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such change for continuous compliance. The registering officer shall maintain a register in Form III showing the particulars of establishments in relation to which certificate of registration have been issued by him. (Rule 18(3)).

(3) Revocation of registration in certain cases: Section 8 provides that 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 mis-representation or suppression of any material fact, or- that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked, the registering officer may revoke the registration. He can do so only after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government

Rule 19 prescribes the circumstances in which application for registration may be rejected. –

- (1) If any application for registration is not complete in all respects, the registering officer shall require the principal employer to amend the application so as to make it complete in all respects.
- (2) If the principal employer, on being required by the registering officer to amend his application for registration, omits or fails to do so, the registering officer shall reject the application for registration.

(4) Effect of non-registration: According to section 9, no principal employer of an establishment, to which this Act applies, shall employ contract labour in the establishment after the expiry of the period under section 7 in the case of the establishment which is required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section.

The principal employer shall also not employ contract labour in the establishment after the revocation of registration of such establishment under Section 8.

It has been well settled by the various judgements of Apex Court & High Courts that the contractor's employees will not automatically become the employees of the principal employer, even if the principal employer does not get registration and the contractor does not hold licence, though employing contract labour without obtaining registration or without obtaining licence is an offence under the Act. Legal Consequences for default on the part of contractor for non-renewal of his licence have been discussed by a bench of Madras High Court in *Workmen of Best & Crompton Industries Limited represented by their General Secretary of Socialist Workers Union, Madras v. Management of Best & Crompton Engineering Ltd., Madras (1985- 1- LLJ, 492)*, their lordship observed that:

“The contractor’s licence has not been renewed within the prescribed time limit and that the registration under section 7 was initially granted for 30 workmen, has not been amended to cover engagement of 75 workmen.”... “Rule 29 requires that the application of renewal should be made before the validity of license. It would therefore, be inferred that the contractor is not eligible to apply for renewal at all and that his only remedy if he wants to work as a licensed contractor, is to apply for a fresh and new license. Otherwise, the workmen would not be deemed to be employed as contract labour.”

The Act mandates that the principal employer should be registered and the contractor have a valid license prior to engaging contract labours. In *Workmen of Best & Crompton Industries Ltd. v. Best & Crompton Industries Ltd.*, the Madras High Court has held that the principal employer must engage contract labour through a contractor who has a valid license, because an invalid license of a contractor would imply direct employment of contract labour by the principal employer. Further, such a license of the contractor is job specific, non-transferable for any other job and indicative of the maximum number of contract labours to be engaged.

In *Food Corporation of India Workers Union vs. Food Corporation of India and other, 1992 LLJ (Guj.)* – It has been held that workmen can be employed as contract labour only through licensed contractors, who shall obtain licence under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with, the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not complied with, the provisions of Contract Labour Act will not

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apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

(5) Prohibition of employment of contract labour: According to section 10, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.

But before issuing any such notification in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;
- (b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment ;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation.- If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

But where the government fails to disclose the basis for refusing to abolish contract labour, it amounts to non-application of mind to the requirements of Section 10(2) and the court can order abolition of contract labour (GEA v. Union of India, 1997 Lab IC 1701 Bom.).

Cases regarding criteria and circumstances for abolition of Contract Labour

1. Feeding hoppers incidental and allied to main work-Loading and unloading sporadic and intermittent work.

The dispute related to the abolition of contract labour in the seeds godown and solvent extraction plants in the appellant's factory engaged in the manufacture of edible oils and its by products. The appellant company maintained that in both the departments the work was intermittent and sporadic type and hence contract labour was both efficient and economic. The union, on behalf of the workmen, challenged this standpoint and furnished charts, etc., to prove the continuous and perennial nature of the work. It also referred to the practice in certain other companies.

If the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, the abolition of contract labour should be justified. It is also open to the Industrial Tribunal to have regard to the practice obtaining in other industries in or about the same area.

It is clear that the feeding of hoppers in the solvent extraction plant is an activity closely and intimately connected with the main activity of the appellant. This item of work is incidental to the nature of the industry carried on by the appellant, which must be done almost every day and there should be no difficulty in having regular workmen in the employment of the appellant to do this type of work. Also on comparison with other factories doing the same work it follows that the feeding of hoppers is an essential part of the industry carried on by the appellant and that it could very well be done by the departmental workman as is being done by others.

On merits the direction of the Industrial Tribunal abolishing contract labour regarding loading and unloading cannot be sustained. When it is shown that in similar establishment this type of work is not ordinarily done through regular workmen, but by contract labour that is a circumstance which will operate in favour of the appellant.

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No doubt, the Industrial Tribunal referred to Section 10 of the Central Act, but the Tribunal misapplied those provisions when it directed abolition of contract labour regarding loading and unloading operations. *Vegolis Pvt. Ltd. v. Workmen*, (1971) 2 SCC 724, 730, 733, 740.

2. Provincial Govt. has exclusive jurisdiction in regard to prohibition of employment of contract labour. Industrial Tribunal cannot issue directions to an establishment to abolish contract labour w.e.f. a date after coming into force of the Act. *Vegolis Pvt. Ltd. v. Workmen*, (1971) 2 SCC 724.

3. S.10 -Central Government is not required to put on record that they have examined the question of prohibition of contract labour in the establishments after taking into account each fact separately. It is for the person challenging the notification to establish that the notification in question had been issued on some extraneous considerations or without taking into account the relevant factors mentioned in S. 10(2). *J.P. Gupta v. Union of India*, 1981 Lab IC 641 (Pat HC).

4. S.10 (1)-A single notification prohibiting contract labour can be issued in respect of different establishments if the operation and nature of work are similar in all establishments Hence notification prohibiting/contract labour in coal mines was proper. *J. P. Gupta v. Union of India*, 1981 Lab IC 641 (Pat HC).

Jurisdiction of Industrial Tribunals to abolish contract labour

It has been held by the Supreme Court in *Vegolis Private Ltd. v. The Workmen*, (1971)II-LLJ p. 567, that after enforcement of the Contract Labour (Regulation and Abolition) Act, 1970, the sole jurisdiction for abolition of contract labour in any particular operation vested with the appropriate Government and thereafter the Tribunals have no jurisdiction to abolish contract labour. Supreme Court cannot under Article 32 of the Constitution order for abolition of Contract Labour System in any establishment (1985 1 SCC 630).

In *Gujarat Electricity Board case*, AIR 1995 SC 2942, the Supreme Court held that:

- (a) all undertakings on their own discontinue the contract labour who satisfy the factors mentioned in classes (a) to (d) of Section 10(2) of the Act, and abolish as many of the labour as is feasible as their direct employees.
- (b) both the Central and State Governments should appoint a committee to investigate the establishments in which the contract labour is engaged and were on the basis of criteria laid down in clauses (a) to (d) of Section 10(2) of the Act, the contract labour system can be abolished and direct employment can be given to the contract labour.

The appropriate Government on its own should take initiative to abolish the labour contracts in the establishments concerned by following the procedure laid down under the Act.

- (c) the Central Government should amend the Act by incorporating a suitable provision to refer to industrial adjudicator the question of the direct employment of the contract workers of the ex-contractor in principal establishments, when the appropriate Government abolishes the contract labour.

After-effect of abolition of contract labour

At present there is no provision in the Act for absorption of contract labour in the event of prohibition of employment of contract labour in any category of work/jobs under Section 10 of the Act. There have been complaints that contract workers are being thrown out of employment in the jobs covered by the relevant notification.

On the crucial question as to after effect of abolition of contract labour under Section 10 of the Act, the Supreme Court in *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC 645, held that a High Court in exercise of its jurisdiction under Article 226 of the Constitution, can direct a principal employer in an appropriate case to absorb the workman concerned after abolition of the contract labour. It overruled its earlier decision of

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two member bench of the Court (Dena Nath case 1991 AIR SC 3026). In this case, it was held that High Court in exercise of its power under Article 226 could not drive at the absorption of contract labour (on its abolition) as direct employees of the principal employer. The Court also overruled another important case (Gujarat Electricity Board, AIR 1995 SC 2942) wherein it was held that on abolition of contract labour their employees are free to raise their cause for reference under Section 10 of Industrial Disputes Act, 1947 seeking absorption of contract labour. After abolition of contract labour system, if the principal employer omits to abide by the law and fails to absorb the contract labour worked in the establishment on regular basis, the workmen have no option but to seek redress under Article 226 of the Constitution.

