

Audit of accounts of Board.

**80.** (1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the Wakf Fund.

State Government to pass orders on auditor's report.

**81.** The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit.

Dues of Board to be recovered as arrears of land-revenue.

**82.** (1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.



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## CHAPTER VIII

### JUDICIAL PROCEEDINGS

Constitution of Tribunals, etc.

83. (*1*) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(*2*) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(*3*) Where any application made under sub-section (*1*) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(*4*) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(*5*) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908, while trying a suit, or executing a decree or order. 5 of 1908

(*6*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Tribunal shall follow such procedure as may be prescribed. 5 of 1908

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(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908. 5 of 1908.

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

**Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.**

84. Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

**Bar of jurisdiction of civil courts.**

85. No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

**Appointment of a receiver in certain cases.**

86. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced— 5 of 1908.

(*a*) by or on behalf of a Board—

(*i*) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;

(*ii*) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

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(*iii*) to recover possession of the property referred to in clause (*a*) or clause (*b*) or to restore possession of such property to the mutawalli of the concerned wakf; or

(*b*) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant,

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

Bar to the enforcement of right on behalf of unregistered wakfs.

87. (*1*) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (*1*) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

Bar to challenge the validity of any notification, etc.

88. Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.

Notice of suits by parties against Board.

89. No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Notice of suits, etc., by courts.

90. (*1*) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given

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to the Board by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

Proceedings under Act 1 of 1894.

**91.** (1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

*Explanation.*—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is wakf property, it may at any time before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

Board to be party to suit or proceeding.

92. In any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding.



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Bar to compromise of suits by or against mutawallis.

93. No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties.

94. (*1*) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(*2*) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the wakf may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

Power of appellate authority to entertain appeal after expiry of specified period.

95. Where under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

## CHAPTER IX

## MISCELLANEOUS

Power of Central Government to regulate secular activities of wakfs.

96. (*1*) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely:—

(*a*) to lay down general principles and policies of wakf administration in so far as they relate to the secular activities of the wakfs;

(*b*) to co-ordinate the functions of the Central Wakf Council and the Board, in so far as they relate to their secular functions;

(*c*) to review administration of the secular activities of wakfs generally and to suggest improvements, if any.

(*2*) In exercising its powers and functions under sub-section (*1*), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

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*Explanation.*—For the purposes of this section "secular activities" shall include social, economic, educational and other welfare activities.

Directions by State Government.

97. Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, give to the Board such general or special directions as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions.

Annual report by State Government.

98. As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the Administration of wakfs in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

Power to supersede Board.

99. (*1*) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (*1*) superseding the Board,—

(*a*) all the members of the Board shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Board in the manner provided in section 14.

Protection of action taken in good faith.

100. No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

Survey Commissioner, members and officers of the Board deemed to be public servants.

101. (1) The Survey Commissioner, members of the Board, every officer, every auditaor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any office in a wakf shall also be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Special provision for reorganisation of certain Boards.

102. (1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution, including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

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(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, after consulting the State Governments concerned, approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters, namely:—

(a) the dissolution of the Board;

(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board;

(c) the area in respect of which the reconstituted Board or new Board shall function and operate;

(d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer;

(e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;

(f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and

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(g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

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(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

Special provision for establishment of Board for part of a State

**103.** (1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.



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(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

Application of Act to properties given or donated by persons not professing Islam for support of certain wakf.

**104.** Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being:-

(*a*) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(*b*) a Muslim graveyard;

(*c*) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt in the same manner as the wakf in which it is so comprised.

Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.

**105.** Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

Powers of Central Government to constitute common Boards.

**106.** (1) Where the Central Government is satisfied that by reasons of—

(*i*) the smallness of the Muslim population in two or more States,

(*ii*) the slender resources of the Wakfs in such States, and

(*iii*) the disproportion between the number and income of the wakfs and the Muslim population in such States,

it is expedient in the interests of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Gazette,

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a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practicable, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1),—

(a) all powers vested in the State Government under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall stand transferred to, and vested in, the Central Government and, thereupon, references in such deed of wakf or law to the State Governments shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned States is included as a member of the Board;

(b) references in this Act to a State shall be construed as references to each of the States for which the common Board has been established;

(c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restrictions as may be specified by the Central Government, and shall by the said name sue or be sued.

Act 36 of 1963 not to apply for recovery of wakf properties.

107. Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.

Special provision as to evacuee wakf properties.

108. The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything

31 of 1950.

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contained in any other provision of this Act, effect as if such entrustment had operated to—

(*a*) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (*1*) of section 11 of the Administration of Evacuee Property Act, 1950 with effect from the date of such entrustment, and 31 of 1950.

(*b*) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.

Power to make rules.

**109.** (*1*) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

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

(*i*) other particulars which the report of the Survey Commissioner may contain, under clause (*f*) of sub-section (3) of section (*4*);

(*ii*) any other matter under clause (*f*) of sub-section (4) of section 4;

(*iii*) the particulars which a list of Wakfs published under sub-section (*2*) of section 5, may contain;

(*iv*) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;

(*v*) the terms and conditions of service of the Chief Executive Officer under sub-section (*2*) of section 23;

(*vi*) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;

(*vii*) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (*1*) of section 38;

(*viii*) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (*1*) of section 39;

(*ix*) the form in which, and the time within which, a separate budget for Wakfs under the direct management of the Board shall be prepared under sub-section (*1*) of section 45;

(*x*) the interval at which accounts of Wakfs may be audited in pursuance of the provisions of sub-section (*1*) of section 47;

(*xi*) the time within which the sale of any property is to be informed under the first proviso to sub-section (*2*) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;

(*xii*) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;

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(*xiii*) the manner of service of notice issued under sub-section (*1*) of section 54 and the manner in which any inquiry is to be made under sub-section (*3*) of that section;

(*xiv*) the manner in which any inquiry may be held under section 64 or section 71;

(*xv*) the other matters which may be specified in the report submitted under sub-section (*3*) of section 65;

(*xvi*) the manner of publication of order made under sub-section (*2*) of section 67;

(*xvii*) the manner in which consultation may be made with mutawalli under sub-section (*1*) of section 69;

(*xviii*) the manner of publication of order made under sub-section (*3*) of section 69;

(*xix*) the rate at which contribution is to be made by a mutawalli under section 72;

(*xx*) the payment of moneys into the Wakf Fund, the investment, the custody and disbursement of such moneys under section 77;

(*xxi*) the form in which, and the time within which, the budget of the Board may be prepared and submitted under section 78;

(*xxii*) the time within which application is to be made to the Tribunal under sub-section (*2*) of section 83;

(*xxiii*) the procedure which the tribunal shall follow under sub-section (*6*) of section 83;

(*xxiv*) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and

(*xxv*) any other matter which is required to be, or may be, prescribed.

Powers to make regulations by the Board.

110. (*1*) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

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

(*a*) the time and places of the meetings of the Board under sub-section (*1*) of section 17;

(*b*) the procedure and conduct of business at the meetings of the Board;

(*c*) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees;



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(*d*) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees;

(*e*) the terms and conditions of service of the officers and other employees of the Board under sub-section (*2*) of section 24;

(*f*) the forms of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (*3*) of section 36;

(*g*) further particulars to be contained in the register of Wakfs under section 37;

(*h*) the form in which, and the time within which, the budgets of Wakfs may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (*1*) of section 44;

(*i*) the books of accounts and other books to be maintained by the Board under section 79;

(*j*) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same;

(*k*) persons by whom any order or decision of the Board may be authenticated; and

(*l*) any other matter which has to be, or may be, provided by regulations.

(*3*) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

Laying of rules and regulations before State Legislature.

**111.** Every rule made under section 109 and every regulation made under section 110 shall be laid, as soon as may be after it is made, before the State Legislature.

Repeal and savings.

**112.** (*1*) The Wakf Act, 1954 and the Wakf (Amendment) Act, 1984 are hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(*3*) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of

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the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

power of remove difficulties.

113. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

K. L. MOHANPURIA,
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Smt. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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REGISTERED NO. G/GNR/2

ra No. 12

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL. XXXVIII] TUESDAY, APRIL 23, 1996/VAISAKHA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 23rd April, 1996.

No. RP/17/ORD/8/96/30/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 16th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 16th January, 1996/Pausa 26, 1917 (Saka)*

## THE ARBITRATION AND CONCILIATION ORDINANCE, 1996

No. 8 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985; Preamble.

AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;



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AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

AND WHEREAS a Bill to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto, has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

## PRELIMINARY

Short title, extent and commencement.

**1.** (*1*) This Ordinance may be called the Arbitration and Conciliation Ordinance, 1996.

(2) It extends to the whole of India:

Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

*Explanation.*—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (*f*) of sub-section (*1*) of section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

## PART I

### ARBITRATION

### *CHAPTER I*

*General provisions*

Definitions.

**2.** (*1*) In this Part, unless the context otherwise requires,—

(*a*) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(*b*) "arbitration agreement" means an agreement referred to in section 7;

(*c*) 'arbitral award" includes an interim award;

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(*d*) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(*e*) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(*f*) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(*i*) an individual who is a national of, or habitually resident in, any country other than India; or

(*ii*) a body corporate which is incorporated in any country other than India; or

(*iii*) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(*iv*) the Government of a foreign country;

(*g*) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(*h*) "party" means a party to an arbitration agreement.

(*2*) This Part shall apply where the place of arbitration is in India. Scope.

(*3*) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(*4*) This Part except sub-section (*1*) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(*5*) Subject to the provisions of sub-section (*4*), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(*6*) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue. Construction of references.

(*7*) An arbitral award made under this Part shall be considered as a domestic award.

(*8*) Where this Part—

(*a*) refers to the fact that the parties have agreed or that they may agree, or

(*b*) in any other way refers to an agreement of the parties,

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that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (*a*) of section 25 or clause (*a*) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

Receipt of written communications.

3. (*1*) Unless otherwise agreed by the parties,—

(*a*) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(*b*) if none of the places referred to in clause (*a*) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(*2*) The communication is deemed to have been received on the day it is so delivered.

(*3*) This section does not apply to written communications in respect of proceedings of any judicial authority.

Waiver of right to object.

4. A party who knows that—

(*a*) any provision of this Part from which the parties may derogate, or

(*b*) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

Extent of judicial intervention.

5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

Administrative assistance.

6. In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

## *CHAPTER II*

### *Arbitration agreement*

Arbitration agreement.

7. (*1*) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(*3*) An arbitration agreement shall be in writing.

(*4*) An arbitration agreement is in writing if it is contained in—

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(*a*) a document signed by the parties;

(*b*) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(*c*) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(*5*) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Power to refer parties to arbitration where there is an arbitration agreement.

**8.** (*1*) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(*2*) The application referred to in sub-section (*1*) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(*3*) Notwithstanding that an application has been made under sub-section (*1*) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

Interim measures etc. by Court.

**9.** A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it becomes decree of a Court, apply to a Court—

(*i*) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(*ii*) for an interim measure of protection in respect of any of the following matters, namely:—

(*a*) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(*b*) securing the amount in dispute in the arbitration;

(*c*) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(*d*) interim injunction or the appointment of a receiver;

(*e*) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

## *CHAPTER III*

### *Composition of arbitral tribunal*

Number of arbitrators.

**10.** (*1*) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (*1*), the arbitral tribunal shall consist of a sole arbitrator.



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Appointment of arbitrators.

**11.** (*1*) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(*2*) Subject to sub-section (*6*), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(*3*) Failing any agreement referred to in sub-section (*2*), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(*4*) If the appointment procedure in sub-section (*3*) applies and—

(*a*) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(*b*) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(*5*) Failing any agreement referred to in sub-section (*2*), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(*6*) Where, under an appointment procedure agreed upon by the parties,—

(*a*) a party fails to act as required under that procedure; or

(*b*) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(*c*) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(*7*) A decision on a matter entrusted by sub-section (*4*) or sub-section (*5*) or sub-section (*6*) to the Chief Justice or the person or institution designated by him is final.

(*8*) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

(*a*) any qualifications required of the arbitrator by the agreement of the parties; and

(*b*) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(*9*) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

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(*10*) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (*4*) or sub-section (*5*) or sub-section (*6*) to him.

(*11*) Where more than one request has been made under sub-section (*4*) or sub-section (*5*) or sub-section (*6*) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(*12*) (*a*) Where the matters referred to in sub-sections (*4*), (*5*), (*6*), (*7*), (*8*) and (*10*) arise in an international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the "Chief Justice of India".

(*b*) Where the matters referred to in sub-sections (*4*), (*5*), (*6*), (*7*), (*8*) and (*10*) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (*e*) of sub-section (*1*) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

Grounds for challenge.

**12.** (*1*) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (*1*) unless they have already been informed of them by him.

(*3*) An arbitrator may be challenged only if—

(*a*) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(*b*) he does not possess the qualifications agreed to by the parties.

(*4*) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Challenge procedure.

**13.** (*1*) Subject to sub-section (*4*), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (*1*), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (*3*) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(*3*) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(*4*) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

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(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

Failure or impossibility to act.

14. (1) The mandate of an arbitrator shall terminate if—

(a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

Termination of mandate and substitution of arbitrator.

15. (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

## *CHAPTER IV*

### *Jurisdiction of arbitral tribunals*

Competence of arbitral tribunal to rule on its jurisdiction.

16. (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

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(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

Interim measures ordered by arbitral tribunal.

**17.** (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

## *CHAPTER V*

### *Conduct of arbitral proceedings*

Equal treatment of parties.

**18.** The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

Determination of rules of procedure

5 of 1908.
1 of 1872.

**19.** (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Place of arbitration.

**20.** (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.



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Commencement of arbitral proceedings.

**21.** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Language.

**22.** (*1*) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(*2*) Failing any agreement referred to in sub-section (*1*), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(*3*) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(*4*) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statements of claim and defence.

**23.** (*1*) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(*3*) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Hearings and written proceedings.

**24.** (*1*) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(*3*) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Default of a party.

**25.** Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(*a*) the claimant fails to communicate his statement of claim in accordance with sub-section (*1*) of section 23, the arbitral tribunal shall terminate the proceedings;

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(*b*) the respondent fails to communicate his statement of defence in accordance with sub-section (*1*) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(*c*) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Expert appointed by arbitral tribunal.

**26.** (*1*) Unless otherwise agreed by the parties, the arbitral tribunal may—

(*a*) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(*b*) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(*3*) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

Court assistance in taking evidence.

**27.** (*1*) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(*a*) the names and addresses of the parties and the arbitrators;

(*b*) the general nature of the claim and the relief sought;

(*c*) the evidence to be obtained, in particular,—

(*i*) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(*ii*) the description of any document to be produced or property to be inspected.

(*3*) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(*4*) The Court may, while making an order under sub-section (*3*), issue the same processes to witnesses as it may issue in suits tried before it.

(*5*) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of

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the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

## CHAPTER VI

### *Making of arbitral award and termination of proceedings*

Rules applicable to substance of dispute.

**28.** (1) Where the place of arbitration is situate in India,—

(*a*) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(*b*) in international commercial arbitration,—

(*i*) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(*ii*) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(*iii*) failing any designation of the law under sub-clause (*ii*) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Decision making by panel of arbitrators.

**29.** (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

Settlement.

**30.** (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

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Form and contents of arbitral award.

**31.** (*1*) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (*1*), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(*3*) The arbitral award shall state the reasons upon which it is based, unless—

(*a*) the parties have agreed that no reasons are to be given, or

(*b*) the award is an arbitral award on agreed terms under section 30.

(*4*) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(*5*) After the arbitral award is made, a signed copy shall be delivered to each party.

(*6*) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(*7*) (*a*) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(*b*) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(*8*) Unless otherwise agreed by the parties,—

(*a*) the costs of an arbitration shall be fixed by the arbitral tribunal;

(*b*) the arbitral tribunal shall specify—

(*i*) the party entitled to costs,

(*ii*) the party who shall pay the costs,

(*iii*) the amount of costs or method of determining that amount, and

(*iv*) the manner in which the costs shall be paid.

*Explanation.*—For the purpose of clause (*a*), "costs" means reasonable costs relating to—

(*i*) the fees and expenses of the arbitrators and witnesses,

(*ii*) legal fees and expenses,

(*iii*) any administration fees of the institution supervising the arbitration, and



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(*iv*) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

Termination of proceedings.

**32.** (*1*) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (*2*).

(*2*) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(*a*) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(*b*) the parties agree on the termination of the proceedings, or

(*c*) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(*3*) Subject to section 33 and sub-section (*4*) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

Correction and interpretation of award; additional award.