Judicial review being the basic feature of the constitution, the High Court is to have the notification enforced at the first instance. Further, the affected employees have a fundamental right to life. Meaningful right to life springs from continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life. When they are engaged as contract labour and were continuously working in the establishment of the appellant to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour, so long as the work is available in the establishment. When the work is of perennial nature and on abolition of contract labour system, they are entitled, per force to be absorbed on regular basis.

Thus, in Air India Statutory Corporation case, the Supreme Court has held though there exists no express provision in the Act for absorption of employees in establishments where contract labour system is abolished by publication of notification under Section 10(1) of the Act, the principal employer is under obligation to absorb the contract labour. The linkage between the contractor and employee stood snapped and direct relationship stood restored between the principal employer and contract labour as its employees. Where the contract labour through a contractor engaged in keeping industrial premises clean and hygiene, but no licence was obtained by principal employer nor contractor and the contract itself stipulating number of employees to be engaged by contractor and overall control of working of contract labour including administrative control remaining with principal employer, it was held by the Court that the contract is a camouflage which could be easily pierced and the employee and the employer relationship could be directly visualised. Employees who have put in 240 days of work is ordered to be absorbed (1999 LAB IC SC 1323 HSEB v. Suresh).

In *Steel Authority of India v. National Union of Water Front Workers and others*, AIR 2001 SC 3527, the Supreme Court overruled the judgement delivered in the Air India Statutory Corporation case. The Apex Court held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the Appropriate Government under Section 10(1) prohibiting employment of contract labour in any process or operation or other work in any establishment. Consequently, the principal employer cannot be required to order absorption of contract labour working in the concerned establishment.

Appointment of Licensing Officer and Licensing of Contractors

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors. Section 11 empowers the appropriate Government to appoint Gazetted Officers to be licensing officers and define the limits of their jurisdiction. Orders regarding appointment of licensing officers and the limits of their jurisdiction are to be notified in the Official Gazette.

(i) Appointment of licensing officers: According to section 11, the appropriate Government may, by an order notified in the Official Gazette, -(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter ; and (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

(ii) Licensing of contractors: According to section 12, with effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or

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execute any work through contract labour except under and accordance with a licence issued in that behalf by the licensing officer. Subject to the provisions of this Act, such a licence may contain such conditions including, in particular, conditions as to hours or work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, If any, as security for the due performance of the conditions as may be prescribed.

According to section 12, “Sub-contractors” or “piece wagers” are equally responsible for obtaining licence and implementing the provisions of the Act and the Rules. Execution of a work in a government project by piece wagers through workers employed by them either directly or through khatedars must be in accordance with the licence obtained under S. 12 (1).

Failure to obtain licence will amount to criminal offence punishable under Ss. 16 to 21 read with Rules 41 to 62 of the Rules. *Labourers Working on Salal Hydro Project v. State of J & K*, (1983) 2 SCC 181: (1983) 1 LLJ 494.

Sections 12 & 2(1)(e)(ii)-Where a firm under all agreement undertook the work of holding and storage of another company's materials and for that purpose utilized the services of some labourers employed through sirdars, the firm, its partners and employees could not be prosecuted for not obtaining licence under S. 12 as the firm is an “establishment” within the meaning of S. 2(1)(e)(ii) and not the company's contractor. Assuming the partners and employees of the firm or any of them were principal employers, they could not be both contractors and principal employers in relation to the same establishment. Moreover, each of the sirdars was a contractor within the meaning of the act in relation to the firm i.e. the establishment. The concerned workmen having been supplied through the medium of sirdars, neither the firm nor the partners nor the employees could be deemed to be a contractor in relation to the said workmen. Their liability to take out a licence cannot, therefore, arise. *Feroze Sons v. B. C. Basu*, (1979) 54, FJR 158 (Cal).

Section 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour without a licence, therefore, constituted a fresh offence everyday on which it continued. *Padam Prasad Jain v. State of Bihar*, 1978 Lab IC 145.

Section 12(1) of the Act mandates that no contractor to whom the Act applies, shall undertake or execute any work through contract labour, except under and accordance with a licence issued in that behalf by the licensing officer which may contain such conditions as envisaged under section 12(2) of the Act which includes, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 of the Act. The Contractor shall apply for license under Rule 21(1) of the Rules stating that every application by a contractor for the grant of a licence in triplicate, in Form II annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017, shall be made to the licensing officer of the area in which the establishment, in relation to which he is the contractor, is located along with requisite treasury receipts as to the deposit of the security at the rates specified in Rule 24 and the payment of the fees at the rates specified in Rule 26. Further under Rule 21(2) of the rules such application shall be accompanied by a certificate by the principal employer in Form III annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017 to the effect that the applicant has been employed by him as a contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act and the rules made there under insofar as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant.

In *Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir and Others*, it was held by the Supreme Court that “if (sub-) contractors undertake or execute any work through contract labour without obtaining a licence under section 12 sub-section (1), they would be guilty of a criminal offence punishable under

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section 23 or section 24. In *Padam Prasad Jain v. State of Bihar*, 1978 Lab IC 145 it was held that “by providing that no person shall undertake or execute any work through a contract labour except without a licence, Section 12 imposed a liability not to undertake or execute any work through contract labour without licence, a liability which continued until the licence was obtained and its requirement was complied with. It was an act which continued. Undertaking or executing any work through contract labour, without a licence, therefore, continued a fresh offence every day on which it continued.”

What is a continuing offence was explained by the Supreme Court in *State of Bihar v. Deokaran A.I.R. 1973 S.C. 908* as follows: “Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirements is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act of omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

(iii) Grant of licences.- According to section 13, every application for the grant of a licence under section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

The licensing officer may make such investigation in respect of the application received and in making any such investigation the licensing officer shall follow such procedure as may be prescribed. A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period, and on payment of such fees and on such conditions as may be prescribed.

Under Rule 25, every licence granted under section 12 shall be “in Form VI annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017” and every licence granted under sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely-

- (i) the licence shall be nontransferable;
- (ii) the number of workmen employed as contract labour in the establishment shall not, on any day, exceed the maximum number specified in the licence

According to Rule 27, every licence granted under Rule 25 or renewed under Rule 29 shall remain in force for twelve months from the date it is granted or renewed.

(iv) Revocation, suspension and amendment of licences.- According to section 14, if the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that-(a) a licence granted under Section 12 has been obtained by misrepresentation or suppression of any material fact, or (b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then the licensing officer may, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted. However before taking any such action, the licensing officer shall give the holder of the licence an opportunity of showing cause.

This action of licensing officer does not prejudice any other penalty to which the holder of the licence may be liable under this Act. Subject to any rules that may be made in this behalf, the licensing, officer may vary or amend a licence granted under Section 12.

Licensing Officer under S. 14 is not a Court. Provisions of this section does not violate Arts. 14 and 19 (1) (f). *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

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(v) Appeal.- According to section 15, any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government. It is 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.

On receipt of an appeal, the appellate officer shall, after giving the appellant an opportunity of being heard dispose of the appeal as expeditiously as possible.

Rules regarding Appeal

Rule 33: Form of Appeal

(1) (i) Every appeal under sub-section (1) of Section 15 shall be preferred in the form of a memorandum signed by the appellant or his authorised agent and presented to the Appellate Officer in person or sent to him by registered post.

(ii) The memorandum shall be accompanied by a certified copy of the order appealed from and a treasury receipt for Rs. 10.

(2) The memorandum shall set forth concisely and under distinct heads the grounds of appeal to the order appealed from.

Rule 34 : Rejection of Appeal

(1) Where the memorandum of appeal does not comply with the provisions of sub-rule (2) of Rule 33 it may be rejected or returned to appellant for the purpose of being amended within a time to be fixed by the Appellate Officer.

(2) Where the Appellate Officer rejects the memorandum under sub- rule (1) he shall record the reason for such rejection and communicate the order to the appellant.

(3) Where the memorandum of appeal is in order the Appellate Officer shall admit the appeal, endorse thereon the date of presentation and shall register the appeal in a book to be kept for the purpose called the Register of Appeals.

(4) (i) When the appeal been admitted, the Appellate Officer shall send the notice of the appeal to the Registering Officer or the Licensing Officer as the case may be from whose order the appeal has been preferred and the Registering Officer or the Licensing Officer shall send the record of the case to the Appellate Officer.

(ii) On receipt of the record, the Appellate Officer shall send a notice to the appellant to appear before him at such date and time as may be specified in the notice for the hearing of the appeal.

Rule 35. Failure to appear on date or hearing.-If on the date fixed for hearing, the appellant does not appear, he Appellate Officer may dismiss the appeal for default of appearance of the appellant.

Rule 36. Restoration or appeals.-

(i) Where an appeal has been dismissed under Rule 35 the appellant may apply to the Appellate Officer for the re-admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing the Appellate Officer shall restore the appeal on its original number.

(ii) Such an application shall, unless the Appellate Officer extends the time for sufficient reason, be made within 30 days of the date of dismissal.

Rule 37. Hearing or appeal.-

(1) If the appellant is present when the appeal is called on for the hearing, the Appellate Officer shall proceed

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to hear the appellant or his authorised agent and any other person summoned by him for this purpose, and pronounce judgment on the appeal either confirming, reversing or varying the order appealed from.

(2) The judgment of the Appellate Officer shall state the points for determination, the decisions thereon and reasons for the decisions.

(3) The order shall be communicated to the appellant and copy thereof shall be sent to the Registering Officer or the Licensing Officer from whose order the appeal has been preferred.

Welfare and Health of Contract Labour

(i) Canteens.- According to section 16, the appropriate Government may make rules requiring that one or more canteens shall be provided and maintained by the contractor for the use of such contract labour in every establishment- (a) to which this Act applies, (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contract, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

In addition to above , the appropriate Government may provide rules for -

- (a) the date by which the canteens shall be provided ;
- (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- (c) the foodstuffs which may be served therein and the charges which may be made therefore.

(ii) Rest-rooms. According to section 17, it is mandatory for the contractor to provide and maintain for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed in every place wherein contract labour is required to halt at night in connection with the work of an establishment-

- (a) to which this Act applies, and
- (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor.

The rest-rooms or the alternative accommodation to be provided shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

Provisions, held are not unreasonable. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

(iii) Other facilities.- According to section 18, It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain-

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

Provision, held, reasonable. *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

(iv) First-aid facilities.-According to section 19, there shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents at every place where contract labour is employed by him.

(v) Liability of principal employer in certain cases.- According to section 20, If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed

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in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed. All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Section 20 & 21- Obligation to provide amenities conferred under the Act to the workers is on the principal employer. Government will be responsible for enforcement of those amenities where contractors engaged by it for executing its construction project fail to provide the amenities to its workers. Government's failure to perform its obligation amounts to violation of Art. 21 and workers can enforce their right by writ petition under Art. 32. *Peoples Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235: 1982 SCC (L & S) 275.

(vi) **Responsibility for payment of wages.**- Section 21 makes a contractor statutorily responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

Section 21(1) of the Act read with Rule 63 states that a contractor shall be responsible for fixing the wage periods in respect of which wages shall be payable and payment of wages to each worker employed by him as contract labour and such wages shall be paid if, as per Rule 65 of the Rules, the wages of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day after the last day of the wage period, which as per Rule 64 of the Rules shall not be one month, in respect of which the wages are payable.

Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

Section 21(2) read with Rules 72 and 73 of the Rules states that every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages and shall record under his signature a certificate at the end of the entries in the Register of Wages or the Register of Wage-cum-Muster Roll, as the case may be in such manner as may be prescribed.

It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.

Payment of wages including overtime wages etc. must be made directly to the workers in full except with authorised statutory deductions, if any. Payment through khatedars after deducting any advance repayable by the workers to the khatedars or any messing charges etc. was not proper. Due amounts could be recovered from the workers after paying full wages.

Equal pay for contract labour:

Rule 25(2) (v) (a) of the Rules states that in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work. However in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central).

In *B.H.E.L Workers Association, Hardwar v. UOI* it was further held that "No invidious distinction can be made

against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central).”

PENALTIES AND PROCEDURE

(i) Obstructions.- According to section 22, Whoever obstructs an inspector in the discharge of his duties under this Act 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 Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 22 also provides for that a person shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both if he wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act 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 the Act,

(ii) Contravention of provisions regarding employment contract labour.- Section 23 provides for that a person 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, if he contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act

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.

S. 23 -Mere allegation of contravention is not sufficient. The complainant has to allege as to who are those persons who have contravened the prohibition of or restriction on the employment of contract labour. *J.P. Gupta v. Union of India, 1981 Lab IC 641 (Pat HC)*.

(iii) Other offences.- According to section 24, If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he 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.

(iv) Offences by companies.- Section 25 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It is 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.

However, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such 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

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other association of individuals; and (b) “director”, in relation to a firm means a partner in the firm.

(v) Cognizance or offences.- According to section 26, no court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.

(vi) Limitation or prosecution.- According to section 27, no court shall take cognizance of an offence punishable under this Act 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 an inspector.

It is provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

MISCELLANEOUS

Inspecting staff

According to section 28, the appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

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 assistance (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 contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein ;
- (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work ;
- (d) seize to take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
- (e) exercise such other powers as may be prescribed.

Any person required to produce any document or thing or to give any information required by an inspector shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code, 1860. The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

S. 28 - Frequent, detailed and thorough inspection should be undertaken by senior officers for ensuring compliance with S. 21. **Labourers Working Salal Hydro Project v. State of J. & K., (1983) 2SCC 181.**

Registers and other records to be maintained

According to section 29, every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

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Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

Effect of laws and agreements inconsistent with this Act

Section 30 states that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of the Act. It is provided that where under any such agreement, contract of service standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act the contract the labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they received benefits in respect of other matters under this Act.

As this Act is for the benefit of contract labour, therefore, nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

Power to exempt in special cases

Section 31 vests the appropriate Government with the power that it may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions if any, and for such period or periods as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

Protection of action taken under this Act

Section 32 provides for statutory immunity as it states that no suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. No suit or other legal proceeding shall lie against the Government 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 Act or any rule or order made thereunder

Power to give directions

According to section 33, the Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

Power to make rules

Section 35 authorise the appropriate Government, subject to the condition of previous publication, to make rules for carrying out the purposes of this Act.

In exercise of the powers conferred by section 35 of the Contract Labour (Regulation and Abolition) Act, 1970 the Central Government made the rules called, "**The Contract Labour (Regulation and Abolition) Central Rules, 1971.**"

The Central Government, in exercise of the powers conferred by section 35 of the Act has notified the rules called "**the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017.**" The rules provide for maintenance of Forms under the Act. It overrides the provisions of Contract Labour (Regulation And Abolition) Central Rules, 1971 by stating that notwithstanding anything contained in any rules made under

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the Contract Labour (Regulation and Abolition) Act, 1970, “the Forms specified in the Schedule annexed to these rules shall be maintained either electronically or otherwise and used for the purposes of the aforesaid enactments and the rules made thereunder, as specified therein.” If the Forms referred to under these rules are required for inspection by the concerned Inspector appointed under any of the enactments referred to in the said sub-rule, the concerned persons shall make available such Forms or provide the necessary particulars for the purposes of accessing the information, as the case may be.

Important Case Studies

1. In *L.&T. McNeil Ltd. v. Government of Tamil Nadu*, 2001 I CLR 804 (S.C.) The High Court rejected the challenge given to the Notification of Government of Tamil Nadu, prohibiting contract labour, in the process of sweeping and scavenging in the establishments/factories employing 50 or more workmen.

The Supreme Court, while quashing the impugned notification, observed that no definite view, was expressed by Labour Advisory Board and in the absence of the same and in the absence of any other material, it is not very clear as to how the Government could have reached the conclusion one way or the other. Thus the decision of the Government in issuing the impugned notification under section 10(1) of the Act, is vitiated because of non-consideration of relevant materials.