**33.** (*1*) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(*a*) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(*b*) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(*2*) If the arbitral tribunal considers the request made under sub-section (*1*) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(*3*) The arbitral tribunal may correct any error of the type referred to in clause (*a*) of sub-section (*1*), on its own initiative, within thirty days from the date of the arbitral award.

(*4*) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(*5*) If the arbitral tribunal considers the request made under sub-section (*4*) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(*6*) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (*2*) or sub-section (*5*).

(*7*) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

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## *CHAPTER VII*

### *Recourse against arbitral award*

Application for setting aside arbitral award.

34. (*1*) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (*3*).

(2) An arbitral award may be set aside by the Court only if—

(*a*) the party making the application furnishes proof that—

(*i*) a party was under some incapacity, or

(*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(*v*) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(*b*) the Court finds that—

(*i*) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(*ii*) the arbitral award is in conflict with the public policy of India.

*Explanation.*—Without prejudice to the generality of sub-clause (*ii*) of clause (*b*), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(*3*) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(*4*) On receipt of an application under sub-section (*1*), the Court may, where it is

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appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

## *CHAPTER VIII*

### *Finality and enforcement of arbitral awards*

Finality of arbitral awards.

**35.** Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

Enforcement.

**36.** Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. 5 of 1908.

## *CHAPTER IX*

### *Appeals*

Appealable orders.

**37.** (*1*) An appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(*a*) granting or refusing to grant any measure under section 9;

(*b*) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie from an order granting or refusing to grant an interim measure under section 17 to a Court.

(*3*) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

## *CHAPTER X*

### *Miscellaneous*

Deposits.

**38.** (*1*) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (*8*) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (*1*) shall be payable in equal shares by the parties:

Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

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(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

Lien on arbitral award and deposits as to costs.

39. (1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

Arbitration agreement not to be discharged by death of party thereto.

40. (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects he deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Provisions in case of insolvency.

41. (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section, the expression "receiver" includes an Official Assignee.

Jurisdiction.

42. Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over



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the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Limitations.

**43.** (*1*) The Limitation Act, 1963, shall apply to arbitrations as it applies to proceedings in court. 36 of 1963.

(*2*) For the purposes of this section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred in section 21. 36 of 1963.

(*3*) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(*4*) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted. 36 of 1963.

## PART II

### ENFORCEMENT OF CERTAIN FOREIGN AWARDS

### *CHAPTER I*

### *New York Convention Awards*

Definition.

**44.** In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

(*a*) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(*b*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

Power of judicial authority to refer parties to arbitration.

**45.** Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. 5 of 1908.

When foreign award binding.

**46.** Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

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Evidence.

**47.** (*1*) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court—

(*a*) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(*b*) the original agreement for arbitration or a duly certified copy thereof; and

(*c*) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (*1*) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

*Explanation.*—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

Conditions for enforcement of foreign awards.

**48.** (*1*) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(*a*) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(*b*) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(*c*) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*e*) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(*a*) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(*b*) the enforcement of the award would be contrary to the public policy of India.

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*Explanation.*—Without prejudice to the generality of clause (*b*) of this sub-section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(*3*) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (*e*) of sub-section (*1*) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Enforcement of foreign awards.

**49.** Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

Appealable orders.

**50.** (*1*) An appeal shall lie from the order refusing to—

(*a*) refer the parties to arbitration under section 45;

(*b*) enforce a foreign award under section 48,

to the Court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Saving.

**51.** Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

Chapter II not to apply.

**52.** Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

## *CHAPTER II*

### *Geneva Convention Awards*

Interpretation.

**53.** In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

(*a*) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(*c*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the

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country in which it was made.

5 of 1908.

**54.** Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative. Power of judicial authority to refer parties to arbitration.

**55.** Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award. Foreign awards when binding.

**56.** (*1*) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court— Evidence.

(*a*) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(*b*) evidence proving that the award has become final; and

(*c*) such evidence as may be necessary to prove that the conditions mentioned in clauses (*a*) and (*c*) of sub-section (*1*) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (*1*) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

*Explanation.*—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

**57.** (*1*) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that -- Conditions for enforcement of foreign awards.

(*a*) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(*c*) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(*d*) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or



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if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) the enforcement of the award is not contrary to the public policy or the law of India.

*Explanation.*—Without prejudice to the generality of clause (*e*), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub-section (*1*) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

(*a*) the award has been annulled in the country in which it was made;

(*b*) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(*c*) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(*3*) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (*a*) and (*c*) of sub-section (*1*) and clauses (*b*) and (*c*) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Enforcement of foreign awards.

**58.** Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

Appealable orders.

**59.** (*1*) An appeal shall lie from the order refusing—

(*a*) to refer the parties to arbitration under section 54; and

(*b*) to enforce a foreign award under section 57,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Saving.

**60.** Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

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## PART III

### CONCILIATION

Application and scope.

**61.** (*1*) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(*2*) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

Commencement of conciliation proceedings.

**62.** (*1*) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(*3*) If the other party rejects the invitation, there will be no conciliation proceedings.

(*4*) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

Number of conciliators.

**63.** (*1*) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Appointment of conciliators.

**64.** (*1*) Subject to sub-section (*2*),—

(*a*) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(*b*) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(*c*) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(*a*) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(*b*) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

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Submission of statements to conciliator.

**65.** (*1*) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(*2*) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(*3*) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

*Explanation.*—In this section and all the following sections of this Part, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.

Conciliator not bound by certain enactments.

**66.** The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. 5 of 1908. 1 of 1872.

Role of conciliator.

**67.** (*1*) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(*2*) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(*3*) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(*4*) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

Administrative assistance.

**68.** In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Communication between conciliator and parties.

**69.** (*1*) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(*2*) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

Disclosure of information.

**70.** When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that

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information to the other party.

71. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings. Co-operation of parties with conciliator.

72. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute. Suggestions by parties for settlement of dispute.

73. (*1*) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations. Settlement agreement.

(*2*) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(*3*) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(*4*) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30. Status and effect of settlement agreement.

75. Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. Confidentiality.

76. The conciliation proceedings shall be terminated— Termination of conciliation proceedings.

(*a*) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(*b*) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(*c*) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(*d*) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.



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Resort to arbitral or judicial proceedings.

**77.** The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs.

**78.** (*1*) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(*2*) For the purpose of sub-section (*1*), "costs" means reasonable costs relating to—

(*a*) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(*b*) any expert advice requested by the conciliator with the consent of the parties;

(*c*) any assistance provided pursuant to clause (*b*) of sub-section (2) of section 64 and section 68;

(*d*) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(*3*) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits.

**79.** (*1*) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(*2*) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(*3*) If the required deposits under sub-sections (*1*) and (*2*) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(*4*) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

Role of conciliator in other proceedings.

**80.** Unless otherwise agreed by the parties,—

(*a*) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(*b*) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Admissibility of evidence in other proceedings.

**81.** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(*a*) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

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(*b*) admissions made by the other party in the course of the conciliation proceedings;

(*c*) proposals made by the conciliator;

(*d*) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

## PART IV

### SUPPLEMENTARY PROVISIONS

Power of High Court to make rules.

**82.** The High Court may make rules consistent with this Ordinance as to all proceedings before the Court under this Ordinance.

Removal of difficulties.

**83.** (*1*) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

**84.** (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Every rule made by the Central Government under this Ordinance 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.

Repeal and saving.

6 of 1937. 10 of 1940. 45 of 1961.

**85.** (*1*) The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961 are hereby repealed.

(2) Notwithstanding such repeal,—

(*a*) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Ordinance came into force unless otherwise agreed by the parties but this Ordinance shall apply in relation to arbitral proceedings which commenced on or after this Ordinance comes into force;

(*b*) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Ordinance, be deemed respectively to have been made or issued under this Ordinance.

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## THE FIRST SCHEDULE

(*See* section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### *ARTICLE I*

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

### *ARTICLE II*

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

### *ARTICLE III*

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### *ARTICLE IV*

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:—

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(*a*) the duly authenticated original award or a duly certified copy thereof;

(*b*) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

*ARTICLE V*

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

(*a*) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(*b*) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(*c*) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*e*) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(*a*) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(*b*) the recognition or enforcement of the award would be contrary to the public policy of that country.

*ARTICLE VI*

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.



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*ARTICLE VII*

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

*ARTICLE VIII*

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

*ARTICLE IX*

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*ARTICLE X*

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

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*ARTICLE XI*

In the case of a federal or non-unitary State, the following provisions shall apply:—

(*a*) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(*b*) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(*c*) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

*ARTICLE XII*

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

*ARTICLE XIII*

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

*ARTICLE XIV*

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

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*ARTICLE XV*

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:—

(*a*) signatures and ratifications in accordance with article VIII;

(*b*) accessions in accordance with article IX;

(*c*) declarations and notifications under articles I, X and XI;

(*d*) the date upon which this Convention enters into force in accordance with article XII;

(*e*) denunciations and notifications in accordance with article XIII.

*ARTICLE XVI*

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article XIII.

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## THE SECOND SCHEDULE

(*See* section 53)

### PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

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3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories; protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

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## THE THIRD SCHEDULE

(*See* section 53)

### CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

*Article* 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th,



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*Article* 10.—The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

*Article* 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every Non-Member State which signs the same.

SHANKER DAYAL SHARMA,
*President.*

A.C.C UNNI,
*Additional Secretary to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

Smt. K. R. TRIVEDI,
*Secretary to Government.*

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 13 REGISTERED NO. G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XXXVII] TUESDAY, APRIL 23, 1996/VAISAKHA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 23rd April, 1996.

No. RP/19/ORD/10/96/29/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-ordinary, Part II, Section 1, dated the 27th January, 1996 is republished for general information :—

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

*New Delhi, the 27th January, 1996/Magha 7, 1917 (Saka)*

## THE TELECOM REGULATORY AUTHORITY OF INDIA ORDINANCE, 1996

### NO. 10 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

### CHAPTER I

### PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Ordinance may be called the Telecom Regulatory Authority of India Ordinance, 1996.

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

(*3*) It shall come into force at once.



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Definitions.

2. (*1*) In this Ordinance, unless the context otherwise requires,—

(*a*) "appointed day" means the day with effect from which the Authority is established under sub-section (*1*) of section 3;

(*b*) "Authority" means the Telecom Regulatory Authority of India established under sub-section (*1*) of section 3;

(*c*) "Chairperson" means the Chairperson of the Authority appointed under sub-section (*3*) of section 3;

(*d*) "Fund" means the Fund constituted under sub-section (*1*) of section 22;

(*e*) "member" means a member of the Authority appointed under sub-section (*3*) of section 3 and includes the Chairperson and the Vice-Chairperson;

(*f*) "notification" means a notification published in the Official Gazette;

(*g*) "prescribed" means prescribed by rules made under this Ordinance;

(*h*) "regulations" means regulations made by the Authority under this Ordinance;

(*i*) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(*2*) Words and expressions used and not defined in this Ordinance but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the meanings respectively assigned to them in those Acts. 13 of 1885. 17 of 1933.

(*3*) Any reference in this Ordinance to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

## CHAPTER II

### TELECOM REGULATORY AUTHORITY OF INDIA

Establishment and incorporation of the Authority.

3. (*1*) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Ordinance, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(*3*) The Authority shall consist of a Chairperson, and not less than two, but not exceeding four members, to be appointed by the Central Government.

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(4) The head office of the Authority shall be at New Delhi.

Qualifications for appointment of Chairperson and other members.

4. (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary, or the posts of Additional Seretary and Seretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

Term of office, conditions of service, etc., of Chairperson and other members.

5. (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be,—

(a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;

(b) if he has been the Chief Justice of a High Court, the same as that of the Chief Justice of the High Court:

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court or a Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson or of the member shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

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(*b*) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

(*a*) be incligible for further employment either under the Government of India or under the State Government; or

(*b*) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject matter of consideration before the Authority.

Powers of Chairperson and Vice-Chairperson.

**6.** (*1*) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(*2*) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

Removal of members from office in certain circum-stances.

**7.** (*1*) The Central Government may remove from office any member, who—

(*a*) has been adjudged as insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*c*) has become physically or mentally incapable of acting as a member; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest.

(*2*) Notwithstanding anything contained in sub-section (*1*), no member shall be removed from his office on the ground specified in clause (*d*) or clause (*e*) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

Meetings.

**8.** (*1*) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(*2*) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(*3*) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

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(4) The Authority may make regulations for the transaction of business at its meetings.

Vacancies, etc., not to invalidate proceedings of the Authority.

9. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and other employees of Authority.

10. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

## CHAPTER III

### POWERS AND FUNCTIONS OF THE AUTHORITY

Functions of Authority.

13 of 1885.

11. (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;

(h) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(i) levy fees at such rates and in respect of such services as may be determined by regulations;

(j) ensure effective compliance of universal service obligations;

(k) perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Ordinance.



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(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and out side India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India. 13 of 1885.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

Power of Authority to call for information, conduct investigations, etc.

12. (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every director, manager, secretary or other officer, if such service provider is a company; or

(b) every partner, manager, secretary or other officer, if such service provider is a firm; or

(c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary, for proper functioning by service providers.

Power of Authority to issue directions.

13. The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

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## CHAPTER IV

### SETTLEMENT OF DISPUTES

Authority to settle disputes.

**14.** (*1*) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (*1*) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court on any matter relating to—

(*i*) technical compatibility and inter-connections between service providers;

(*ii*) revenue sharing arrangements between different service providers;

(*iii*) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matter relating to—

(*a*) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (*1*) of section 5 of the
54 of 1969. Monopolies and Restrictive Trade Practices Act, 1969;

(*b*) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or a [illegible] Redressal Commission established under section 9 of the
68 of 1986. Consumer Protection Act, 1986;

(c) dispute between telegraph authority and any other person referred to in sub-
13 of 1885. section (*1*) of section 7B of the Indian Telegraph Act, 1885.

Ruling of application to Authority and procedure for passing order by it.

**15.** (*1*) An aggrieved person may make an application in respect of matters referred to in sub-section (*2*) of section 14 within such period as may be prescribed.

*Explanation.*—For the purposes of this sub-section, the expression "aggrieved person" means—

(*i*) any service provider who has a dispute in respect of matters referred to in clauses (*i*) and (*ii*) of sub-section (2) of section 14;

(*ii*) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (*1*), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

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(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

Procedure and powers of Authority.

16. (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte;*

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte;*

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

Right to legal representation.

17. The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

Appeal to High Court.

18. Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Orders passed by Authority or High Court to be executable as a decree.

19. Every order made by the Authority under this Ordinance or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.

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Penalty for wilful failure to comply with orders of Authority or of High Court.

**20.** If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine, or with both.

## CHAPTER V

### FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government.

**21.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Ordinance.

Fund.

**22.** (*1*) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

(*a*) all grants, fees and charges received by the Authority under this Ordinance; and

(*b*) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(*2*) The Fund shall be applied for meeting—

(*a*) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(*b*) the expenses of the Authority in the discharge of its functions under this Ordinance; and

(*c*) the expenses on objects and for purposes authorised by this Ordinance.

Accounts and audit.

**23.** (*1*) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such auditor shall be payable by the Authority to the Comptroller and Auditor-General of India.

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

(*4*) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.



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Furnishing of returns, etc., to Central Government.

**24.** (*1*) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(*2*) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(*3*) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

## CHAPTER VI

### MISCELLANEOUS

Power of Central Government to issue directions.

**25.** (*1*) The Central Government may, from to time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(*2*) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-setion.

(*3*) The decision of the Central Government whether a question is one of policy or not shall be final.

Members, officers and employees of Authority to be public servants.

**26.** All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Bar of jurisdiction.

**27.** No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

Protection of action taken in good faith.

**28.** No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of the Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

Penalty for contravention of directions of Authority.

**29.** If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.

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Offences by companies.

**30.** (*1*) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Ordinance 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 the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

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

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

Exemption from tax on wealth and income.

27 of 1957.
43 of 1961.

**31.** Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

Delegation.

**32.** The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulations under section 35) as it may deem necessary.

Cognizance of offences.

**33.** (*1*) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder, save on a complaint made by the Authority.

(*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 Ordinance.

Power to make rules.

**34.** (*1*) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

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

(*a*) the salary and allowances payable to and the other conditions of service of the members under sub-section (*6*) of section 5;

(*b*) the powers and functions of the Chairperson under sub-section (*1*) of section 6;

(*c*) the category of books of account or other documents which are required to be maintained under sub-section (*3*) of section 12;

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(*d*) the period within which an application is to be made under sub-section (*1*) of section 15;

(*e*) the manner in which the accounts of the Authority shall be maintained under sub-section (*1*) of section 23;

(*f*) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-sections (*1*) and (2) of section 24;

(*g*) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Power to make regulations.

35. (*1*) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(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 times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (*1*) of section 8, including quorum necessary for the transaction of business;

(*b*) the transaction of business at the meetings of the Authority under sub-section (*4*) of section 8;

(*c*) the salaries and allowances payable to and the other terms and conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(*d*) levy of fees under clause (*i*) of sub-section (*1*) of section 11.

Rules and regulations to be laid before Parliament.

36. Every rule and every regulation made under this Ordinance 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 regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of certain laws.

37. The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 and, in particular, nothing in this Ordinance shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.

13 of 1885.
17 of 1933.

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**38.** (*1*) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistant with the provisions of this Ordinance as may appear to be necessary for removing the difficulty. Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each Hosue of Parliament.

Sd/–
**SHANKER DAYAL SHARMA,**
*President.*

Sd/–
**K. L. MOHANPURIA,**
*Secy. to the Govt. of India.*

By order and in the name of the Governor of Gujarat,

**Smt. K. R. TRIVEDI,**
*Secretary to Government.*



GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 14 REGISTERED NO. G/GNR/2

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

Vol. XXXVII] TUESDAY, APRIL 23, 1996/VAISAKHA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a Separate Compilation.**


## PART—VI

### Acts of Parliament and Ordinances promulgated by the President.

GOVERNMENT OF GUJARAT

**LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT**

Sachivalaya, Gandhinagar, 23rd April, 1996.

No : RP/16/Ord : 7/96/28/E.—The following ordinance promulgated by the President and published in the Gazette of India, Extra-Ordinary, Part II, Section 1 dated the 11th January, 1996 is republished for general information:—

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

*New Delhi, the 11th January, 1996/Pausa 21, 1917 (Saka)*

THE SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT ORDINANCE, 1996

No. 7 OF 1996

Promulgated by the President in the Forty-sixth year of the Republic of India.

An ordinance further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954.

WHEREAS Parliament is not in session and thePresident is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—



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## CHAPTER I

## PRELIMINARY

Short title and commencement.

**1.** (1) This Ordinance may be called the Supreme Court and High Court Judges, (Conditions of Service) Amendment Ordinance, 1996.

(2) It shall come into force at once.

## CHAPTER II

## AMENDMENT OF THE SUPREME COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1958

Amendment of section 23A.

**2.** In section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 (hereinafter in this Chapter referred to as the Supreme Court Judges Act), for the words "one hundred and fifty Litres of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted. 41 of 1958

Amendment of section 23B.

**3.** In section 23B of the Supreme Court Judges Act, for the words "one thousand two hundred and fifty", and "seven hundred and fifty", the words "four thousnad" and "three thousand" shall respectively be substituted.

## CHAPTER III

## AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

Amendment of section 22B.

**4.** In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter in this Chapter referred to as the High Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted. 28 of 1954

Amendment of section 22C.

**5.** In section 22C of the High Court Judges Act, for the words "five hundred" and "three hundred", the words "three thousand" and "two thousand" shall respectively be substituted.

Sd/--
SHANKER DAYAL SHARMA,
*President.*

Sd/--
K. L. MOHANPURIA,
*Secy, to the Govt. of India.*

By order and in the name of the Governor of Gujarat,
Sd/--
SMT. K. R. TRIVEDI,
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR

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REGISTERED NO. G/GNR/2

Extra No. 15

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL. XXXVII] WEDNESDAY, JUNE 26, 1996/ASADHA 5, 1918.

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

**PART—VI**

**Acts of Parliament and Ordinances promulgated by the President.**

GOVERNMENT OF GUJARAT

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, Dated the 19th June, 1996.

No. RP/29/Act-1/96/ /E.—The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

**(Legislative Department)**

New Delhi, the 1st January, 1996/Paush 11, 1917 (Saka).

The following Act of Parliament received the assent of the President on the 1st January, 1996 and is hereby published for general information :

## THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

**(Act No. 1 of 1996)** **(1st January, 1996)**

*AN ACT*

*to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region.*

WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993—2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region;

AND WHEREAS India is a signatory to the said Proclamation;

AND WHEREAS it is considered necessary to implement the Proclamation aforesaid.



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BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

Short title, extent and commencement.

**1.** (*1*) This Act may be called the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification, appoint.

Definitions.

**2.** In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government; 2 of 1924.

(*ii*) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

(*iii*) in respect of the Central Coordination Committee and the Central Executive Committee, the Central Government;

(*iv*) in respect of the State Coordination Committee and the State Executive Committee, the State Government;

(*b*) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:—

(*i*) total absence of sight; or

(*ii*) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

(*iii*) limitation of the field of vision subtending an angle of 20 degree or worse;

(*c*) "Central Coordination Committee" means the Central Coordination Committee constituted under sub-section (*1*) of section 3;

(*d*) "Central Executive Committee" means the Central Executive Committee constituted under sub-section (*1*) of section 9;

(*e*) "cerebral palsy" means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development;

(*f*) "Chief Commissioner" means the Chief Commissioner appointed under sub-section (*1*) of section 57;

(*g*) "Commissioner" means the Commissioner appointed under sub-section (*1*) of section 60;

(*h*) "competent authority" means the authority appointed under section 50;

(*i*) "disability" means—

(*i*) blindness;

(*ii*) low vision;

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(*iii*) leprosy-cured;

(*iv*) hearing impairment;

(*v*) locomotor disability;

(*vi*) mental retardation;

(*vii*) mental illness;

(*j*) "employer" means,—

(*i*) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

(*ii*) in relation to an establishment, the chief executive officer of that establishment;

(*k*) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956, and includes Departments of a Government;

1 of 1956.

(*l*) "hearing impairment" means loss of sixty decibels or more in the better year in the conversational range of frequencies;

(*m*) "institution for persons with disabilities" means an institution for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities;

(*n*) "leprosy-cured person" means any person who has been cured of leprosy but is suffering from—

(*i*) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(*ii*) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(*iii*) extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation,

and the expression "leprosy cured" shall be construed accordingly;

(*o*) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;

(*p*) "medical authority" means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;

(*q*) "mental illness" means any mental disorder other than mental retardation;

(*r*) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence;

(*s*) "notification" means a notification published in the Official Gazette;

(*t*) "person with disability" means a person suffering from not less than forty per cent. of any disability as certified by a medical authority;

(*u*) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

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

(*w*) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels;

(*x*) "Special Employment Exchange" means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, respecting—

(*i*) persons who seek to engage employees from amongst the persons suffering from disabilities;

(*ii*) persons with disability who seek employment;

(*iii*) vacancies to which person with disability seeking employment may be appointed;

(*y*) "State Coordination Committee" means the State Coordination Committee constituted under sub-section (*1*) of section 13;

(*z*) "State Executive Committee" means the State Executive Committee constituted under sub-section (*1*) of section 19.

## CHAPTER II

### THE CENTRAL COORDINATION COMMITTEE

Central Coordination Committee.

**3.** (*1*) The Central Government shall by notification constitute a body to be known as the Central Coordination Committee to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(*2*) The Central Coordination Committee shall consist of—

(*a*) the Minister in-charge of the Department of Welfare in the Central Government, Chairperson, *ex officio*;

(*b*) the Minister of State in-charge of the Department of Welfare in the Central Government, Vice-Chairperson, *ex officio;*

(*c*) Secretaries to the Government of India in-charge of the Departments of Welfare, Education, Woman and Child Development, Expenditure, Personnel, Training and Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, Legal Affairs, Public Enterprises, Members, *ex officio;*

(*d*) Chief Commissioner, Member, *ex officio;*

(*e*) Chairman Railway Board, Member, *ex officio;*

(*f*) Director-General of Labour, Employment and Training, Member, *ex officio;*

(*g*) Director, National Council for Educational Research and Training, Member, *ex officio;*

(*h*) three Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members;

(*i*) three persons to be nominated by the Central Government to represent the interests, which in the opinion of that Government ought to be represented, Members;

(*j*) the Directors of the—

(*i*) National Institute for the Visually Handicapped, Dehradun;

(*ii*) National Institute for the Mentally Handicapped, Secundrabad;

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(*iii*) National Institute for the Orthopaedically Handicapped, Calcutta;

(*iv*) Ali Yavar Jung National Institute for the Hearing Handicapped, Bombay,

Members, *ex officio*;

(*k*) four Members to be nominated by the Central Government by rotation to represent the States and the Union territories in such manner as may be prescribed by the Central Government:

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;

(*l*) five persons as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the Central Government, one from each area of disability, Members:

Provided that while nominating persons under this clause, the Central Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(*m*) Joint Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of the handicapped, Member-Secretary, *ex officio*.

(*3*) The office of the Member of the Central Coordination Committee shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.

Term of office of Members.

**4.** (*1*) Save as otherwise provided by or under this Act a Member of Central Coordination Committee nominated under clause (*i*) or clause (*l*) of sub-section (*2*) of section 3 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(*2*) The term of office of an *ex officio* Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(*3*) The Central Government may if it thinks fit remove any Member nominated under clause (*i*) or clause (*l*) of sub-section (*2*) of section 3, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(*4*) A Member nominated under clause (*i*) or clause (*l*) of sub-section (*2*) of section 3 may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

(*5*) A casual vacancy in the Central Coordination Committee shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(*6*) A Member nominated under clause (*i*) or clause (*l*) of sub-section (*2*) of section 3 shall be eligible for renomination.

(*7*) Members nominated under clause (*i*) and clause (*l*) of sub-section (*2*) of section 3 shall receive such allowances as may be prescribed by the Central Government.

Disqualifications.

**5.** (*1*) No person shall be a Member of the Central Coordination Committee, who—

(*a*) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(*b*) is of unsound mind and stands so declared by a competent court, or

(*c*) is or has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or



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(*d*) is or at any time has been convicted of an offence under this Act; or

(*e*) has so abused in the opinion of the Central Government his position as a Member as to render his continuance in the Central Coordination Committee detrimental to the interests of the general public.

(*2*) No order of removal shall be made by the Central Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*6*) of section 4, a Member who has been removed under this section shall not be eligible for renomination as a Member.

Vacation of seats by Members.

**6.** If a Member of the Central Coordination Committee becomes subject to any of the disqualifications specified in section 5, his seat shall become vacant.

Meetings of the Central Coordination Committee.

**7.** The Central Coordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the Central Government.

Functions of the Central Coordination Committee.

**8.** (*1*) Subject to the provisions of this Act, the function of the Central Coordination Committee shall be to serve as the national focal point on disabilty matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing, the Central Coordination Committee may perform all or any of the following functions, namely:—

(*a*) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(*b*) develop a national policy to address issues faced by persons with disabilities;

(*c*) advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability;

(*d*) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies;

(*e*) review in consultation with the donor agencies their funding policies from the perspective of their impact on persons with disabilities;

(*f*) take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions;

(*g*) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(*h*) to perform such other functions as may be prescribed by the Central Government.

Central Executive Committee.

**9.** (*1*) The Central Government shall constitute a Committee to be known as the Central Executive Committee to perform the functions assigned to it under this Act.

(2) The Central Executive Committee shall consist of—

(*a*) the Secretary to the Government of India in the Ministry of Welfare, Chairperson, *ex officio;*

(*b*) the Chief Commissioner, Member, *ex officio;*

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(*c*) the Director-General for Health Services, Member, *ex officio;*

(*d*) the Director-General, Employment and Training, Member, *ex officio;*

(*e*) six persons not below the rank of a Joint Secretary to the Government of India, to represent the Ministries or Departments of Rural Development, Education, Welfare, Personnel, Public Grievances and Pension and Urban Affairs and Employment, Science and Technology, Members, *ex officio;*

(*f*) the Financial Advisor, Ministry of Welfare in the Central Government, Member, *ex officio;*

(*g*) Advisor (Tariff) Railway Board, Member, *ex officio;*

(*h*) four members to be nominated by the Central Government, by rotation, to represent the State Governments and the Union territories in such manner as may be prescribed by the Central Government;

(*i*) one person to be nominated by the Central Government to represent the interest, which in the opinion of the Central Government ought to be represented, Member;

(*j*) five persons, as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the Central Government, one from each area of disability, Members:

Provided that while nominating persons under this clause, the Central Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(*k*) Joint Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of the handicapped, Member-Secretary, *ex officio.*

(*3*) Members nominated under clause (*i*) and clause (*j*) of sub-section (*2*) shall receive such allowances as may be prescribed by the Central Government.

(*4*) A Member nominated under clause (*i*) or clause (*j*) of sub-section (*2*) may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

Functions of the Central Executive Committee.

**10.** (*1*) The Central Executive Committee shall be the executive body of the Central Coordination Committee and shall be responsible for carrying out the decisions of the Central Coordination Committee.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Central Executive Committee shall also perform such other functions as may be delegated to it by the Central Coordination Committee.

Meetings of the Central Executive Committee.

**11.** The Central Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the Central Government.

Temporary association of persons with Central Executive Committee for particular purposes.

**12.** (*1*) The Central Executive Committee may associate with itself in such manner and for such purposes as may be prescribed by the Central Government any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(*2*) A person associated with the Central Executive Committee under sub-section (*1*) for any purpose shall have the right to take part in the discussions of the Central Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said Committee, and shall not be a member for any other purpose.

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(3) A person associated with the said Committee under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be prescribed by the Central Government.

## CHAPTER III

### THE STATE COORDINATION COMMITTEE

State Coordination Committee.

**13.** (1) Every State Government shall, by notification, constitute a body to be known as the State Coordination Committee to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

(2) The State Coordination Committee shall consist of—

(a) the Minister in-charge of the Department of Social Welfare in the State Government, Chairperson, *ex officio*;

(b) the Minister of State in-charge of the Department of Social Welfare, if any, Vice-Chairperson, *ex officio*;

(c) Secretaries to the State Government in-charge of the Departments of Welfare, Education, Woman and Child Development, Expenditure, Personnel Training and Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, Public Enterprises, by whatever name called, Members, *ex officio*;

(d) Secretary of any other Department which the State Government considers necessary, Member, *ex officio*;

(e) Chairman Bureau of Public Enterprises (by whatever name called) Member, *ex officio*;

(f) five persons, as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, Members:

Provided that while nominating persons under this clause, the State Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(g) three Members of State Legislature, of whom two shall be elected by the Legislative Assembly and one by the Legislative Council, if any;

(h) three persons to be nominated by that State Government to represent agriculture, industry or trade or any other interest, which in the opinion of State Government ought to be represented, Members, *ex officio*;

(i) the Commissioner, Member, *ex officio*;

(j) Secretary to the State Government dealing with the welfare of the handicapped, Member-Secretary, *ex officio*.

(3) Notwithstanding anything contained in this section, no State Coordination Committee shall be constituted for a Union territory and in relation to a Union territory, the Central Coordination Committee shall exercise the functions and perform the functions of a State Coordination Committee for the Union territory:

Provided that in relation to a Union territory, the Central Coordination Committee may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify.

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Terms and conditions of service of Members.

**14.** (*1*) Save as otherwise provided by or under this Act, a Member of a State Coordination Committee nominated under clause (*f*) or clause (*h*) of sub-section (*2*) of section 13 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(*2*) The term of office of an *ex officio* Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(*3*) The State Government may, if it thinks fit, remove any Member nominated under clause (*f*) or clause (*h*) of sub-section (*2*) of section 13, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(*4*) A Member nominated under clause (*f*) or clause (*h*) of sub-section (*2*) of section 13 may, at any time, resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

(*5*) A casual vacancy in the State Coordination Committee shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(*6*) A Member nominated under clause (*f*) and clause (*h*) of sub-section (*2*) of section 13 shall be eligible for renomination.

(*7*) Members nominated under clause (*f*) and clause (*h*) sub-section (*2*) of section 13 shall receive such allowances as may be prescribed by the State Government.

Disqualifications.

**15.** (*1*) No person shall be a Member of the State Coordination Committee, who—

(*a*) is, or at any time, has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(*b*) is of unsound mind and stands so declared by a competent court, or

(*c*) is or has been convicted of an offence which in the opinion of the State Government involves moral turpitude, or

(*d*) is or at any time has been convicted of an offence under this Act, or

(*e*) has so abused, in the opinion of the State Government, his position as a member as to render his continuance in the State Coordination Committee detrimental to the interests of the general public.