2. In *Steel Authority of India Ltd. v. National Union Water Front Workers*, 2001 III CLR 349 (S.C.) in a challenge to the Central Government Notification dated 9-12-1976, prohibiting employment of contract labour for sweeping, etc. in the buildings owned and occupied by establishments in respect of which Central Government is appropriate Government, the Supreme Court held that the said notification apart from being an omnibus notification, does not reveal the compliance of section 10(1) of the Act. Besides the Notification also exhibits non-application of mind by the Central Government and hence impugned notification cannot be sustained.

3. In *B.H.E.L Workers Association, Hardwar v. UOI* the court observed that “The Contract Labour (Regulation and Abolition) Act, 1970 does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The court further held that “Parliament has not abolished contract labour but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under section 10 of the Act.

4. In *Catering Cleaners of Southern Railway v. UOI*, the court held that writ of mandamus directing Central Government to abolish the contract labour system cannot be issued because section 10 had vested the power in the appropriate government. In the circumstances, the appropriate order to make according to Court, was to direct the Central Government to take suitable action under section 10 of the Act within six months from the date of order. It was also observed that without waiting for the decision of the Central Government, the Southern Railway was free on its own motion to abolish the system and regularise the services of the employees.

5. In *Gujarat Electricity Board v. Hind Mazdoor Sabha* where it was held that only the appropriate government can abolish contract labour in accordance with section 10 and no court or industrial adjudicator has jurisdiction on the matter of absorption.

6. In *Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh & Ors.* 2002 II CLR 299 allowing the appeal filed by the Municipal Corporation of Greater Mumbai, the Supreme Court held that “directions given by the High Court, not being consistent with Constitution Bench judgment in Steel Authorities’ case (2001 III CLR 349), impugned judgment is set aside, leaving it open to the respondent union to seek remedies available in terms of para 125 of the aforesaid SAIL Judgment, before the State Government or industrial adjudicator as the case may be.”

7. *Bhilwara Dugdh Utpadak Sahakarīs Ltd. Vs Vinod Kumar Sharma Dead by LRS & ORS* (01.09.2011)

In a recent judgment on *Bhilwara Dugdh Utpadak Sahakarīs Ltd.* the Supreme Court of India dismissing the appeal of the appellate hold that, the workmen employed through a contractor are the employees of the Principal Employer and not of the Contractor and added that the judgment on *SAIL Vs. National Union Waterfront Workers* (2001) has no application in the present case.

8. *Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr*, 2012 LLR 1160

The Madras High Court, in its judgment in the case of *Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Comimbator & Anr*, was called upon to decide on an issue dealing with the payment of gratuity to an employee of the Mettur Thermal Power Station, Mettur, (Power Station) whose services were terminated in 2003. The employee concerned worked at the Power Station between 1988 and 1999, as a contract employee. In 1999, the employee was directly hired by the Power Station and he continued to be so employed till 2003. Upon termination of his services, the employee claimed gratuity payments for a period of sixteen years, between 1988 and 2003. The Power Station claimed that its responsibility to pay gratuity would lie only in respect of the period during which the employee was employed directly by the Power Station (i.e., 1999 – 2003) and not for the period when he was a contract employee. The Madras High Court held that gratuity, being a termination payment required to be paid under a law, would constitute ‘wages’ under the CLRA and in accordance with section 21(4) of the CLRA, the Power Station (being the principal employer for the period between 1988 and 1999) would be responsible for the payment of gratuity to the contract employee.

LESSON ROUND UP

- “The Contract Labour (Regulation and Abolition) Act, 1970” provides for regulation of the employment of contract labour and its abolition under certain circumstances.
- It covers every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as ‘contract labour’ and every contractor who employs or who employed on any day of the preceding 12 months, 20 or more contract employee. It does not apply to establishments where the work is of intermittent and casual nature unless work performed is more than 120 days and 60 days in a year respectively (Section 1).
- The Act provides for setting up of Central and State Advisory Contract Labour Boards by the Central and State Governments to advise the respective Governments on matters arising out of the administration of the Act (Section 3 & 4).
- The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules (Section 7 & 12).

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- The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same (Section 16, 17, 18, 19 and 20).
- The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971 (Section 21).
- For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/- (Section 23 & 24).
- Apart from the regulatory measures provided under the Act for the benefit of contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work. Sub-section (2) of Section 10 lays down mandatory guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment.

SELF-TEST QUESTIONS

1. Explain the provisions of applicability of the Act.
2. Who can abolish contract labour under the Act?
3. Write the rules w.r.t. Canteens under the Contract Labour (Regulation and Abolition) Central Rules, 1971.
4. Who is responsible for payment of wages under the Act if contractor fails to make payment of wages to contract labour?
5. Briefly discuss case of “Steel Authority of India v. National Union of Water Front Workers and others”?
6. Explain the provisions of registration of establishment under the Act.

Section III

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

LESSON OUTLINE

- Learning Objectives
- History of the Legislation
- Challenge to constitutional validity of the Act
- Introduction
- Object of the Act
- Applicability of the Act
- Definitions
- The Advisory Committees and Expert Committees
- Registration of Establishment
- Registration of Building Workers as Beneficiaries
- Building and other Construction Workers' Welfare Boards
- Hours of Work, Welfare Measures and Other Conditions of Service of Building Workers
- Safety and Health Measures
- Inspecting Staff
- Special Provisions
- Penalties and Procedures
- LESSON ROUND UP
- SELF TEST QUESTION

LEARNING OBJECTIVES

“Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act was enacted to regulate the employment and conditions of service and to provide for safety, health and welfare measures for crores of building and other construction workers in the country. The Act is applicable to every establishment which employs 10 or more workers in any building or other construction work. There is also provision of constitution of Central and the State Advisory Committee to advise the appropriate Governments on matters arising out of administration of the law besides constitution of Welfare Boards by the State Governments and registration of beneficiaries under the Act and provision for their identity cards etc. The Building and other Construction Workers' Welfare Cess Act” was enacted simultaneously to provide levy of cess on construction cost to be paid by employer. These legislations provide for regulating the employment and conditions of service, safety and health and welfare measures for the construction workers by setting up a Welfare Fund at the State level for crediting thereto contribution made by beneficiaries and collection made out from levy of cess of 1% of the construction cost incurred by an employer on construction works. The Fund is to be used for providing financial assistance to the families of beneficiaries in case of accident, old age pension, housing loans, payment of insurance premia, children's education, medical and maternity benefits etc. The Act exempts for the construction of residential houses for own purpose constructed with a cost not exceeding Rs. 10 Lakh. The Act provides for constitution of Safety Committee in every establishment employing 500 or more workers. The provision of Workmen's Compensation Act, 1923 also applies to building worker as if the employment to which this Act applies had been included in the Second Schedule to that Act.

The students must be familiar with the provisions of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

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

HISTORY OF THE LEGISLATION

The construction workers constitute one of the largest categories of workers in the unorganized sector. As per the Fifth Employment Unemployment Survey (2015-16) there are five crore nineteen thousand four hundred and nineteen workers engaged throughout the country in building and other construction works. These workers are one of the most vulnerable segments of the unorganised labour in India. Their work is of temporary nature, the relationship between employer and the employee is temporary, working hours are uncertain. Basic amenities and welfare facilities provided to these workers are inadequate. Risk to life and limb is also inherent. In the absence of adequate statutory provisions to get the requisite information regarding the number and nature of accidents was quite difficult and due to this to fix responsibility or to take corrective measures was not an easy job. Although the provisions of certain Central Acts were applicable to the building and other construction workers yet a need was felt for a comprehensive Central Legislation for regulating the safety, welfare and other conditions of service of these workers. In pursuant to the decision of the 41st Labour Ministers Conference held on 18th May, 1995, the Committee of State Labour Ministers had expressed its consensus for the Central Legislation on this subject.

Stages of the Act coming into force

(i) Promulgation of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995)

In order to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995) was promulgated by the President on 3rd November, 1995 as the Parliament was not in session. To replace this Ordinance a Bill was introduced in the Lok Sabha on 1st December, 1995. Since the Bill could not be taken up for consideration it lapsed.

(ii) Promulgation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 3 of 1996)

On 5th January, 1996 the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord. 3 of 1996). To replace this Ordinance, a Bill was introduced in the Parliament which could not be passed and the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) on 27th March, 1996 with a view to provide continued effect to the legislative protection

(iii) Promulgation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996) on 20th June, 1996

As second Ordinance could not be replaced by an Act of Parliament, the President promulgated the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996) on 20th June, 1996.