(*2*) No order of removal shall be made by the State Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*6*) of section 14, a Member who has been removed under this section shall not be eligible for renomination as a Member.

Vacation of seats.

**16.** If a Member of the State Coordination Committee becomes subject to any of the disqualifications specified in section 15, his seat shall become vacant.

Meetings of the State Coordination Committee.

**17.** The State Coordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.



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Functions of the State Coordination Committee.

**18.** (*1*) Subject to the provisions of this Act, the function of the State Coordination Committee shall be to serve as the state focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing function the State Coordination Committee may, within the State perform all or any of the following functions, namely:—

(*a*) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(*b*) develop a State policy to address issues faced by persons with disabilities;

(*c*) advise the State Government on the formulation of policies, programmes, legislation and projects with respect to disability;

(*d*) review, in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities;

(*e*) take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions;

(*f*) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(*g*) to perform such other functions as may be prescribed by the State Government.

State Executive Committee.

**19.** (*1*) The State Government shall constitute a committee to be known as the State Executive Committee to perform the functions assigned to it under this Act.

(2) The State Executive Committee shall consist of—

(*a*) the Secretary, Department of Social Welfare, Chairperson, *ex officio*;

(*b*) the Commissioner, Member, *ex officio*;

(*c*) nine persons not below the rank of a Joint Secretary to the State Government, to represent the Departments of Health, Finance, Rural Development, Education, Welfare, Personnel Public Grievances, Urban Affairs Labour and Employment, Science and Technology, Members, *ex officio*;

(*d*) one person to be nominated by the State Government to represent the interest, which in the opinion of the State Government ought to be represented, Member;

(*e*) five persons, as far as practicable being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, Members;

Provided that while nominating persons under this clause, the State Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(*f*) Joint Secretary dealing with the disability division in the Department of Welfare, Member-Secretary, *ex officio*.

(*3*) Members nominated under clause (*d*) and clause (*e*) of sub-section (*2*) shall receive such allowances as may be prescribed by the State Government.

(*4*) A Member nominated under clause (*d*) or clause (*e*) may at any time resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

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Functions of the State Executive Committee.

**20.** (*1*) The State Executive Committee shall be the executive body of the State Coordination Committee and shall be responsible for carrying out the decisions of the State Coordination Committee.

(*2*) Without prejudice to the provisions of sub-section (*1*), the State Executive Committee shall also perform such other functions as may be delegated to it by the State Coordination Committee.

Meetings of the State Executive Committee.

**21.** The State Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

Temporary association of persons with State Executive Committee for particular purposes.

**22.** (*1*) The State Executive Committee may associate with itself in such manner and for such purposes as may be prescribed by the State Government any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(*2*) A person associated with the State Executive Committee under sub-section (*1*) for any purpose shall have the right to take part in the discussions of the State Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said Committee, and shall not be a member for any other purpose.

(*3*) A person associated with the said Committee under sub-section (*1*) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be prescribed by the State Government.

Power to give directions.

**23.** In the performance of its functions under this Act,—

(*a*) the Central Coordination Committee shall be bound by such directions in writing, as the Central Government may give to it; and

(*b*) the State Coordination Committee shall be bound by such directions in writing, as the Central Coordination Committee or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with any direction given by the Central Coordination Committee, the matter shall be referred to the Central Government for its decision.

Vacancies not to invalidate proceedings.

**24.** No act or proceeding of the Central Coordination Committee, the Central Executive Committee, a State Coordination Committee or a State Executive Committee shall be called in question on the ground merely on the existence of any vacancy in or any defect in the constitution of such Committees.

## CHAPTER IV

### PREVENTION AND EARLY DETECTION OF DISABILITIES

Appropriate Governments and local authorities to take certain steps for the prevention of occurrence of disabilities.

**25.** Within the limits of their economic capacity and development, the appropriate Governments and the local authorities, with a view to preventing the occurrence of disabilities, shall—

(*a*) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;

(*b*) promote various methods of preventing disabilities;

(*c*) screen all the children at least once in a year for the purpose of identifying "at-risk" cases;

(*d*) provide facilities for training to the staff at the primary health centres;

(*e*) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;

(*f*) take measures for pre-natal, perinatal and post-natal care of mother and child;

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(g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;

(h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted.

## CHAPTER V

### EDUCATION

Appropriate Governments and local authorities to provide children with disabilities free education, etc.

**26.** The appropriate Governments and the local authorities shall—

(a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b) endeavour to promote the integration of students with disabilities in the normal schools;

(c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

(d) endeavour to equip the special schools for children with disabilities with vocational training facilities.

Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc.

**27.** The appropriate Governments and the local authorities shall by notification make schemes for—

(a) conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;

(b) conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;

(c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;

(d) imparting education through open schools or open universities;

(e) conducting class and discussions through interactive electronic or other media;

(f) providing every child with disability free of cost special books and equipments needed for his education.

Research for designing and developing new assistive devices, teaching aids, etc.

**28.** The appropriate Governments shall initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities.

**29.** The appropriate Governments shall set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organisations to develop teachers' training programmes specialising in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

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**30.** Without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make provision for— Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc.

*(a)* transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;

*(b)* the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;

*(c)* the supply of books, uniforms and other materials to children with disabilities attending school;

*(d)* the grant of scholarship to students with disabilities;

*(e)* setting up of appropriate fora for the redressal of grievances of parents regarding the placement of their children with disabilities;

*(f)* suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;

*(g)* restructuring of curriculum for the benefit of children with disabilities;

*(h)* restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

**31.** All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision. Educational institutions to provide amanuensis to students with visual handicap.

## CHAPTER VI

### EMPLOYMENT

**32.** Appropriate Governments shall—

*(a)* identify posts, in the establishments, which can be reserved for the persons with disability; Identification of posts which can be reserved for persons with disabilities.

*(b)* at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

**33.** Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent. for persons or class of persons with disability of which one per cent. each shall be reserved for persons suffering from— Reservation of posts.

*(i)* blindness or low vision;

*(ii)* hearing impairment;

*(iii)* locomotor disability or cerebral palsy,

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.



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Special Employment Exchange.

**34.** (*1*) The appropriate Government may, by notification, require that from such date as may be specified, by notification, the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition.

(*2*) The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed.

Power to inspect record or document in possession of any establishment.

**35.** Any person authorised by the Special Employment Exchange in writing, shall have access to any relevant record or document in the possession of any establishment and may enter at any reasonable time and premises where he believes such record or document to be, and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information.

Vacancies not filled up to be carried forward.

**36.** Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

Employers to maintain records.

**37.** (*1*) Every employer shall maintain such record in relation to the person with disability employed in his establishment in such form and in such manner as may be prescribed by the appropriate Government.

(*2*) The records maintained under sub-section (*1*) shall be open to inspection at all reasonable hours by such persons as may be authorised in this behalf by general or special order by the appropriate Government.

Schemes for ensuring employment of persons with disabilities.

**38.** (*1*) The appropriate Governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for—

(*a*) the training and welfare of persons with disabilities;

(*b*) the relaxation of upper age limit;

(*c*) regulating the employment;

(*d*) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;

(*e*) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and

(*f*) constituting the authority responsible for the administration of the scheme.

All educational institutions to reserve seats for persons with disabilities.

**39.** All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent. seats for persons with disabilities.

Vacancies to be reserved in poverty alleviation schemes.

**40.** The appropriate Governments and local authorities shall reserve not less than three per cent. in all poverty alleviation schemes for the benefit of persons with disabilities.

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**41.** The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five per cent. of their work force is composed of persons with disabilities.

Incentives to employers to ensure five per cent of the work force is composed of persons with disabilities.

## CHAPTER VII

### AFFIRMATIVE ACTION

**42.** The appropriate Governments shall by notification make schemes to provide aids and appliances to persons with disabilities.

Aids and appliances to persons with disabilities.

**43.** The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for—

Schemes for preferential allotment of land for certain purposes.

(*a*) house;

(*b*) setting up business;

(*c*) setting up of special recreation centres;

(*d*) establishment of special schools;

(*e*) establishment of research centres;

(*f*) establishment of factories by entrepreneurs with disabilities.

## CHAPTER VIII

### NON-DISCRIMINATION

**44.** Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to—

Non-discrimination in transport.

(*a*) adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;

(*b*) adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

**45.** The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for—

Non-discrimination on the road.

(*a*) installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap;

(*b*) causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users;

(*c*) engraving on the surface of the zebra crossing for the blind or for persons with low vision;

(*d*) engraving on the edges of railway platforms for the blind or for persons with low vision;

(*e*) devising appropriate symbols of disability;

(*f*) warning signals at appropriate places.

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Non-discrimination in the built environment.

**46.** The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for—

(*a*) ramps in public buildings;

(*b*) adaptation of toilets for wheel chair users;

(*c*) braille symbols and auditory signals in elevators or lifts;

(*d*) ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

Non-discrimination in Government employment.

**47.** (*1*) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(*2*) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

## CHAPTER IX

### RESEARCH AND MANPOWER DEVELOPMENT

Research.

**48.** The appropriate Governments and local authorities shall promote and sponsor research, *inter alia*, in the following areas:—

(*a*) prevention of disability;

(*b*) rehabilitation including community based rehabilitation;

(*c*) development of assistive devices including their psycho-social aspects;

(*d*) job identification;

(*e*) on site modifications in offices and factories.

Financial incentives to Universities to enable them to undertake research.

**49.** The appropriate Governments shall provide financial assistance to universities, other institutions of higher learning, professional bodies and non-governmental research-units or institutions, for undertaking research for special education, rehabilitation and man-power development.

## CHAPTER X

### RECOGNITION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES

Competent authority.

**50.** The State Government shall appoint any authority as it deems fit to be a competent authority for the purposes of this Act.

No person to establish or maintain an institution for persons with disabilities except in accordance with a certificate of registration.

**51.** Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except under and in accordance with a certificate of registration issued in this behalf by the competent authority:

Provided that a person maintaining an institution for persons with disabilities immediately before the commencement of this Act may continue to maintain such institution for a period of six months from such commencement and if he has made an application for

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such certificate under this section within the said period of six months, till the disposal of such application.

Certificate of registration.

**52.** (*1*) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

(*2*) On receipt of an application under sub-section (*1*), the competent authority shall make such enquiries as it may deem fit and where it is satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder it shall grant a certificate of registration to the applicant and where it is not so satisfied the competent authority shall, by order, refuse to grant the certificate applied for:

Provided that before making any order refusing to grant a certificate the competent authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in such manner as may be prescribed by the State Government.

(*3*) No certificate of registration shall be granted under sub-section (*2*) unless the institution with respect to which an application has been made is in a position to provide such facilities and maintain such standards as may be prescribed by the State Government.

(*4*) A certificate of registration granted under this section,—

(*a*) shall, unless revoked under section 53, remain in force for such period as may be prescribed by the State Government;

(*b*) may be renewed from time to time for a like period; and

(*c*) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(*5*) An application for renewal of a certificate of registration shall be made not less than sixty days before the period of validity.

(*6*) The certificate of registration shall be displayed by the institution in a conspicuous place.

Revocation of certificate.

**53.** (*1*) the competent authority may, if it has reasonable cause to believe that the holder of the certificate of registration granted under sub-section (*2*) of section 52 has—

(*a*) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or

(*b*) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted,

it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

Provided that no such order shall be made until an opportunity is given to the holder of the certificate to show cause as to why the certificate should not be revoked.

(2) Where a certificate in respect of an institution has been revoked under sub-section (*1*), such institution shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 54 against the order of revocation, such institution shall cease to function—

(*a*) where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal, or

(*b*) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal.



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(*3*) On the revocation of a certificate in respect of an institution, the competent authority may direct that any person with disability who is an inmate of such institution on the date of such revocation, shall be—

(*a*) restored to the custody of her or his parent, spouse or lawful guardian, as the case may be, or

(*b*) transferred to any other institution specified by the competent authority.

(*4*) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the competent authority.

Appeal.

**54.** (*1*) Any person aggrieved by the order of the competent authority refusing to grant a certificate or revoking a certificate may, within such period as may be prescribed by the State Government, prefer an appeal to that Government against such refusal or revocation.

(*2*) The order of the State Government on such appeal shall be final.

Act not to apply to institutions established or maintained by the Central or State Government.

**55.** Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.

## CHAPTER XI

### INSTITUTION FOR PERSONS WITH SEVERE DISABILITIES

Institutions for persons with severe disabilities.

**56.** The appropriate Government may establish and maintain institutions for persons with severe disabilities at such places as it thinks fit.

(*2*) Where, the appropriate Government is of opinion that any institution other than an institution, established under sub-section (*1*), is fit for the rehabilitation of the persons with severe disabilities, the Government may recognise such institution as an institution for persons with severe disabilities for the purposes of this Act:

Provided that no institution shall be recognised under this section unless such institution has complied with the requirements of this Act and the rules made thereunder.

(*3*) Every institution established under sub-section (*1*) shall be maintained in such manner and satisfy such conditions as may be prescribed by the appropriate Government.

(*4*) For the purposes of this section "person with severe disability" means a person with eighty per cent. or more of one or more disabilities.

## CHAPTER XII

### THE CHIEF COMMISSIONER AND COMMISSIONERS FOR PERSONS WITH DISABILITIES

Appointment of Chief Commissioner for persons with disabilities.

**57.** (*1*) The Central Government may, by notification, appoint a Chief Commissioner for persons with disabilities for the purposes of this Act.

(*2*) A person shall not be qualified for appointment as the Chief Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(*3*) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chief Commissioner shall be such as may be prescribed by the Central Government.

(*4*) The Central Government shall determine the nature and categories of officers and other employees required to assist the Chief Commissioner in the discharge of his functions and provide the Chief Commissioner with such officers and other employees as it thinks fit.

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(5) The officers and employees provided to the Chief Commissioner shall discharge their functions under the general superintendence of the Chief Commissioner.

(6) The salaries and allowances and other conditions of service of officers and employees provided to the Chief Commissioner shall be such as may be prescribed by the Central Government.

Functions of the Chief Commissioner.

**58.** The Chief Commissioner shall—

(a) coordinate the work of the Commissioners;

(b) monitor the utilisation of funds disbursed by the Central Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe.

Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.

**59.** Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to—

(a) deprivation of rights of persons with disabilities;

(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities,

and take up the matter with the appropriate authorities.

Appointment of Commissioners for persons with disabilities.

**60.** (1) Every State Government may, by notification appoint a Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension gratuity and other retirement benefits) of the Commissioner shall be such as may be prescribed by the State Government.

(4) The State Government shall determine the nature and categories of officers and other employees required to assist the Commissioner in the discharge of his functions and provide the Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Commissioner shall discharge their functions under the general superintendence of the Commissioner.

(6) The salaries and allowances and other conditions of service of officers and employees provided to the Commissioner shall be such as may be prescribed by the State Government.

Powers of the Commissioner.

**61.** The Commissioner within the State shall—

(a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;

(b) monitor the utilisation of funds disbursed by the State Government;

(c) take steps to safeguard the rights and facilities made available to persons with disabilities;

(d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

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Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.

62. Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to—

(*a*) deprivation of rights of persons with disabilities;

(*b*) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities.

Authorities and officers to have certain powers of civil court.

63. The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of witnesses;

(*b*) requiring the discovery and production of any document;

(*c*) requisitioning any public record or copy thereof from any court or office;

(*d*) receiving evidence on affidavits; and

(*e*) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

Annual report to be prepared by the Chief Commissioner.

64. (*1*) The Chief Commissioner shall prepare in such form and at such time for each financial year as may be prescribed by the Central Government an annual report giving a full account of his activities during the previous financial year and forward a copy thereof to the Central Government.

(2) The Central Government shall cause the annual report to be laid before each House of Parliament along with the recommendations explaining the action taken or proposed to be taken on the recommendation made therein in so far as they relate to the Central Government and the reasons for non-acceptance, if any, of any such recommendation or part.

Annual reports to be prepared by the Commissioners.

65. (*1*) The Commissioner shall prepare in such form and at such time for each financial year as may be prescribed by the State Government an annual report giving a full account of his activities during the previous financial year and forward a copy thereof to the State Government.

(2) The State Government shall cause the annual report to be laid before each State Legislature along with the recommendations explaining the action taken or proposed to be taken on the recommendation made therein in so far as they relate to the State Government and the reasons for non-acceptance, if any, of any such recommendation or part.

## CHAPTER XIII

### SOCIAL SECURITY

Appropriate Governments and local authorities to undertake rehabilitation.