(iv) Enactment of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

In order to replace third Ordinance, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill was introduced in the Parliament. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill having been passed by both the Houses of Parliament received the assent of the President on 19th August, 1996. It came on the Statute Book as Parliament simultaneously enacted "The Building and Other Construction Workers Cess Ac, 1996" as a complementary legislation to the Building and Other Construction Workers

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(Regulation of Employment And Conditions of Service) Act, 1996 (hereinafter referred as BOCW Act, 1996) and for the purpose of “augmenting the resources” of the Welfare Boards set up under the BOCW Act, 1996. The BOCW Cess Act, 1996 envisages the levy of a cess of a minimum of 1% of the “cost of construction”, to be paid by the ‘employer’ to the state authorities. The cess so recovered is to be used for carrying out the statutory functions of the various state-level Welfare Boards.

Further, the Building and Other Construction Workers (RECS) Central Rules, 1998 were notified on 19.11.1998. These rules are applicable to establishments for which appropriate Government is the Central Government under the Act. For other establishment where State Government is the appropriate Government, rules are framed by concerned State Government to give effect to the provisions of the Act in it's respective State.

CHALLENGE TO CONSTITUTIONAL VALIDITY OF THE ACT

(1) The constitutional validity of the BOCW Act and the Cess Act was challenged in the Delhi High Court by the Builders Association of India. As regards the BOCW Act it was contended that it is bad for vagueness and as far as the Cess Act is concerned, it was contended that the cess is a compulsory and involuntary exaction without reference to any special benefit for the payer of the cess and therefore the cess was in fact a tax. It was contended that Parliament lacked legislative competence to impose a tax on lands and buildings which was the effect of the Cess Act.

In *Builders Association of India v. Union of India*, ILR (2007) 1 Del 1143 the contentions urged were repelled by the Delhi High Court and the constitutional validity of the BOCW Act and the Cess Act was upheld.

(2) The decision of the Delhi High Court was challenged and that challenge was repelled in *Dewan Chand Builders & Contractors v. Union of India* (2012) 1 SCC 101. The Supreme Court, while upholding the constitutional validity of both the Acts, noted the scheme of the BOCW Act in the context of Article 21 of the Constitution and observed as follows:

“It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional.”

(3) The interpretation of the BOCW Act and the Cess Act was again considered in *A. Prabhakara Reddy and Company v. State of Madhya Pradesh* (2016) 1 SCC 600. The emphasis in this case was on registering the construction workers and providing them necessary benefits. Since the levy of cess is a fee, it was urged that urgent steps should be taken for implementation of the two Acts. It was further observed that merely because there was some delay in the effective implementation of both the statutes it could not be a ground for invalidating the levy of cess, nor could the levy of cess be said to have retrospective application.

INTRODUCTION

The Constitution of India has provisions for ensuring occupational health and safety for workers in the form of three Articles: 24, 39 (e and f) and 42. The important legislations related to occupational health, safety and welfare of workers are the Factories Act, 1948, the Mines Act, 1952 and the Dock Workers (Safety, Health & Welfare) Act, 1986, Workmen's Compensation Act, 1923 and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Among these laws, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 came into force from 19th August, 1996 to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare. It was further supplemented by “The Building and Other Construction Workers

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Cess Act, 1996” for the purpose of “augmenting the resources” of the Welfare Boards set up under the BOCW Act, 1996

It is further governed by the Central Rules, 1998 & each of the State has got the powers to frame their own rules for implementation of the BOCW Act, 1996.

OBJECT OF THE ACT

The Preamble of the Act specifies the object of the Act as,

“An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measure and for other matter connected therewith or incidental thereto.”

It is further governed by the Central Rules, 1998 & each of the State has got the powers to frame their own rules for implementation of the BOCW Act, 1996.

The Building and Other Construction Workers Welfare Cess Act, 1996, provides for levy and collection of cess on the cost of construction incurred by the employers to be added to the resources of the Building and Other Construction Workers Welfare Boards.

In the case of *National Campaign Committee for Central Legislation on Construction Labour v. Union of India and Others*(2011) 4 SCC 655, the Supreme Court held that:

“The object of the Act is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance, to provide financial assistance for educating children, medical treatment, etc. Though the Welfare Boards were to be constituted with adequate full-time staff, many States have not constituted the Welfare Boards. In some States, even though the Boards are constituted, they are not provided with necessary staff or facilities. As a result, welfare measures to benefit the workers are not been taken. Section 3 of the Building and Other Construction Workers’ Welfare Cess Act, 1996, provides for collection of cess from every employer at the rates prescribed, on the cost of construction incurred by an employer. We are told that many of the State Governments have collected the cess as contemplated under the Cess Act. But these amounts have not been passed on to the Welfare Boards to extend the benefits to the workers as contemplated by the Act. Even the registration of building workers as beneficiaries under the Act is not being taken up. Overall, the implementation of the provisions of the Act is far from satisfactory. There is an urgent need to extend the benefits of the Act to the unorganized section of the building workers in a meaningful manner.”

In the case of *Dewan Chand Builders & Contractors v. Union of India*, while upholding the Constitutional validity of The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996; The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Central Rules, 1998; The Building and Other Construction Workers’ Welfare Cess Act, 1996 and The Building and Other Construction Workers’ Welfare Cess Rules, 1998, the Supreme Court observed that:

“The scheme of the Act is that it empowers the Central Government and the State Governments to constitute Welfare Boards to provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. It is clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient

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powers to ensure enforcement of the primary purpose of the BOCW Act. It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made there under that their sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures.”

APPLICABILITY OF THE ACT (SEC 1) :

- It extends to the whole of India.
- It shall be deemed to have come into force on the 1st day of March, 1996.
- It applies to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work.

(Sec 1(4)).

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.

The Act is not applicable to:

- a person who is employed ,in connection with any building or other construction work, mainly in a managerial or administrative capacity
- a person who is employed ,in connection with any building or other construction work, 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
- Any building or construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 are applicable (This means, only the establishments registered under respective State’s Shops & Commercial Establishments Act will get covered under BOCW Act.)
- Establishment which employs, or had employed on any day of the preceding twelve months less than ten building workers in any building or other construction work.
- An individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs

The Hon’ble High Court of Orissa in the matter of *Sterlite Energy Limited v. State of Orissa & Ors.* [reported at 2011 III LLJ 349 (DB)] has held that the provisions of the Factories Act, 1948 and the BOCW Act do not overlap, holding that the BOCW Act applies to factories under construction while the Factories act, 1948 is generally applicable to completed factories.

Definitions (Section2)

In this Act, unless the context otherwise requires, –

(1) **“Appropriate Government”** means, –

(i) the Central Government in relation to following establishments:

- 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,;
- 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

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;

(ii) **the Government of the State in which that establishment is situated**

- in relation to any other establishment which employs building workers either directly or through a contractor;

{Section 2(1)(a)}

(2) **“Beneficiary”**

Beneficiary means a building worker registered under section 12 – {Section 2(1)(b)}

(3) **“Board”** means a Building and Other Construction Workers’ Welfare Board constituted under sub-section (1) of section 18 – {Section 2(1)(c)}

(4) **“Building and 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; {Section 2(1)(d)}

Any building or construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 are applicable are not covered under the definition and hence workers employed therein will not get benefit under “The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act”.

(5) **“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 expressed 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;

{Section 2(1)(e)}

This Act is also applicable to casual workers and daily wage workers. In *Municipal Corporation of Delhi v. Female Workers*, AIR 2000 SC 1274, the Supreme Court declared that there is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and should be extended to women engaged in work on casual basis or on muster roll on daily-wage basis. The provision for maternity benefit is also granted to women employees who are covered under the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1996, from the welfare fund.

(6) **“Contractor”** means a person

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- 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;

{Section 2(1)(g)}

(7) **“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;
- (ii) 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;

For the private projects and infrastructure sector, the underlined portion, taken together implies that the ‘employer’ means an owner of an establishment and includes a contractor.

{Section 2(1)(i)}

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) stipulates the welfare measures and the Building and Other Construction Workers Welfare Cess Act, 1996, (Cess Act) has been enacted for levy and collection of cess on the ‘cost of construction’ incurred, from the ‘employer’ for use for the welfare of construction workers who are registered with the respective state.

Liability to pay cess would be that of employer and as per the definitions referred to above, the employer in relation to an establishment would mean the owner thereof and would include the contractor in case where the building or other construction work is carried on by or through a contractor.

Section 3 of CESS Act doesn’t specifically state as to whether cess is required to be paid by owner or contractor for a particular establishment. However, in the case of *Delhi Metro Rail Corporation*, it has been held by High Court that there is nothing wrong in deduction of the amount of cess from the bills of the contractor. There can be a deduction of cess at source without prior assessment so long as it remains adjustable against any final liability that may be determined at the end of the assessment.

In *Gannon Dunkerley and Co. Ltd. -vs- State of Madhya Pradesh*, reported as 2009 (5) MPHT 258, a Single Judge of the Madhya Pradesh High Court at Jabalpur, dealing with the issue of interpretation of the expression “employer” in the Cess Act and the Cess Rules, held that “the intention of the Legislature is, therefore, not only to include the owner of the establishment in the present case the Company but also the Contractors who carries out the work of building or other construction work and is an employer for the purpose of the Construction Workers Act, 1996 and the Cess Act, 1996. Thus, there is no escape for the contractors who have undertaken the building and other construction work in the establishment belonging to the Company”

The Hon’ble High Court of Delhi, in the case of *Builders Association of India & Ors. v. Union of India & Ors.*[9] held that: “There appears to be a definitive scheme in the definition itself. A range of choices has been made available to the government for levying cess and the intention is not to confine it only to the owner of a building or the person expending for the construction. The idea is to seek to levy and collect the cess from the contractor or the owner as the case may be. It is not possible to accept

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the submission that both the contractor and the owner would be taxed vis-à-vis the same construction activity.”

(8) “Establishment” means

- any establishment belonging to, or under the control of, Government, anybody 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 the total cost of such construction not being more than rupees ten lakhs;

{Section 2(1)(j)}

(9) “Wages” shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936. {Section 2(1)(n)}

Any reference in this Act 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. {Section 2(2)}

THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

Chaper II (Sections 3-5) of the Act deals with constitution of Advisory Committee at Centre and State Level to advise the concerned Government w.r.t. administration of the Act. It also provides for constitution of Expert Committee by the appropriate Government.

Central Advisory Committee (Section 3)

The Central Government shall constitute 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 Act as may be referred to it.

The Central Advisory Committee shall consist of –

- (a) a Chairperson to be appointed by the Central Government;
- (b) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States –members;
- (c) the Director-General –member, *ex officio*;
- (d) 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.

The number of persons to be appointed as members from each of the categories specified in clause (d) above, 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.

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

The office of member of the Central Advisory Committee shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

State Advisory Committee (Section 4)

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). It will function with State Government like Central Advisory Committee will work with Central Government. The role of State Advisory Committee is to advise the State Government on such matters arising out of the administration of this Act as may be referred to it.

The State Advisory Committee shall consist of –

- (a) a Chairperson to be appointed by the State Government;
- (b) two members of the State Legislature to be elected from the State Legislature –members; (c) a member to be nominated by the Central Government;
- (d) the Chief Inspector –member, *ex officio*;
- (e) 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.

The number of persons to be appointed as members from each of the categories specified in clause (e) above 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 (Section 5)

Expert Committee is constituted by the appropriate Government. 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 Act.

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

If a member is also an officer of Government or of any body corporate established by or under any law for the time being in force, he shall not be entitled to any fee or allowances .

REGISTRATION OF ESTABLISHMENTS

Chapter III (Section 6-10) deals with registration of establishment under the Act. Every employer of an establishment to which this Act applies and to which this Act may be applicable at any time is required to make an application in the prescribed form with prescribed fee for the registration of his establishment within a period of sixty days of the commencement of the Act or within sixty days from the date on which this Act becomes applicable to the establishment

Appointment of registering officers (Section 6)

For the purposes of the Act, the registering officers are appointed by the appropriate Government, by order notified in the Official Gazette. The appropriate government in it's order also define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.

Registration of establishments. (Section 7)

Application for registration : Every employer shall, –

- (a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and
- (b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act 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.

So, registration is mandatory under the Act for every establishment to which this Act applies.

Form of application :The section provides that every such application shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

Issue of registration certificate: After the receipt of an application for registration as stated above, 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.

Intimation of change: 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. (Section 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 Act 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 (Section 9)

Time period for making an appeal: Any person aggrieved by an order of revocation of registration 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:

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.

On receipt of an appeal, 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 (Section 10)

No employer of an establishment which is required to be registered but has not been registered or registration of such an establishment has been revoked and no appeal has been preferred or where an appeal has been preferred but it has been dismissed, can employ building workers in the establishment after the expiry of the

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period for making application for registration under 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.

REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

Chapter IV (Sections 11-17) contains provisions w.r.t. registration of building workers as beneficiaries of the Building and Other Construction Workers' Welfare Fund (hereinafter referred as Fund).

Beneficiaries of the Fund (Section 11)

Section 11 of the Act provides for that subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

Registration of building workers as beneficiaries. (Section 12)

Who shall be eligible for registration as a beneficiary: 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 Act.

Application for registration in prescribed form: An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf. The application shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

Registration as beneficiary: If the officer authorised by the Board in this regard is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act. An application for registration shall not be rejected without giving the applicant an opportunity of being heard.

Right to appeal : Any person aggrieved by the decision of the Board (refusal to grant registration) 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 . The decision of the Secretary or such other officer on such appeal shall be final. 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.

Maintenance of registers: The Secretary of the Board shall cause to maintain such registers as may be prescribed.

Identity cards(Section 13)

Issue of Identity Cards: 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.

Obligation of employer: 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.

Presentation of identity card for inspection: A beneficiary who has been issued an identity card under this Act 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. (Section 14)

When does a build work cease to be beneficiary under the Act:

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A building worker who has been registered as a beneficiary under this Act shall cease to be as such when

- (i) he attains the age of sixty years or
- (ii) when he is not engaged in building or other construction work for not less than ninety days in a year:

If building work remains absent from the building or other construction work due to any personal injury caused to him by accident arising out of and in the course of his employment, then such period of absence shall not be considered while calculating the said period of ninety days.

Exception: Notwithstanding anything stated above, if a person had been a beneficiary for at least three 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 three 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(Section 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 undertaken 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 (Section 16)

A registered beneficiary, until he attains the age of sixty years, has to contribute to the Fund at the rates specified by the State Government. If any beneficiary is unable to pay his contribution due to any financial hardship, the Building and Other Construction Workers' Welfare Board can waive the payment of contribution for a period not exceeding three months at a time .

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 (Section 17)

If any beneficiary fails to pay his contribution for a continuous period of not less than one year, he ceases to be a beneficiary of the Fund.

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.

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

Chapter V (Sec 18-27) of the Act provides for the constitution of Welfare Boards by every State Government, their constitution and functioning for the purpose of carrying out the responsibilities and exercising powers bestowed upon State Government under the Act.

Constitution of State Welfare Boards (Section 18)

Notification to appoint State Welfare Board: 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 Act.

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Corporate Status of the Board: 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.

Composition of the Board: The Board shall consist of

- (i) a chairperson,
- (ii) a person to be nominated by the Central Government and
- (iii) 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.

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 (Section 19)

Appointment of Secretary and other officers and employees of Boards:

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 Act.

The secretary of the Board shall be its chief executive officer.

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 (Section 20)

Procedure regarding meetings:

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.

Who shall preside the meeting:

- (i) The chairperson or,
- (ii) if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and
- (iii) 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.

Decision by majority: 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 (Section 21)

Act or proceedings of a Board shall not 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(Section 22)

- (1) 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;
 - (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 dependant, 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) *Grant of loan or subsidy:* 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) *Annual Grants-in-aid:* 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:

Grants and loans by the Central Government(Section 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(Section 24)

The Board shall constitute a fund to be called the Building and Other Construction Workers' Welfare Fund.

Following amount shall be credited to the Fund:

- (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.