66. (*1*) The appropriate Governments and the local authorities shall within the limits of their economic capacity and development undertake or cause to be undertaken rehabilitation of all persons with disabilities.

(2) For purposes of sub-section (*1*), the appropriate Governments and local authorities shall grant financial assistance to non-governmental organisations.

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(*3*) The appropriate Governments and local authorities while formulating rehabilitation policies shall consult the non-governmental organisations working for the cause of persons with disabilities.

Insurance scheme for employees with disabilities.

**67.** (*1*) The appropriate Governments shall by notification frame an insurance scheme for the benefit of its employees with disabilities.

(*2*) Notwithstanding anything contained in this section, the appropriate Government may instead of framing an insurance scheme frame an alternative security scheme for its employees with disabilities.

Unemployment allowance.

**68.** The appropriate Governments shall within the limits of their economic capacity and development shall by notification frame a scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.

## CHAPTER XIV

### MISCELLANEOUS

Punishment for fraudulently availing any benefit meant for persons with disabilities.

**69.** Whoever, fraudulently avails or attempts to avail, any benefit meant for persons with disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or with both.

Chief Commissioners, Commissioners, officers and other staff to be public servants.

**70.** The Chief Commissioner, the Commissioners and other officers and staff provided to them shall be deemed to be public servants within the meaning of section 21 of the 45 of 1860. Indian Penal Code.

Protection of action taken in good faith.

**71.** No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Governments or the local authority or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made thereunder.

Act to be in addition to and not in derogation of any other law.

**72.** The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benfit of persons with disabilities.

Power of appropriate Government to make rules.

**73.** (*1*) The appropriate Governments may, by notification, make rules for carrying out the provisions of this Act.

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

(*a*) the manner in which a State Government or a Union territory shall be chosen under clause (*k*) of sub-section (*2*) of section 3;

(*b*) allowances which members shall receive under sub-section (*7*) of section 4;

(*c*) rules of procedure which the Central Coordination Committee shall observe in regard to the transaction of business in its meetings under section 7;

(*d*) such other functions which the Central Coordination Committee may perform under clause (*h*) of sub-section (*2*) of section 8;

(*e*) the manner in which a State Government or a Union territory shall be chosen under clause (*h*) of sub-section (*2*) of section 9;



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(*f*) the allowances which the Members shall receive under sub-section (*3*) of section 9;

(*g*) rules of procedure which the Central Executive Committee shall observe in regard to transaction of business at its meetings under section 11;

(*h*) the manner and purposes for which a person may be associated under sub-section (*1*) of section 12;

(*i*) fees and allowances which a person associated with the Central Executive Committee shall receive under sub-section (*3*) of section 12;

(*j*) allowances which members shall receive under sub-section (*7*) of section 14;

(*k*) rules of procedure which a state Coordination Committee shall observe in regard to transaction of business in its meetings under section 17;

(*l*) such other functions which a State Coordination Committee may perform under clause (*g*) of sub-section (*2*) of section 18;

(*m*) the allowances which Members shall receive under sub-section (3) of section 19;

(*n*) rules of procedure which a state Executive Committee shall observe in regard to transaction of business at its meetings under section 21;

(*o*) the manner and purposes for which a person may be associated under sub-section (*1*) of section 22;

(*p*) fees and allowances which a person associated with the State Executive Committee may receive under sub-section (*3*) of section 22;

(*q*) information or return which the employer in every establishment should furnish and the Special Employment Exchange to which such information or return shall be furnished under sub-section (*1*) of section 34;

(*r*) the form and the manner in which record shall be maintained by an employer under sub-section (*1*) of section 37;

(*s*) the form and manner in which an application shall be made under sub-section (*1*) of section 52;

(*t*) the manner in which an order of refusal shall be communicated under sub-section (*2*) of section 52;

(*u*) facilities or standards required to be provided or maintained under sub-section (*3*) of section 52;

(*v*) the period for which a certificate of registration shall be valid under clause (*a*) of sub-section (*4*) of section 52;

(*w*) the form in which and conditions subject to which a certificate of registration shall be granted under clause (*c*) of sub-section (*4*) of section 52;

(*x*) period within which an appeal shall lie under sub-section (*1*) of section 54;

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(*y*) the manner in which an institution for persons with severe disabilities shall be maintained and conditions which have to be satisfied under sub-section (*3*) of section 56;

(*z*) the salary, allowances and other terms and conditions of service of the Chief Commissioner under sub-section (*3*) of section 57;

(*za*) the salary, allowances and other conditions of service of officers and employees under sub-section (*6*) of section 57;

(*zb*) intervals at which the Chief Commissioner shall report to the Central Government under clause (*d*) of section 58;

(*zc*) the salary, allowances and other terms and conditions of service of the Commissioner under sub-section (*3*) of section 60;

(*zd*) the salary, allowances and other conditions of service of officers and employees under sub-section (*6*) of section 60;

(*ze*) intervals within which the Commissioner shall report to the State Government under clause (*d*) of section 61;

(*zf*) the form and time in which annual report shall be prepared under sub-section (*1*) of section 64;

(*zg*) the form and time in which annual report shall be prepared under sub-section (*1*) of section 65;

(*zh*) any other matter which is required to be or may be prescribed.

(*3*) Every notification made by the Central Government under the proviso to section 33, proviso to sub-section (*2*) of section 47, every scheme framed by it under section 27, section 30, sub-section (*1*) of section 38, section 42, section 43, section 67, section 68 and every rule made by it under sub-section (*1*), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, notification or scheme, both Houses agree that the rule, notification or scheme should not be made, the rule, notification or scheme 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, notification or scheme, as the case may be.

(*4*) Every notification made by the State Government under the proviso to section 33, proviso to sub-section (*2*) of section 47, every scheme made by it under section 27, section 30, sub-section (*1*) of section 38, section 42, section 43, section 67, section 68 and every rule made by it under sub-section (*1*), shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House before that House.

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Amendment of Act 39 of 1987.

**74.** In section 12 of the Legal Services Authorities Act, 1987, for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) a person with disability as defined in clause (*i*) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.".

(Sd.)
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

(Sd.)
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 16 REGISTERED NO. G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL. XXXVII] MONDAY, JULY 8, 1996 / ASADHA 17, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 8th July, 1996.

No. RP/41/96/Act 39/95/ /E.—The following Act of Parliament is re-published for general information :—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

**(Legislative Department)**

New Delhi, the 9th September, 1995/Bhadrapad 18, 1917 (Saka

The following Act of Parliament received the assent of the President on the 8th September, 1995 and is hereby published for general information :

### THE TEXTILE UNDERTAKINGS (NATIONALISATION) ACT 1995.

**(Act No. 39 of 1995)** **(8th September, 1995)**

*AN ACT*

*to provide for the acquisition and transfer of the textile undertakings, and the right, title and interest of the ownwers in respect of the textile undertakings, specified in the First Schedule with a view to augmenting the production and distribution of different varieties of cloth and yarn so as to subserve the interests of the general public and for matters connected therewith or incidental thereto.*

WHEREAS the textile companies specified in column (3) of the First Schedule have, through their undertakings specified in column (2) of the said Schedule, been engaged in the manufacture and production of different varieties of cloth and yarn;

AND WHEREAS, pending acquisition, the management of the said textile undertakings was taken over by the Central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983 or under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976, as the case may be;

40 of 1983
98 of 1976



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AND WHEREAS large sums of money have been invested with a view to making the said textile undertakings viable;

AND WHEREAS further investment of very large sums of money is necessary for the purpose of securing the optimum utilisation of the available facilities for the manufacture, production and distribution of cloth and yarn by the said textile undertakings of the companies;

AND WHEREAS such investment is also necessary for securing the continued employment of the workmen employed in the said textile undertakings;

AND WHEREAS it is necessary in the public interest to acquire the said textile undertakings of the textile companies to ensure that the interests of the general public are served by the continuance by the said undertakings of the companies of the manufacture, production and distribution of different varieties of cloth and yarn which are vital to the needs of the country;

BE it enacted by Parliament in Forty-sixth Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

**Short title and commencement.**

**1.** *(1)* This Act may be called the Textile Undertakings (Nationalisation) Act, 1995.

*(2)* The provisions of section 31 and 32 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of April, 1994.

**Definitions.**

**2.** *(1)* In this Act, unless the context otherwise requires,—

*(a)* "appointed day" means the 1st day of April, 1994;

*(b)* bank means—

*(i)* the State Bank of India constituted under the State Bank of India Act, 1955; **23 of 1955.**

*(ii)* a subsidiary Bank as defind in the State Bank of India (Subsidiary Banks) Act, 1959; **38 of 1959.**

*(iii)* a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; **5 of 1970.**

*(iv)* a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; **40 of 1980.**

*(v)* any other bank, being a scheduled bank as defind in clause *(e)* of section 2 of the Reserve Bank of India Act, 1934; **2 of 1934.**

*(c)* "Commissioner" means a Commissioner of Payments appointed under section 17;

*(d)* "Custodian" means a Custodian appointed under section 4 of the Textile Undertakings (Taking Over of Management) Act, 1983 or under section 4 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976, as the case may be; **40 of 1983. 98 of 1976.**

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1 of 1956.

*(e)* "National Textile Corporation" means the National Textile Corporation Limited formed and registered under the Companies Act. 1956.

*(f)* "notification" means a notification published in the Official Gazette;

*(g)* "owner", when used in relation to a textile undertaking, means any person or firm who or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the textile undertaking or any part thereof, and in the case of a textile company which is being wound up or the business whereof is being carried on by a liquidator or receiver, includes such liquidator or receiver, and also includes any agent or manager of such owner but does not include any person or body of person authorised under the Textile Undertaking (Taking Over of Management) Act 1983 or under the Laximirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976 to take over the management of the whole or any part of the textile undertaking;

40 of 1983.
98 of 1976.

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

*(i)* "specified date" means such date as the Central Government may, for the purpose of any provision of this Act, by notification, specify; and different dates may be specified for different provisions of this Act;

*(j)* "subsidiary textile corporation" means the National Textile Corporation (South Maharashtra) Limited, the National Textile Corporation (Uttar Pradesh) Limited or any other textile corporation formed by the National Textile Corporation as its subsidiary;

*(k)* "textile" includes yarn or fabrics made either wholly or partly of cotton, wool, jute, synthetic and artificial (man-made) fibres;

1 of 1956.

*(l)* "textile company" means a company (being a company as defined in the Companies Act, 1956) specified in column (3) of the First Schedule as owning the textile undertaking specified in the corresponding entry in column (2) of that Schedule;

*(m)* "textile undertaking" or "the textile undertaking" means an undertaking specified in column *(2)* of the First Schedule, the management of which was, before the appointed day, taken over by the Central Government under the Textile Undertaking (Taking Over of Management) Act, 1983, or as the case may be, under the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976.

40 of 1983.
98 of 1976.

*(2)* Words and experssions used herein and not defined but defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act.

1 of 1956.

## CHAPTER II

### Acquisition and Transfer of the Textile Undertakings

**Acquisition of rights of owners and vesting of the textile undertakings.**

3. *(1)* On the appointed day, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

*(2)* Every textile undertaking which stand vested in the Central Government by virtue of sub-section *(1)* shall, immediately after it has so vested, stand transferred to, and vested in, the Naitonal Textile Corporaiton.

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**General effect of vesting.**

4. *(1)* The textile undertakings referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, sotres, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts pertaining to the textile undertakings and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the textile company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

*(2)* All property as aforesaid which have vested in the Central Government under sub-section *(1)* of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

*(3)* Where any licence or other instrument in relation to a textile undertaking had been granted, at any time before the appoined day to the owner by the Central Government or a State Government or any other authority, the National Textile Corporation shall, on and from such date, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or such other instrument had been granted to it and shall hold such licence or the textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the textile undertaking under such other instrument.

*(4)* Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

*(5)* For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interest, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in relation to such property in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

*(6)* If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government under section 3, instituted or preferred by or against the textile company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the textile undertakings or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the National Textile Corporation.

*(7)* Any person who, on the date on which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated, was in possession of, or had under his custody or control, the whole or any part of any textile undertaking referred to in section 3, the management of which could not be taken over by the Central Government by reason of any decree, order or injunction of any court or otherwise, shall deliver forthwith the possession of such undertaking or part and all books of account, registers and all other documents of whatever nature relating to such undertaking or part to the Central Government or the National Textile Corporation or such other person as the Central Government or the National Textile Corporation, as the case may be, may specify in this behalf. Ord. 6 of 1995.

**Owner to be liable for certain prior liabilities**

5. *(1)* Every liability, other than the liability specified in sub-section (2) of the owner of a textile undertaking, in the relation to the textile undertakings in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

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(2) any liability arising in respect of—

*(a)* loans advanced by the Central Government, or a State Government, or both, to a textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983 or as the case may be under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management), 1976; 40 of 1983. 98 of 1976.

*(b)* amounts advanced to a textile undertaking [after the management of such undertaking had been taken over by the Central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983, or as the case may be under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976], by the National Textile Corporation or by a State Textile Corporation, or by both, together with interest due thereon; 40 of 1983. 98 of 1976.

*(c)* wages, salaries and other dues of employees of the textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government,

shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that,—

*(a)* save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to a textile undertaking, in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

*(b)* no award, decree or order of any court, tribunal or other authority in relation to any textile undertaking, passed after the appointed day, in respect of any matter, claim or dispute in relation to any matter not referred to in sub-section (2), which arose before that day shall be enforceable against the Central Government or the National Textile Corporation;

*(c)* no liability of any textile undertaking or any owner thereof in relation to any textile undertaking before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

**Transfer of any textile undertaking or part thereof to subsidiary textile corporation.**

6. *(1)* The National Textile Corporation may, by order in writing, transfer any textile undertaking specified at serial numbers 1 to 13 in the First Schedule or part of any such textile undertaking to the National Textile Corporation (South Maharashtra) Limited and any textile undertaking specified at serial numbers 14 and 15 in the First Schedule or part of any such textile undertaking to the National Textile Corporation (Uttar Pradesh) Limited, as the case may be, or to any other subsidiary textile corporation and any such transfer shall be subject to such terms and conditions as may be specified in the said order.

*(2)* The subsidiary textile corporation shall, on and from the date of such transfer, be deemed to be substituted in the licence or other instrument referred to in sub-section *(3)* of section 4 in place of the National Textile Corporation as if such licence or other instrument had been granted to the subsidiary textile corporation, and shall hold such licence or other instrument for the remainder of the period for which the National Textile Corporation would have held such licence or other instrument.



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*(3)* On the transfer to a subsidiary textile corporation of any textile undertaking or any part thereof, the liabilities of the National Textile Corporation, referred to in sub-section (2) of section 5, shall, in so far as they relate to the textile undertaking or part thereof so transferred to the subsidiary textile corporation, become, on and from the date of such transfer, the liabilities of the subsidiary textile corporation and shall be discharged by the subsidiary textile corporation as and when any such liability is required to be discharged.

*(4)* Save as otherwise expressly provided in this Act, references in this Act to the National Textile Corporation shall, in respect of any textile undertaking or any part thereof which is transferred to a subsidiary textile corporation, be construed as references to the subsidiary textile corporation.

**Shares to be issued by the National Textile Corporation for the value of the assets transferred to it by the Central Government.**

7. *(1)* An amount equal to the value of the assets of a textile undetaking transferred to, and vested in, the National Textile Corporation under sub-section (2) of section 3, shall be deemed to be the contribution made by the Central Government to the equity capital of the National Textile Corporation; and for the contribution so made, the National Textile Corporation shall issue (if necessary after amending its memorandum and articles of association) to the Central Government paid-up shares, in its equity capital, having a face value equal to the amount specified against the textile undertaking in the corresponding entry in column (4) of the First Schedule.

*(2)* Where any liability assumed by the Central Government under this Act is taken over by the National Textile Corporation under section 27, the Central Government shall surrender to that Corporation the shares issued to it under sub-section *(1)* having the face value equal to the amount to the extent to which the liability has been so taken over by the National Textile Corporation and thereupon the share capital of the National Textile Corporation shall, to the extent of the face value of the shares so surrendered, stand reduced.

## CHAPTER III

### PAYMENT OF AMOUNTS

**Payment of amount to owners of textile undertakings.**

8. The owner of every textile undertaking shall be given by the Central Government, in cash and in the manner specified in Chapter VI, for the transfer to, and vesting in, it, under sub-section *(1)* of section 3, of such textile undertaking and the right, title and interest of the owner in relation to such textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule.

**Payment of further amount.**

9. *(1)* In consideration of the retrospective operation of the provisions of section 3, 4 and 5, there shall be given, in cash, by the Central Government to the owner of every textile undertaking, the management of which was taken over by the Central Government, an amount equal to an amount calculated at the rate specified in section 5 of the Textile Undertakings (Taking Over of Management) Act, 1983, or as the case may be, as specified in section 5 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976 for the period commencing on the appointed day and ending on the date on which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated.

**40 of 1983. 98 of 1976. Ord. 6 of 1995.**

*(2)* In addition to the amount referred to in section 8, there shall be given by the Central Government, in cash, to the owner of every textile undertaking, simple interest at the rate of four per cent per annum on the amount specified against such owner in the corresponding entry in column (4) of the First Schedule for the period commencing on the appointed day

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and ending on the date on which payment of such amount is made by the Central Government to the Commissioner.

*(3)* The amount representing interest calculated at the rate specified in sub-section (2) shall be given in addition to the amount specified in the First Schedule.

*(4)* For the removal of doubts, it is hereby declared that the liabilities of the owners in relation to the textile undertakings which have vested in the Central Government under section 3 shall be discharged from the amount referred to in the First Schedule and also from the amounts determined under sub-sections *(1)* and *(2)* in accordance with the rights and interests of the creditors of the owner.

## CHAPTER IV

### MANAGEMENT, ETC., OF TEXTILE UNDERTAKINGS

**Management, etc. of textile undertakings.**

10. The National Textile Corporation or any person which that Corporation may, by order in writing, specify, shall be entitled to exercise the powers of general superintendence, direction, control and management of the affairs and business of a textile udnertaking, the right, title and interest of an owner in relation to which have vested in that Corporation under sub-section (2) of section 3, and do all such things as the owner of the textile undertaking is authorised to exercise and do.

**Special provision for disposal of assets of the textile undertakings in certain circumstances.**

11. If the National Textile Corporation considers it necessary or expedient for the better management, modernisation, restructuring or revival of a textile undertaking so to do, it may, with the previous sanction of the Central Government, transfer, mortgage, sell or otherwise dispose of any land, plant, machinery or any other assets of any of the textile undertakings:

Provided that the proceeds of no such transfer, mortgage, sale or disposal of assets shall be utilized for any purpose other than the purpose for which the sanction of the Central Governmet has been obtained.

**Duty of persons in charge of management of textile undertakings to deliver all assets, etc.**

12. On the vesting of the management of a textile undertaking in the National Textile Corporation, all persons in charge of the management of such textile undertaking immediately before such vesting shall be bound to deliver to the National Textile Corporation all assets, books of account, registers or other documents in their custody relating to textile undertaking.

**Accounts.**

13. The National Textile Corporation shall maintain the accounts of the textile undertakings in accordance with the provisions of the Companies Act, 1956.

**1 of 1956.**

## CHAPTER V

### PROVISIONS RELATING TO EMPLOYEES OF TEXTILE UNDERTAKINGS

**Employment of certain employees to continue.**

14. *(1)* Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, in the employment of a textile undertaking shall become, on and from the appointed day, an employee of the National Textile Corporation, and shall hold office or service in the National Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such textile undertaking had not been transferred

**14 of 1947.**

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to and vested in, the National Textile Corporation, and shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation.

*(2)* Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947, and who has been, immediately before the appointed day, in the employment of a texitle undertaking shall, in so far as such person is employed in connection with the textile undertaking which has vested in the National Textile Corporation, become, as from the appointed day, an employee of the National Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and, with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the textile undertaking if it had not vested in the National Textile Corporation and shall continue to do so unless and until his employment in the National Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the National Textile Corporation. 14 of 1947.

*(3)* Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of a textile undertaking to the National Textile Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority. 14 of 1947.

*(4)* Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the National Textiie Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the extent such liability has been taken over by the Central Government under section 5, enforce his claim against the owner of the textile undertaking but not against the Central Government or the National Textile Corporation.

**Provident and other funds.**

**15.** *(1)* Where the owner of a textile undertaking has established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in such textile undertaking, the monies relatable to the employees, whose services have become transferred by or under this Act to the National Textile Corporation shall, out of the monies standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and shall vest in, the National Textile Corporation.

*(2)* The monies which stand transferred, under sub-section (1), to the National Textile Corporation shall be dealt with by that Corporation in such manner as may be prescribed.

**Transfer of employees to a subsidiary textile corporation.**

**16.** Where any textile undertaking or any part thereof is transferred under this Act to a subsidiary textile corporation, every person referred to in sub-section *(1)* and sub-section (2), of section 14 shall, on and from the date of such transfer, become an employee of the subsidiary textile corporation , and the provisions of sections 14 and 15 shall apply to such employee as they apply to an employee of the National Textile Corporation as if references in the said sections to the National Textile Corporation were references to the subsidiary textile corporation.

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## CHAPTER VI

### COMMISSIONERS OF PAYMENTS

**Appointment of Commissioners of Payments.**

**17.** *(1)* For the purpose of disbursing the amounts payable to the owner of each textile undertaking, the Central Government shall, by notification in the Official Gazette,—

*(a)* appoint such number of persons as it may think fit to be Commissioners of Payments; and

*(b)* define the local limits within which the Commissioners of Payments shall exercise the powers conferred, and perform the duties imposed, on them by or under this Act.

*(2)* The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act, and different persons may be authorised to exercise different powers.

*(3)* Any person authorised by the Commissioner to exercise any powers may exercise those powers in the same manner and with the same effect as it they have been conferred on that person directly by this Act and not by way of authorisation.

*(4)* The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

*(5)* References in this Act, to the Commissioner shall, where more than one Commissioner has been appointed, be construed as references to the Commissioner in relation to the textile undertaking within the local limits of the jurisdiction specified under clause *(b)* of sub-section *(1)*.

**Payment by the Central Government to the Commissioner.**

**18.** *(1)* The Central Government shall, within thirty days from the specified date, pay in cash to the Commissioner, for payment to the owner of a textile undertaking, an amount equal to the amount specified against the textile undertaking in the First Schedule and shall also pay to the Commissioner such sums as may be due to the owner of a textile undertaking under sub-sections *(1)* and *(2)* of section 9.

40 of 1983.

*(2)* In relation to the textile undertakings, the management of which was taken over by the Central Government under the Textile Undertakings (Taking Over of Management) Act, 1983, there shall be paid by the Central Government [in addition to the amount referred to in sub-section *(1)*], to the Commissioner, in cash, such amount payable under section 5 of that Act as remains unpaid in relation to the period commencing on the date on which such management was taken over by the Central Government and ending on the appointed day.

98 of 1976.

*(3)* In relation to the textile undertakings, the management of which was taken over by the Central Government under the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976, there shall be paid by the Central Government [in additon to the amount referred to in sub-section *(1)*], to the Commissioner, in cash, such amount payable under section 5 of that Act as remains unpaid in relation to the period commencing on the date on which such management was taken over by the Central Government and ending on the appointed day.



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*(4)* A deposit account shall be opened by the Central Government, in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account in the Public Account of India, and thereafter the said deposit account shall be operated by the Commissioner.

*(5)* Separate records shall be maintained by the Commissioner in respect of each textile undertaking in relation to which payments have been made to him under this Act.

*(6)* Interest accruing on the amounts standing to the credit of the deposit account referred to in sub-section *(4)* shall inure to the benefit of the owners of the textile undertakings.

**Certain powers of the National Textile Corporation.**

**19.** *(1)* The National Textile Corporation shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money due to the textile undertaking, realised after the appointed day, notwithstanding that the realisations pertain to a period prior to the appointed day.

*(2)* The National Textile Corporation may make a claim to the Commissioner with regard to every payment made by the Custodian after the appointed day but before the date on which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated for discharging any liability of the owner of textile undertaking in relation to any period prior to the appointed day, and every such claim shall have priority, in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the Custodian. **Ord. 6 of 1995.**

*(3)* Save as otherwise provided in this Act, the liabilities in relation to a textile undertaking in respect of any period prior to the appointed day which have not been discharged by the Custodian shall be the liabilities of the owner of that textile undertaking.

**Claims to be made to the Commissioner.**

**20.** Every person having a claim against the owner of a textile undertaking shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days but not thereafter.

**Priority of claims.**

**21.** The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles, namely:—

*(a)* category I shall have precedence over all other categories and category II shall have precedence over category III and so on;

*(b)* the claims specified in each of the categories, except category IV, shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

*(c)* the liabilities specified in category IV shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, *inter se*, of such loans; and

*(d)* the question of payment of a liability with regard to a matter specified in a

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lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

Examination of claims.

**22.** *(1)* On receipt of the claims under section 20, the Commissioner shall arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order.

*(2)* If, on examination of the claims, the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category.

Admission or rejection of claims.

**23.** *(1)* After examining the claims with reference to the priority set out in the Second Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursement made by the Commissioner.

*(2)* Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language and one issue of the daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

*(3)* Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

*(4)* The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the textile undertaking an opportunity of refuting the claim and after giving the claimants a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

*(5)* The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions including the place or places at which he may hold his sittings and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

*(a)* the summoning and enforcing the attendance of any witness and examining him on oath;

*(b)* the discovery and production of any document or other material object producible as evidence;

*(c)* the reception of evidence on affidavits;

*(d)* the issuing of any commision for the examination of witnesses.

*(6)* Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections, 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

*(7)* A claimant who is dissatisfied with the decision of the Commissioner may prefer and appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the textile undertaking is situated:

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Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court for the State in which the textile undertaking is situated, and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

**Disbursement of money by the Commissioner to claimants.**

**24.** After admitting a claim under this Act, the amount due in respect of such claim shall be credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such sums are due and on such credit or payment the liability of the owner in respect of such claim shall stand discharged.

**Disbursement of amounts to the owners.**

**25.** *(1)* If, out of the monies paid to him in relation to a textile undertaking, there is a balance left after meeting the liabilities as specified in the Second Schedule, the Commissioner shall disburse such balance to the owner of such textile undertaking.

*(2)* Before making any payment to the owner of any textile undertaking under sub-section *(1)*, the Commissioner shall satisfy himself as to the right of such person to receive the whole or any part of such amount, and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount referred to in section 8 and 9, the Commissioner shall refer the matter to the court and make the disbursement in accordance with the decision of that court.

*(3)* For the removal of doubts, it is hereby declared that the entries in column (3) of the First Schedule shall not be deemed to be conclusive as to the right, title and interest of any person in relation to any textile undertaking specified in the corresponding entries in column (2) of the said Schedule and evidence shall be admissible to establish the right, title and interest of any person in relation to such textile undertaking.

*(4)* Where any machinery, equipment or other property in a textile undertaking has vested in the National Textile Corporation, but such machinery, equipment or other property does not belong to the owner of such textile undertaking, the amount specified in column (4) of the First Schedule against such textile undertaking shall, on a reference made to it by the Commissioner, be apportioned by the court between the owner of such textile undertaking and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

*Explanation.*—In this section, "Court", in relation to a textile undertaking, means the principal civil court of original jurisdiction within the local limits of whose jurisdiction the textile undertaking is situated.

**Undisbursed or unclaimed amounts to be deposited to the general reserve account.**

**26.** Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made, shall be transferred by the Commissioner to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of revenue.

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## CHAPTER VII

### MISCELLANEOUS

**Assumption of liability.**

**27.** *(1)* Where any liability of the owner of a textile undertaking arising out of any item specified in category I of the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undischarged and that liability shall be assumed by the Central Government.

*(2)* The Central Government may, by order, direct the National Textile Corporation to take over any liability assumed by that Government under sub-section *(1)* and on receipt of such direction it shall be the duty of the National Textile Corporation to discharge such liability.

**Management to continue to vest in the Custodian until alternative arrangements are made.**

**28.** Notwithstanding the vesting, under this Act, of a textile undertaking in the National Textile Corporation,—

Ord. 6 of 1995.

*(a)* the Custodian who has been managing the affairs of such undertaking before the date on which the Textile Undertaking (Nationalisation) Ordinance, 1995 was promulgated shall, until alternative arrangements have been made by the National Textile Corporation, continue to manage the affairs of such undertakings as if the Custodian had been authorised by the National Textile Corporation to manage the affairs of such undertaking; and

*(b)* the Custodian or any person authorised by him for this purpose shall, until alternative arrangements have been made by the National Textile Corporation, continue to be authorised to operate, in relation to the textile undertaking, any account of such undertaking in a bank as if such Custodian or the person authorised by the Custodian had been authorised by the National Textile Corporation to operate such account.

**Act to override all other enactments.**

**29.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or authority.

**Contracts to cease to have effect unless ratified by the National Textile Corporation.**

**30.** *(1)* Every contract entered into by the owner or occupier of any textile undertaking for any service, sale or supply and in force immediately before the appointed day shall, on and from the expiry of one hundred and twenty days from the date on

Ord. 6 of 1995.

which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated, cease to have effect unless such contract is before the expiry of that period, ratified, in writing, by the National Textile Corporation and in ratifying such contract the National Textile Corporation may make such alterations or modifications therein as it may think fit:

Provided that the National Textile Corporation shall not omit to ratify a contract, and shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the textile undertaking.

*(2)* The National Textile Corporation shall not omit to ratify a contract or make any alteration or modification therein except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.



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**nalties.**

**31.** Any person who,—

*(a)* having in his possession, custody or control any property forming part of a textile undertaking, wrongfully withholds such property from the Central Government or the National Textile Corporation, or any person authorised by that Government or Corporation, as the case may be, in this behalf, or

*(b)* wrongfully obtains possession of, or retains, any property forming part of the textile undertaking or wilfully withholds or fails to furnish to the Central Government, the National Textile Corporation or any person specified by that Government, or Corporation, as the case may be, any document relating to such textile undertaking which may be in his possession, custody or control or fails to deliver to the National Textile Corporation or any person specified by that Corporation any assets, books of account, registers or other documents in his custody relating to the textile undertaking, or

*(c)* wrongfully removes or destroys any property forming part of any textile undertaking or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

**fences by npalnes.**

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

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

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

*Explanation.*—For the purposes of this section,—

*(a)* "Company" means any body corporate and includes a firm or other association of individuals; and

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

**otection of action ken in good faith.**

**33.** No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Custodian or the National Textile Corporation or any subsidiary textile corporation or any officer or other person authorised by either of such Corporations for anything which is in good faith done or intended to be done under this Act.

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**Textile companies not to be wound up by the court.**

**34.** No proceeding for the winding up of a textile company, the right, title and interest in relation to the textile undertaking owned by which have vested in the National Textile Corporation under this Act or for the appointment of a receiver in respect of the business of the textile undertaking shall lie or be proceeded with in any court except with consent of the Central Government.

**Delegation of powers.**

**35.** *(1)* The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the power under section 36, may also be exercised by any person or persons as may be specified in the notification.

*(2)* Whenever any delegation of power is made under sub-section *(1)*, the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

**Power to make rules.**

**36.** *(1)* The Central Government may, by notification, make rules to carry out the provisions of this Act.

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

*(a)* The time within which and the manner in which an intimation referred to in sub-section *(4)* of section 4 shall be given;

*(b)* the manner in which monies in any provident or other fund referred to in section 15 shall be dealt with;

(c) any other matter which is required to be, or may be, prescribed.

*(3)* Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in this rule or both Houses agree that the rules should not be made the rule shall threreafter 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.

**Power to remove difficulties.**

**37.** *(1)* If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order not inconsistent with the provisions of this Act, remove the difficulty;

**Ord. 6 of 1995.**

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated.