Utilisation of Fund: The Fund shall be applied for meeting –

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

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- (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 Act.

Limit of Administrative expenses: No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that financial year.

Budget (Section 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 (Section 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 (Section 27)

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.

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.

Audit of the accounts: 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.

Audited copy of accounts to be forwarded to the State Government: 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.

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.

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

Chapter VI (Sections 28-37) makes provisions for working hours, overtime wages and other social welfare of building workers.

Fixing hours for normal working day, etc (Section 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;

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- (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 overtime work (Section 29)

If 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.

Meaning of ordinary rates of wages : Here ordinary rate 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 (Section 30)

Maintenance of register: Every employer shall maintain such registers and records giving the following in prescribed form:

- (i) particulars of building workers employed by him,
- (ii) the work performed by them,
- (iii) the number of hours of work which shall constitute a normal working day for them,
- (iv) a day of rest in every period of seven days which shall be allowed to them,
- (v) the wages paid to them,
- (vi) the receipts given by them and such other particulars in such form as may be prescribed.

Display of notices: 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.

Rules w.r.t. wage books or wage slips: 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 (Section 31)

Employer shall not require or allow any person 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, if employer knows or has reason to believe that

- such person is a deaf or

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- such person has a defective vision or
- such person has a tendency to giddiness..

Drinking water (Section 32)

Section 32 provides for obligation of employer to 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.

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 situated within six metres of any washing place, urinal or latrine.

Latrines and urinals (Section 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.

Accommodation (Section 34)

It shall be duty of the employer to 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.

Such temporary accommodation shall have separate cooking place, bathing, washing and lavatory facilities.

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 temporary structures so erected by him and restore the ground in good level and clean condition.

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 (Section 35)

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.

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 and infants.

First-aid (Section 36)

Every employer shall provide in all the places where building or other construction work is carried on such first-

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aid facilities as may be prescribed.

Canteens, etc. (Section 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.

SAFETY AND HEALTH MEASURES

Chapter VII (Sections 38-41) contains provision to ensure safety and health of building workers. It provides for the power of appropriate government to make rules for safety and health of building workers.

Safety Committee and safety officers (Section 38)

When shall employer constitute Safety Committee: The employer shall constitute a Safety Committee if five hundred or more building workers are ordinarily employed in the establishment.

Composition of Safety Committee: The Safety Committee shall consist 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.

Appointment of safety officer: Section also make it mandatory for employer of such establishment to appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

Notice of certain accidents(Section 39)

Notice of which accident is required to be given: The employer shall give notice of following accident to such authority, in such form and within such time as may be prescribed, where in any establishment an accident occurs

- (i) which causes death or
- (ii) 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
- (iii) which is of such a nature as may be prescribed,

Investigation / Inquiry into accident:

On receipt of a notice, the prescribed authority may make such investigation or inquiry as it considers necessary.

But where such notice 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 (Section 40)

(1) The appropriate Government may, 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: –

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- (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 persons 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;
- (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 equipments 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;

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- (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;
- (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 (Section 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.

INSPECTING STAFF

Chapter VIII of the Act consists of sections 42 and 43 providing for appointment of Director-General, Chief Inspector and Inspectors and their powers, functions and limitations.

Appointment of Director-General, Chief Inspector and Inspectors (Section 42)

Appointment of Director-General of Inspection: The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection. He 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.

Appointment of Chief Inspector of Inspection: 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 Act in the State and shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

Appointment of Inspectors: The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

Powers and function of Inspector: 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 Act subject to general control and supervision of the Director-General or the Chief Inspector.

Deemed public servants: 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 1860.

Powers of Inspectors (Section 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

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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 Act, 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 Act 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 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.

SPECIAL PROVISIONS

Chapter IX (Sections 44-46) contains special provisions w.r.t. responsibility of employer to ensure compliance with the provisions of the Act, payment of wages , compensation, notice of commencement of work etc.

Responsibility of employers (Section 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 Act relating to safety and for taking all practical steps necessary to prevent accidents.

Responsibility for payment of wages and compensation (Section 45)

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.

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.

Notice of commencement of building or other construction work (Section 46)

Notice to the jurisdictional Inspector: An employer shall, at least thirty days before the commencement of any

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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.

PENALTIES AND PROCEDURE

Chapter X (Sections 47-55) provides for imposition of penalties, their recovery and cognizance of offence punishable under the Act.

Penalty for contravention of provisions regarding safety measures (Section 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:

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 (Section 48)

Where an employer fails to give notice of the commencement of the building or other construction work under

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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 (Section 49)

(1) Whoever obstructs an Inspector in the discharge of his duties under this Act 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 Act 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 Act 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 Act 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 (Section 50)

(1) Whoever contravenes any other provision of this Act or any rules made thereunder or who fails to comply with any provision of this Act 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.

(4) Without prejudice to any other provision contained in this Act, 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: –

- (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 Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other or higher penalty

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or punishment than is provided for such offence by this section:

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

Appeal (Section 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 (Section 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.

Offences by companies (Section 53)

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

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

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

Explanation. – For the purposes of this section, –

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- (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 (Section 54)

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.

A court shall take cognizance of any offence punishable under this Act only 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
- (c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

Limitation of prosecutions (Section 55)

No court shall take cognizance of an offence punishable under this Act 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.

MISCELLANEOUS (SECTIONS 56-63)

Delegation of powers (Section 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 Act as it may deem necessary.

Returns (Section 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 Workmen's Compensation Act, 1923 to building workers (Section 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 Act applies had been included in the Second Schedule to that Act.

Protection of action taken in good faith (Section 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 Act 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 Act 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 Act or any rule or order made or issued thereunder.

Power of Central Government to give directions (Section 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 Act.

Power to make rules (Section 62)

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

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

- (a) the 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;
- (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 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;

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- (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;
- (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-section (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.

In exercise of the powers conferred under sections 62 and 40 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), the Central Government makes The Building And Other Construction Workers' (Regulation Of Employment And Conditions Of Service) Central Rules, 1998.

Applicability of the rules:

They shall apply to the building or other construction work relating to any establishment in relation to which appropriate Government is the Central Government under this Act.

Where State Government is the appropriate Government, rules are framed by respective State Government under the Act.

Saving of certain laws (Section 63)

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the building and other construction workers than those provided for them by or under this Act.

Compliances by the employer under the Act

1. Every employer shall apply for registration under the Act within 60 days from the date when the Act becomes applicable to it.
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 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.(Sec16)
4. Every employer shall maintain registers and furnish returns according to the Labour Laws (Simplification of Procedure for furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.
5. Every employer shall comply provisions of the Act and rules made thereunder w.r.t. drinking water, latrines and urinals, accommodation, crèches, canteen and first aid facilities.
6. The employer shall constitute a Safety Committee if five hundred or more building workers are ordinarily employed in the establishment consisting of representatives of employers and workers in equal ratio.
7. The employer shall give notice of accident to prescribed authority which occurs in his establishment and cause death or causes such bodily injury as to make that person incapable of resuming work for at least 48 hours.
8. The employer shall follow the rules made by the Appropriate Government to give effect to the provisions of the Act.
9. The employer shall make timely payment of wages to each worker employer in his establishment.
10. The employer shall make payment for compensation according to the Workmen's Compensation Act, 1923 if contractor fails to make payment to a building worker who has died or suffered injury from accident arising out of or in the course of employment.
11. A written notice shall be sent to the jurisdictional inspector at least 30 days before commencement of construction work by the employer.