*(2)* Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**Repeal and saving.**

**Ord. 6 of 1995.**

**38.** *(1)* The Textile Undertakings (Nationalisation) Ordinance, 1995, is hereby repealed.

*(2)* Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

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## THE FIRST SCHEDULE

[*See* sections 2(*l*) and (*m*), 8 and 18(*l*)]

| Name of the textile undertaking | Name of the owner | Amount (in rupees) |
|---|---|---|
| (2) | (3) | (4) |
| Elphinstone Spinning and Weaving Mills, Elphinstone Road, Bombay. | The Elphinstone Spining and Weaving Mills Co. Ltd., Kamani Chambers, 32, Ramji Bhai Kamani Marg, Bombay-38. | 4,56, 98,000 |
| Finlay Mills, 10/11, Dr. S.S. Rao Road, Bombay. | The Finlay Mills Ltd., Chartered Bank Building, Fort, Bombay-23. | 8,14,87,000 |
| Gold Mohur Mills, Dadasaheb Phalke Road, Dadar, Bombay. | The Gold Mohur Mills Ltd., Chartered Bank Building, Fort, Bombay-23. | 5,45,55,000 |
| Jam Manufacturing Mills, Lalbaug, Parel, Bombay. | The Jam Manufacturing Co. Ltd., Lalbaug, Parel, Bombay-12. | 2,79,62,000 |
| Kohinoor Mills (No. 1), Naigaum Cross Road, Dadar, Bomba,<br>Kohnioor Mills (No. 2), Naigaum Cross Road, Dadar, Bombay.<br>Kohinoor Mills (No. 3), Lady Jamshedji Road, Dadar, Bombay. | The Kohinoor Mills Co. Ltd., Killick House, Charanjit Rai Marg (Home Street), Fort, Bombay-1. | 2,33,38,000 |
| New City of Bombay Manufacturing Mills, 63, Tukaram B. Kadam Marg, Bombay. | The New City of Bombay Manufacturing Co. Ltd., 63, Tukaram Baisaji Kadam Path, Bombay-33. | 4,23,57,000 |
| Podar Mills, N.M.. Joshi Marg, Bombay. | The Podar Mills Ltd., Podar Chambers, Syed Abdulla Brelvi Road, Fort, Bombay-1. | 7,46,30,000 |
| Podar Mills (Process House), Ganpat Rao Kadam Marg, Bombay. | The Podar Mills Ltd., Podar Chambers, Syed Abdulla Brelvi Road, Fort, Bombay-1. | 1,91,94,000 |
| Shree Madhusudan Mills, Pandurang Bhudhkar Marg, Bombay. | Shree Madhusudan Mills Ltd., 31, Chowringhee Road, Calcutta-16. | 2,70,85,000 |
| Shree Sitaram Mills, N.M. Joshi Marg, Bombay. | Shree Sitaram Mills Ltd., N.M. Joshi Marg, Bombay-11. | 1,95,20,000 |
| Tata Mills, Dr. Ambedkar Road, Dadar, Bombay. | The Tata Mills Ltd., Bombay House, 24, Homi Mody Street, Fort, Bombay-23. | 9,33,47,000 |
| Laxmirattan Cotton Mills, Kalpi Road, Kanpur. | Laxmirattan Cotton Mills Company Limited, Behari Niwas, Chatai Mahal, Kanpur. | 2,22,39,000 |
| Atherton West Cotton Mills, Anwar Ganj, Kanpur. | Atherton West and Company Limited, Anwarganj, Kanpur. | 1,10,95,000 |



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## THE SECOND SCHEDULE

*[See sections 21, 22, 23 and 27]*

*Order of priorities for discharge of liabilities in respect of a textile undertaking*

### PART A

*Post-take-over management period*

Category I.—

(a) Loans advanced by a Bank.

(b) Loans advanced by an institution other than a Bank.

(c) Any other loan.

(d) Any credit availed of for purpose of trade or manufacturing operations.

Category II.—

(a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

(b) Any other dues.

### PART B

*Pre-take-over management period*

Category III.—

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee.

Category IV.—

Secured Loans.

Category V.—

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.



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**Category VI.—**

**(a) Any credit availed of for purpose of trade or manufacturing operations.**

**(b) Any other dues.**

Sd./-
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,
Sd./–
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 17 REGISTERED NO G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XXXVII] MONDAY, JULY 8, 1996 / ASADHA 17, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

### Acts of Parliament and Ordinances promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 8th July, 1996.

No. RP/32/96/Act 30/95/ /E.—The following Act of Parliament is re-published for general information :—

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 21st August, 1995/Shravan 30, 1917 (Saka).

The following Act of Parliament Received the assent of the President on the 19th August, 1995 and is hereby published for general information :

## THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 1995.

**(Act No. 30 of 1995)** **(19th August, 1995)**

*AN ACT*

*further to amend the Workmen's Compensation Act, 1923.*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

Short title and commencement.

**1.** (*1*) This Act may be called the Workmen's Compensation (Amendment) Act, 1995.

(*2*) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

8 of 1923.

Amendment of section 2.

**2.** In section 2 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act),—

(*a*) in sub-section (*1*),—

(*i*) in clause (*d*),—

(*I*) in sub-clause (*i*), for the word "legitimate" occurring at both the places, the words "legitimate or adopted" shall be substituted;

(*II*) in sub-clause (*iii*), in item (*c*), for the words "legitimate or illegitimate", the words "legitimate or illegitimate or adopted" shall be substituted;



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(*III*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—For the purposes of sub-clause (*ii*) and items (*f*) and (*g*) of sub-clause (*iii*), references to a son, daughter or child include an adopted son, daughter or child respectively.";

(*ii*) in clause (*n*),—

(*I*) in sub-clause (*i*), for the words and figures "section 3 of the Indian Railways Act, 1890", the words, brackets and figures "clause (*34*) of section 2 of the Railways Act, 1989" shall be substituted; 9 of 1890. 24 of 1989.

(*II*) after sub-clause (*i*), the following sub-clause shall be inserted, namely:—

"(*ia*) (*a*) a master, seaman or other member of the crew of a ship,

(*b*) a captain or other member of the crew of an aircraft,

(*c*) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(*d*) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons:

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.".

Amendment of section 3.

3. In section 3 of the principal Act,—

(*a*) in sub-section (*1*), in the proviso, in clause (*b*), after the word "death", the words "or permanent total disablement" shall be inserted;

(*b*) in sub-section (*3*),—

(*i*) for the opening portion beginning with the words, "The State Government" and ending with the words and letter "Part C of

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that Schedule", the words "The Central Government or the State Government" shall be substituted;

(*ii*) after the words "shall apply", the words, ", in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State" shall be inserted.

Amendment of section 4.

**4.** In section 4 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), for the words "forty per cent." and "twenty thousand rupees", the words "fifty per cent." and "fifty thousand rupees" shall respectively be substituted;

(*ii*) in clause (*b*), for the words "fifty per cent." and "twenty-four thousand rupees", the words "sixty per cent." and "sixty thousand rupees" shall respectively be substituted;

(*iii*) in *Explanation II*, for the words "one thousand rupees", at both the places where they occur, the words "two thousand rupees" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-section (*1*), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.";

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (*1*), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.".

Amendment of section 4A.

**5.** In section 4A of the principal Act, for sub-section (*3*), the following sub-sections shall be substituted, namely:—

"(*3*) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(*a*) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be

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specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(*b*) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (*b*) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

*Explanation.*—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934. 2 of 1934.

(*3A*) The interest payable under sub-section (*3*) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government.".

Amendment of section 8.

6. In section 8 of the principal Act,—

(*a*) in sub-section (*1*), in the proviso, for the words "not exceeding an aggregate of one hundred rupees, and so much of such aggregate", the words "of an amount equal to three months' wages of such workman and so much of such amount" shall be substituted;

(*b*) in sub-section (*4*), the words "shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding fifty rupees and pay the same to the person by whom such expenses were incurred, and" shall be omitted.

Amendment of section 14.

7. In section 14 of the principal Act, in sub-section (*4*), for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted. 7 of 1913. 1 of 1956.

Insertion of new sections 15A and 15B.

8. After section 15 of the principal Act, the following sections shall be inserted, namely:—

Special provisions relating to captains and other members of crew of aircrafts.

"15A. This Act shall apply in the case of workmen who are captains or other members of the crew of aircrafts subject to the following modifications, namely:—

(*1*) The notice of the accident and the claim for compensation may, except where the person injured is the captain of the aircraft, be served on the captain of the aircraft as if he were the employer, but where the accident happened and the disablement commenced on board the aircraft it shall not be necessary for any member of the crew to give notice of the accident.

(*2*) In the case of the death of the captain or other member of the crew, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the aircraft has been or is deemed to have been lost with all hands, within eighteen months of the date on which the aircraft was, or is deemed to have been, so lost:

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Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(*3*) Where an injured captain or other member of the crew of the aircraft is discharged or left behind in any part of India or in any other country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence—

(*a*) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(*b*) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(*c*) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

Special provisions relating to workmen abroad of companies and motor vehicles.

15B. This Act shall apply—

(*i*) in the case of workmen who are persons recruited by companies registered in India and working as such abroad, and

(*ii*) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other workmen, subject to the following modifications, namely:— 59 of 1988.

(*1*) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(*2*) In the case of death of the workman in respect of whom the provisions of this section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim



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has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(*3*) Where an injured workman is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence—

(*a*) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(*b*) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(*c*) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.".

Amendment of section 18A.

**9.** In section 18A of the principal Act, for the words "five hundred", the words "five thousand" shall be substituted.

Amendment of section 21.

**10.** In section 21 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-sections shall be substituted, namely:—

"(*1*) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which—

(*a*) the accident took place which resulted in the injury; or

(*b*) the workman or in case of his death, the dependant claiming the compensation ordinarily resides; or

(*c*) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdic-

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tion over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the workman, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(*1A*) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or money remaining with the latter and on receipt of such a request, he shall comply with the same.";

(*ii*) second proviso to sub-section (*2*) shall be omitted.

Amendment of section 22.

**11.** In section 22 of the principal Act, for the brackets, figure and words "(*1*) No application for the settlement", the following shall be substituted, namely:—

"(*1*) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.

(*1A*) Subject to the provisions of sub-section (*1*), no application for the settlement".

Amendment of section 23.

5 of 1898. 2 of 1974.

**12.** In section 23 of the principal Act, for the words and figures "section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898", the words and figures "section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973" shall be substituted.

Amendment of section 30.

9 of 1908. 36 of 1963.

**13.** In section 30 of the principal Act, in sub-section (*3*), for the words and figures "the Indian Limitation Act, 1908", the words and figures "the Limitation Act, 1963" shall be substituted.

Amendment of Schedule I

**14.** In Schedule I of the principal Act, in Part II,—

(*i*) in the column relating to description of injury, against serial numbers 2, 3, 4, 17, 18, 19, 20 and 21, for the figures '8"', '4½"', '5"' and '3½"' wherever they occur, the figures and abbreviations "20.32 cms.", "11.43 cms.", "12.70 cms." and "8.89 cms." shall respectively be substituted;

(*ii*) after serial number 10 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

| | | |
|---|---|---|
| "10A. | Guillotine amputation of tip of thumb without loss of bone. | 10"; |

(*iii*) in the column relating to percentage of loss of earning capacity, against serial numbers 21, 22 and 23, for the figures and word

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"40", "30" and "30", the figures and word "50", "50" and "50" shall respectively be substituted;

(*iv*) after serial number 26 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

"26A. Loss of partial vision of one eye . . . . 10".

Amendment of Schedule II.

**15.** In Schedule II of the principal Act,—

(*i*) in item (*i*), after the words "railway, in connection with the operation", the word ", repair" shall be inserted;

(*ii*) in item (*vii*), for the words and figures "the Indian Ports Act, 1908", the words and figures "the Ports Act, 1908 or the Major Port Trusts Act, 1963" shall be substituted; 15 of 1908. 38 of 1963.

(*iii*) in item (*xii*), for the words, brackets and figures "clause (*4*) of section 3, and sub-section (*1*) of section 148 of the Indian Railways Act, 1890", the words, brackets and figures "clause (*31*) of section 2 and sub-section (*1*) of section 197 of the Railways Act, 1989" shall be substituted; 9 of 1890. 24 of 1989.

(*iv*) for item (*xix*), the following item shall be substituted, namely:—

"(*xix*) employed, otherwise than in a clerical capacity, in the generating, transforming, transmitting or distribution of electrical energy or in generation or supply of gas; or";

(*v*) in item (*xxix*), for the words "employed in farming", the words "employed in horticultural operations, forestry, bee-keeping or farming" shall be substituted;

(*vi*) after item (*xxxii*) and before the *Explanation*, the following items shall be inserted, namely:—

"(*xxxiii*) employed as watchman in any factory or establishment; or

(*xxxiv*) employed in any operation in the sea for catching fish; or

(*xxxv*) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or

(*xxxvi*) employed in handling animals like horses, mules and bulls; or

(*xxxvii*) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or

(*xxxviii*) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

(*xxxix*) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities ground, water surveys and exploration; or

(*xl*) employed in cleaning of jungles or reclaiming land or ponds in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

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(*xli*) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty-five persons have been employed; or

(*xlii*) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams and the like; or

(*xliii*) employed in the construction, boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter-point and the like; or

(*xliv*) employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations; or

(*xlv*) employed in mechanised harvesting and threshing operations; or

(*xlvi*) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or

(*xlvii*) employed as artist for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level; or

(*xlviii*) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and engaged in outdoor work.".

45 of 1955.

Amendment of Schedule III.

**16.** In Schedule III of the principal Act, in Part B, after serial number 24 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:—

| | |
|---|---|
| "25. Snow blindness in snow bound areas. | All work involving exposure to the risk concerned". |
| 26. Disease due to effect of heat in extreme hot climate. | All work involving exposure to the risk concerned. |
| 27. Disease due to effect of cold in extreme cold climate. | All work involving exposure to the risk concerned.". |

Sd./-

SHRI K. L. MOHANPURIA,

Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Sd./-

SMT. K. R. TRIVEDI,

Secretary to Government.



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REGISTERED NO. G/GNR/2

Extra No. 18



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

VOL. XXXVII] MONDAY, JULY 8, 1996 / ASADHA 17, 1918

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART—VI

### Acts of Parliament and Ordinances promulgated by the President.

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 8th July, 1996.

No. RP/46/96/Act. 45/95/ /E.—The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 18th December, 1995/Agrahayan. 27, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 16th December, 1995 and is hereby published for general information :

THE RESEARCH AND DEVELOPMENT CESS (AMENDMENT) ACT, 1995

(Act No. 45 of 1995) *AN ACT* (16th December, 1995)

*to amend the Research and Development Cess Act, 1986.*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Research and Development Cess (Amendment) Act, 1995.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

32 of 1986

2. In section 2 of the Research and Development Cess Act, 1986 (hereinafter referred to as the principal Act),—

(*i*) for clauses (*a*) to (*c*), the following clauses shall be substituted, namely:—

'(*a*) "Board" means the Technology Development Board constituted under the Technology Development Board Act, 1995;

(*b*) "cess" means the cess levied under section 3;';

(*ii*) in clause (*e*), for the words "is approved by the Central Government", occurring at the end, the following shall be substituted, namely:—

"is approved or automatically approved in accordance with the Industrial Policy of the Government of India in force from time to time".

Amendment of section 4

3. In section 4 of the principal Act,—

(*i*) for the expression "Development Bank", the expression "Board" shall be substituted;

(*ii*) for the expression "Fund", the expression "Board" shall be substituted.

Omission of sections 5 and 6.

4. Sections 5 and 6 of the principal Act shall be omitted.

Amendment of sections 8 and 9.

5. In sections 8 and 9 of the principal Act, for the expression "Development Bank", wherever it occurs, the expression "Board" shall be substituted.

Sd./-
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,
Sd./-
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR

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REGISTERED NO. G/GNR/2

Extra No. 19

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL. XXXVIII] TUESDAY, JULY 9, 1996 / ASADHA 18, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 9th July, 1996.

No. RP/36/96/Act. 34/95/ /E.—The following Act of Parliament is republished for general information :

GOVERNMENT OF INDIA

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

**(Legislative Department)**

New Delhi, the 30th August, 1995/Bhadrapad 8, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 30th August, 1995 and is hereby published for general information :

THE PAYMENT OF BONUS (AMENDMENT) ACT, 1995

*AN ACT*

**(Act No. 34 of 1995)** **(30th August , 1995)**

*further to amend the Payment of Bonus Act, 1965*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Payment of Bonus (Amendment) Act, 1995.

(2) It shall be deemed to have come into force on the 1st day of April, 1993.

Amendment of section 2.

21 of 1965.

2. In section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act), in clause (*13*), for the words "two thousand and five hundred rupees", the words "three thousand and five hundred rupees" shall be substituted.

Amendment of section 12.

3. In section 12 of the principal Act, for the words "one thousand and six hundred rupees" at both the places where they occur, the words "two thousand and five hundred rupees" shall be substituted.



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Repeal and saving.

4. (1) The Payment of Bonus (Amendment) Ordinance, 1995 is hereby repealed. Ord. 8 of 1995.

(2) Notwithstanding such repeal, anything done or any action taken under the Principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Sd./-
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,
Sd./–
SMT. K. R. TRIVEDI,
Secretary to Government.

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Extra No. 20 REGISTERED NO. G/GNR/2

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# The Gujarat Government Gazette

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**PUBLISHED BY AUTHORITY**

VOL. XXXVII ] THURSDAY, JULY 25, 1996 / SRAVANA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT
Sachivalaya, Gandhinagar, 25th July, 1996.

No. RP/32/96/Act 29/95/ /E.—The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA
**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**
**(Legislative Department)**
New Delhi, the 17th August, 1995/shravana 26, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 17th August, 1995 and is hereby published for general information :

## THE MATERNITY BENEFIT (AMENDMENT) ACT, 1995.

**(Act No. 29 of 1995)** **(17th August, 1995)**

*An Act*

*further to amend the Meternity Benefit Act, 1961.*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of india as follows :—

**1.** (*1*) This Act may be called the Maternity Benefit (Amendment) Act, 1995. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the *Official Gazette,* appoint.



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53 of 1961.

Amendment of section 3.

**2.** In section 3 of the Maternity Benefit Act, 1961 (hereinafter referred to as the principal Act), after clause (*h*), the following clause shall be inserted, namely:—

'(*ha*) "medical termination of pregnancy" means the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act, 1971.'.

34 of 1971.

Amendment of section 4.

**3.** In section 4 of the principal Act,—

(*a*) in sub-section (*1*), for the words "or her miscarriage", the words ", miscarriage or medical termination of pregnancy" shall be substituted;

(*b*) in sub-section (*2*), for the words "or her miscarriage", the words ", miscarriage or medical termination of pregnancy" shall be substituted.

Substitution of new section for section 9.

**4.** For section 9 of the principal Act, the following section shall be substituted, namely:—

Leave for miscarriage, etc.

"9. In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.".

Insertion of new section 9A.

**5.** After section 9 of the principal Act, the following section shall be inserted, namely:—

Leave with wages for tubectomy operation.

"9A. In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.".

Amendment of section 10.

**6.** In section 10 of the principal Act, for the words "or miscarriage", the words ", miscarriage, medical termination of pregnancy or tubectomy operation" shall be substituted.

SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 21 REGISTERED NO. G/GNR/2

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# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL. XXXVII ] THURSDAY, JULY 25, 1996 / SRAVANA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**


## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

### LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 25th July, 1996.

No. RP/43/96/Act 41/95/E.—The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS**

**(Legislative Department)**

New Delhi, the 9th September, 1995/Bhadrapad 18, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 8th September, 1995 and is hereby published for general information :

## THE NATIONAL COMMISSION FOR MINORITIES (AMENDMENT) ACT, 1995

**(Act No. 41 of 1995)**

*An Act* **(8th September, 1995)**

*to amend the National Commission for Minorities Act, 1992.*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows :—

1. This Act may be called the National Commission for Minorities (Amendment) Act, 1995. Short title.



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Amendment of section 2.

**2.** In section 2 of the National Commission for Minorities Act, 1992 (hereinafter referred to as the principal Act), in clause (*b*), the words "and includes the Vice-Chairperson" shall be added at the end. 19 of 1992.

Amendment of section 3.

**3.** In section 3 of the principal Act, in sub-section (*2*), for the words "Chairperson and six Members", the words "Chairperson, a Vice-Chairperson and five Members" shall be substituted.

SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

SMT. K. R. TRIVEDI,
Secretary to Government.

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GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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Extra No. 22 REGISTERED NO. G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

**PUBLISHED BY AUTHORITY**

VOL.--XXXVIII] THURSDAY, JULY 25, 1996 / SRAVANA 3, 1918

**Separate paging is given to this Part in order that it may be filed as a separate compilation.**

## PART—VI

**Acts of Parliament and Ordinances promulgated by the President.**

**LEGISLATIVE AND PARLIAMENTERY AFFAIRS DEPARTMENT**

Sachivalaya, Gandhinagar, 25th July, 1996.

No. RP/45/96/Act 44/95/ /E.—The following Act of Parliament is re-published for general information :

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, 18th December, 1995/Agrahayan 27, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 16th December, 1995 and is hereby published for general information :

## THE TECHNOLOGY DEVELOPMENT BOARD ACT, 1995

**(Act No. 44 of 1995)** **(16th December, 1995)**

*An Act*

*to provide for the constitutin of a Board for payment of equity capital or any other financial assistance to industrial concerns and other agencies attempting development and commercial application of indigenous technology or adopting imported technology to wider domestic applications and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows :—

### CHAPTER I

### PRELIMINARY

**1.** (1) This Act may be called the Technology Development Board Act, 1995. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2.** In this Act, unless the context otherwise requires— Definitions.

(*a*) "Board" means the Technology Development Board constituted under sub-section (*1*) of section 3;

(*b*) "Chairperson" means the Chairperson of the Board;

(*c*) "Fund" means the Fund for Technology Development and application constituted under sub-section (*1*) of section 9;



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(*d*) "member" means a member of the Board and includes the Chairperson;

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

(*f*) "Secretary" means the Secretary of the Board appointed under sub-section (*1*) of section 4;

(*g*) words and expressions used herein and not defined but defined in the Research and Development Cess Act, 1986, shall have the meanings respectively assigned to them in that Act. 32 of 1986

## CHAPTER II

### TECHNOLOGY DEVELOPMENT BOARD

Constitution and incorporation of the Board.

3. (*1*) The Central Government shall by notification in the Official Gazette, constitute, for the purposes of this Act, a Board to be called the Technology Development Board.

(*2*) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to contract and shall, by the said name, sue and be sued.

(*3*) The Board shall consist of the following members, namely:—

(*a*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Science and Technology — *ex officio* Chairperson;

(*b*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Scientific and Industrial Research — *ex officio;*

(*c*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Finance (Expenditure) — *ex-officio:*

(*d*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Defence Research and Development — *ex officio;*

(*e*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Industrial Development — *ex officio;*

(*f*) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Rural Development — *ex officio.*

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(*g*) such number of persons, not exceeding four as may be prescribed, to be appointed by the Central Government from amongst persons having experience in technology development and application, banking and finance, industry, agriculture and rural development; and

(*h*) Secretary of the Board. *ex officio.*

(4) The term of office and other conditions of service of members specified in clause (*g*) of sub-section (*3*) shall be such as may be prescribed.

(5) The Chairperson shall, in addition to presiding over the meetings of the Board, exercise and discharge such powers and duties of the Board as may be delegated to him by the Board and such other powers and duties as may be prescribed.

(6) No act or proceeding of the Board shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board;

(b) any defect in the appointment of a person acting as a member of the Board;

(*c*) any irregularity in the procedure of the Board not affecting the merits of the case.

Secretary and other officers and employees of the Board.

**4.** (*1*) The Board may appoint the Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the Secretary and other officers and employees of the Board shall be such as may be determined by regulations.

Committees of the Board.

**5.** (*1*) Subject to the rules made in this behalf, the Board may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(2) The Board shall have the power to co-opt as members of any committee appointed under sub-section (*1*), such number of persons who are not members of the Board as it may think fit, and the person so co-opted shall have the right to attend the meetings of the committee, and take part in the proceedings of the committee, but shall not have the right to vote.

Functions of the Board.

**6.** The Board may—

(a) provide equity capital, subject to such conditions as may be determined by regulations, or any other financial assistance to industrial concerns and other agencies attempting commercial application of indigenous technology or adapting imported technology of wider domestic applications;

(b) provide financial assistance to such research and development institutions engaged in developing indigenous technology or adaptation of imported technology for commercial application, as may be recognised by the Central Government;

(c) perform such other functions as may be entrusted to it by the Central Government.

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## CHAPTER III

### APPLICATION FOR GRANT OF FINANCIAL ASSISTANCE

Application for grant of financial assistance, etc.

**7.** (*1*) An application for grant of financial assistance for the purposes mentioned under section 6 shall be made to the Board in such form as may be prescribed.

(2) The Board may, after examining the application and after making such enquiries as it deems necessary by order in writing, either grant the financial assistance or refuse to grant the same:

Provided that no refusal of grant shall be made unless an opportunity is given to the applicant of being heard.

## CHAPTER IV

### FINANCE, ACCOUNTS AND AUDIT

Grants and loans by the Central Government.

**8.** The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.

Fund for Technology Development and Application.

**9.** (*1*) There shall be constituted a Fund to be called the Fund for Technology Development and Application and there shall be credited to the Fund—

(a) any grants and loans made to the Board by the Central Government under section 8;

(b) all sums received by the Board from any other source;

(c) recoveries made of the amounts granted from the Fund; and

(d) any income from investment of the amount of the Fund.

(2) The Fund shall be applied for meeting—

(a) expenses on the objects and for the purposes authorised by this Act;

(b) salaries, allowances and other expenses of officers and other employees of the Board; and

(c) expenses of the Board in the discharge of its functions under this Act.

Transfer of money receipts and liabilities.

**10.** On and from the commencement of this Act,—

(a) the moneys standing at the credit of the Venture Capital Fund formed under section 5 of the Research and Development Cess Act, 1986 which is part of the Development Assistance Fund established by the Development Bank under section 14 of the Industrial Development Bank of India Act, 1964 shall stand transferred to and vest in the Board; 32 of 1986. 18 of 1964.

(b) all sums of money due to the Development Bank immediately before such commencement shall be deemed to be due to the Board;

(c) all debts, obligations and liabilities incurred, all contracts or agreements entered into and all matters and things engaged to be done by, with or for the Development Bank immediately before such commencement for or in connection with the purpose of the Venture Capital Fund

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shall be deemed to have been incurred, entered into or engaged to be done by with or for the Board; and

(*d*) all suits and other legal proceedings instituted or which could have been instituted by or against the Development Bank immediately before such commencement may be continued or instituted by or against the Board.

Budget.

11. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

Annual Report.

12. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

Accounts and audit.

13. (*1*) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

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

(*3*) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(*4*) The Board shall furnish to the Central Government before such date as may be prescribed its audited copy of accounts together with auditor's report.

Annual report and auditors report to be laid before Parliament.

14. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

## CHAPTER V

### MISCELLANEOUS

Returns to be furnished to the Board.

15. (*1*) An industrial concern or an institution receiving financial assistance from the Board shall furnish returns to the Board in such form and at such time as may be determined by regulations.



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(2) The Board may authorise an officer to visit any industrial concern or institution referred to in sub-section (1) at any time to verify the accuracy of any return made under this section.

Power of the Central Government to issue directions.

**16.** (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of the policy or not shall be final.

Power of Central Government to supersede the Board.

**17.** (1) If at any time the Central Government is of opinion—

(a) that on account of grave emergency, the Board is unable to discharge the functions and the duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Government underthis Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) sub- section (2), shall not be deemed to be disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

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(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Delegation.

**18.** The Board may, by general or special order in writing, delegate to the Chairperson or any other member or to any officer of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 22) as it may deem necessary.

Members, officers and employees of the Board to be public servants.

**19.** All members, offices and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of action taken in good faith.

**20.** No prosecution or other legal proceeding shall lie against the Government or the Board or any committee appointed by it or any member of the Board or such committee, or any officer or employee of the Government or the Board or any other person authorised by the Government or the Board, for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Power of Central Government to make Rules.

**21.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of members of the Board under clause (g) of sub-section (3) of section 3;

(b) the term of office and other conditions of service of the members of the Board under sub-section (4) of section 3;

(c) the powers and duties of the Chairperson under sub-section (5) of section 3;

(d) the constitution of committees under sub-section (1) of section 5;

(e) the form of application under sub-section (1) of section 7;

(f) the form in which, and the time at which the Board shall prepare its budget under section 11 and its annual report under section 12;

(g) the form of annual statement of accounts under sub-section (1) of section 13 and the date before which the audited copy of the accounts may be furnished to the Central Government under sub-section (4) of that section;

(h) any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by rules.

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Power of Board to make regulations.

**22.** (*1*) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

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

(*a*) the terms and conditions of service of the Secretary and other officers and employees of the Board under sub-section (*2*) of section 4;

(*b*) the conditions subject to which equity capital may be provided by the Board under clause (*a*) of section 6;

(*c*) the form in which and the time at which the returns may be furnished to the Board under sub-section (*1*) of section 15.

Rules and regulations to be laid before Parliament.

**23.** Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Sd/–
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Sd/–
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR

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Extra No. 23 REGISTED NO. G/GNR/2

# The Gujarat Government Gazette

# EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXXVI] SATURDAY, AUGUST 3, 1996/SRAVANA 12,1918

**Separate paging is given to this Part in order that it may be filed as a Separate Compilation.**

## PART VI

## Acts of Parliament and Ordinances promulgated by the President.

GOVERNMENT OF GUJARAT

**LEGISLATIVE AND PARLIAMENTARY**

**AFFAIRS DEPARTMENT**

Sachivalaya Gandhinagar, 3rd August, 1996.

No. RP/34/96/Act/32/95 /E.—The following Act of Parliament is re-published for general information:

GOVERNMENT OF INDIA.

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS,**
**(Legislative Department),**

New Delhi the 23rd August, 1995/BhadraPad 1, 1917 (Saka)

The following Act of Parliament received the assent of the President on the 22nd August, 1995 and is hereby published for general information:

### THE ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL INPORTANCE) AMENDMENT ACT, 1995

**(Act No. 32 of 1995)** **(22nd August, 1995)**

*AN ACT*

*further to amend the Additional Duties of Excise (Goods of Special Importance) Act* **1957.**

BE it enacted by Parliament in the Forty sixth Year of the Republic of India as follows:—



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Short title and commencement

1. (1) This Act may be called the Additional Duties of Excise (Goods of Special Importance) Amendment Act, 1995.

(2) It shall be deemed to have come into force on the 1st day of April, 1995.

Amendment of long title

2. In the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as the principal Act,) in the long title, for the words, figures and letters "second report dated the 18th December, 1989", the words, figures and letters "report dated the 25th day of November, 1994" shall be substituted. 58 of 1957

Substitution of new Schedule for the Second Schedule

3. In the principal Act, for the Second Schedule, the following Schedule shall be substituted, namely:—

## THE SECOND SCHEDULE

(*See* Section 4)

*Distribution of additional duties*

During each of the financial years commencing on and after the 1st day of April, 1995, there shall be paid to each of the States, specified in column (1) of the Table below such percentage of the net proceeds of additional duties levied and collected during that financial year in respect of the goods described in column (3) of the First Schedule after deducting therefrom a sum equal to 2.203 per cent. of the said proceeds as being attributable to Union territories, as is set out against in column (2) of the said Table.

Provided that it during that financial year is levied and collected in any State a tax on the sale or purchase of the goods described in column (3) of the First Schedule, or one or more of them by or under any law of that State, no sums shall be payable to that State under this paragraph, in respect of that financial year, unless the Central Government by special order other wise directs.

TABLE

| State | Percentage |
|---|---|
| (1) | (2) |
| Andhra Pradesh | 7.820 |
| Arunachal Pradesh | 0.104 |
| Assam | 2.483 |
| Bihar | 7.944 |
| Goa | 0.232 |
| Gujarat | 5.995 |
| Haryana | 2.366 |
| Himachal Pradesh | 0.595 |
| Jammu and Kashmir | 0.856 |
| Karnataka | 5.744 |

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| 1 | 2 |
|---|---|
| Kerala .. .. .. .. .. | 3.740 |
| Madhya Pradesh .. .. .. .. .. | 7.236 |
| Maharashtra .. .. .. .. .. | 12.027 |
| Manipur .. .. .. .. .. | 0.197 |
| Meghalaya .. .. .. .. .. | 0.188 |
| Mizoram .. .. .. .. .. | 0.079 |
| Nagaland .. .. .. .. .. | 0.137 |
| Orissa .. .. .. .. .. | 3.345 |
| Punjab .. .. .. .. .. | 3.422 |
| Rajasthan .. .. .. .. .. | 4.873 |
| Sikkim .. .. .. .. .. | 0.053 |
| Tamil Nadu .. .. .. .. .. | 7.669 |
| Tripura .. .. .. .. .. | 0.286 |
| Uttar Pradesh .. .. .. .. .. | 14.573 |
| West Bengal .. .. .. .. .. | 8.036". |

Ord. 10 of 1995.

**4.** (1) The Additional Duties of Excise (Goods of Special Importance) Amendment Ordinance, 1995, is hereby repealed

Repeal and Saving.

(2) Notwithstanding such repeal anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

Sd/--
SHRI K. L. MOHANPURIA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Sd/--
SMT. K. R. TRIVEDI,
Secretary to Government.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.

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