Important note:

Application of The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

1. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is one of the Scheduled Act covered by The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.
2. Therefore, an employer in relation to any small establishment or very small establishment applies, shall furnish the returns or maintain the registers required to be furnished or maintained under The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

LESSON ROUND UP

- The Building and Other Construction Worker’s (Regulation of Employment and Conditions of Service) Act, 1996, is applicable to the establishments engaging ten or more building and other constructions workers.
- It seeks to regulate the employment and conditions of work for building and other construction workers and provides for their safety, health and other welfare measures. The establishments engaging less than ten workers are not covered under this Act.
- The Act provides for fixing hours for normal working day inclusive of one or more specified intervals; provides for a day of rest in every period of seven days and payment of work on a day of rest at the overtime rate, wages at the rate twice the ordinary rate of wages for overtime work. It also provides for adequate drinking water, latrines and urinals and accommodation for workers, crèches, first-aid, and canteens at the work site.
- The appropriate government (Central or State) is empowered to make rules for the safety and health of building workers.
- It provides for the constitution of Expert Committee to advise on matters relating to framing of rules by the appropriate government for registration of establishments, employing construction workers, appointment of registering officers, registration of building workers and issuance of their identity cards, lastly the establishment of welfare boards by the state governments.
- Section 22 of the Act describes the functions of the Board applicable to the beneficiaries. These are: to provide immediate assistance in case of accident, to pay pension to those who have completed the age of sixty years, to sanction loans and advances for construction of a house, to pay some amount in connection with premium for Group Insurance Scheme, to give financial assistance for the education of children of the beneficiaries, to meet medical expenses for treatment of major ailments of beneficiaries or dependents, to pay maternity benefit to the female beneficiaries, and to make provisions and improvement of other welfare measures as may be prescribed. Further, the Board can also grant aid, loans, and subsidies to local authorities and employers in aid of any scheme relating to the welfare of the building workers.
- There are special provisions regarding fixing responsibility of employers to ensure compliance with regard to prevention of accidents, timely payment of wages, and safety provisions, etc.

SELF TEST QUESTIONS

1. Discuss the applicability of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
2. Write a brief on constitutional validity of the Act.
3. Define (i) Appropriate Government (ii) Beneficiary (iii) Building and other Construction Work (iv) Building Worker
4. Write a brief note on constitution of Central Advisory Committee under the Act.
5. What is the effect of non-registration under the Act?
6. Who shall be eligible for registration as a beneficiary under the Act?

Section IV

The Mines Act, 1952

LESSON OUTLINE

- Learning Objectives
- Historical Background of mining legislation in India
- Occupational Safety and Health in Mines
- The Code of Regulations currently in force
- Rules framed w.r.t. Mines Act, 1952
- Scheme of the Act
- Applicability of the Act
- Definitions
- When is a worker said to be employed in or connection with a mine
- Non-applicability of the Act
- Reference to time of day
- Appointment of Chief Inspector and Inspectors
- Functions of Inspectors
- Powers of Inspectors of Mines
- Powers of special officers to enter, measure etc.
- Facilities to be afforded to Inspectors
- Secrecy Information Obtained
- Certifying Surgeons
- Committees
- Functions of the Committee
- Powers, etc. of the Committee
- Recovery of expenses
- Notice to be given of mining operations
- Managers
- Duties and Responsibilities of owners, agents and managers
- Provisions as to Health and Safety
- Hours and Limitation of Employment
- Leave with Wages
- Regulations, Rules and Bye-Laws
- Penalties and Procedures
- Miscellaneous
- LESSON ROUND UP
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

The Mines Act, 1952 was legislated with the purpose of regulating the health and safety of laborers working in the mines. The Mines Act, 1952 came into force on 1st July, 1952. The applicability of the Act is extended to the whole of India.

The Mines Act, 1952 is the law that comprehensively and exclusively deals with health, welfare and the safety of the workers employed in mining activity. A mine has been defined as "any excavation where operation for the purpose of searching or obtaining minerals has been or is being carried on." Hours of all employees both surface workers and underground workers are fixed at 48, and no worker is allowed to work more than 9 hours a day on the surface or eight hours a day below the surface. No person employed in a mine is allowed to work more than six days a week.

The Act has incorporated many sections which were required to ensure that the working conditions of the miners are met with the proper safety and medical guidelines apt to their work environment, whilst setting a minimum benchmark for all the activities falling under the Act.

In the mines the restrictions on employment of women and children and adolescents are even more stringent. Thus, no woman shall be employed in any mine below ground nor in any mine above ground except between the hours of 6 a.m. and 7 p.m. Moreover, every woman employed in a mine above ground shall be allowed an interval of rest of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. An adolescent, who is a person between the ages of fifteen and eighteen years, may, however, be permitted to work in a mine subject to certain restrictions. Thus, no adolescent shall be allowed to work in any part of a mine which is below ground unless he has completed his sixteenth year, and has been certified to be fit for working below ground by the certifying surgeon appointed under the Act.

The students must be familiar with the provisions of the Act as mines are an important part of the industry.

An Act to amend and consolidate the law relating to the Regulation of labour and safety in mines.

INTRODUCTION

Mining is not a new phenomenon; neither the need for law regulating mining is new. There has been laws guiding and regulating mining activities since 19th century. The first proposal for regulation of mining in India came in 1890, which was introduced by Lord Cross, who at that time was the Secretary of State of India, later in 1894 for the first time Inspector of Mines was appointed for the purpose of management and supervision.

In the year 1901, first Mine Act enacted in India which was only applicable to the mines situated in British India and it was accompanied with establishment of "Bureau of Mines Inspection" in Kolkata. Since then Mine Act has been re-enacted in 1923, 1928 and 1935. In the year 1952, Mine Act was now applicable throughout India. Since then the Mine Act has been guiding and regulating the mining activity in India, though the Act is open to necessary amendment and it has been amended from time to time. It has also been witnessed that every state is guided by different state mining laws, as every state differs from one another. The Mines Act, 1952 consolidated the previous laws and bring it into tune with the provisions of the Factories Act, 1948.

It is accepted that mining is a hazardous profession. Just like in any other industrial accident, unsafe act and unsafe conditions of work lead to accidents in mines. Most of the accidents are preventable - they do not just happen, they are caused. Other than loss of lives or serious injuries due to mining accidents, the aspect of occupational health hazards in mining industry is critical and going to assume serious proportion with the increasing awareness.

Under the Constitution of India, safety, welfare and health of persons employed in all mines - coal, oil and metalliferous - all over the country, are the concern of the Central Government. The matter is regulated by the Mines Act, 1952 which is administered by the Directorate General of Mines Safety (DGMS for short), a Scientific and Technological Organisation under the Union Ministry of Labour. In so far as the oil mines are concerned, the jurisdiction of the Mines Act, 1952 extends upto the limits of territorial waters but does not extend to the continental shelf, exclusive economic zones and other maritime zones. The Mines Act is an Act of Parliament. It is a structural frame of law containing the national objectives on the aspects of mines safety, health and welfare of persons employed in mines. The Act empowers the Central Government to make Regulations and Rules elaborating the objectives of the Act under various enabling provisions. Subordinate legislation under the Mines Act:

Rules framed w.r.t. Mines Act, 1952 or as under :

• The Mines Rescue Rules, 1985:

- (i) *Object of the rules:* To provide for rescue of work persons in the event of explosion, fire etc..
- (ii) *Applicability of the rules:* These rules apply to coal and metalliferous underground mines.

• The Mines Vocational Training Rules, 1966

Object of the rules: To equip the mine workers, in all types of mines, to recognise and deal with hazards.

• The Mines Rules, 1955

Object of the rules: Elaboration of Welfare, Health and Medical Surveillance, Worker's Participation in Safety Management in respect of coal, metalliferous and oil mines.

• The Mines Creche Rules, 1966 and The Coal Mines Pit Head Bath Rules, 1959

Object of the rules: To provide respectively for shelter to children of female employees in all mines and bathing facilities for workers employed in coal mines.

Scheme of the Act

Mines Act, 1952 consists of 88 sections divided into 10 chapters as follows:

- (i) Chapter 1- Applicability of the Act and Definitions (Sec 1-4)
- (ii) Chapter 2- Inspectors and Certifying Surgeons (Sec 5-11)
- (iii) Chapter 3-Committees (Sec 12-15)
- (iv) Chapter 4-Mines Management (Sec 16-18)
- (v) Chapter 5- Health and Safety (Sec 19-27)
- (vi) Chapter 6- Employment (Sec 28-48)
- (vii) Chapter 7- Leave and Wages (Sec 49-56)
- (viii) Chapter 8- Regulations, Rules and Bye Laws (Sec 57-62)
- (ix) Chapter 9 –Penalties and Procedures (Sec 63-81)
- (x) Chapter 10- Miscellaneous (Sec. 82-88)

Applicability of the Act

The Act is applicable to whole of India (Section 1).

This Act shall also apply to mines belonging to the Government (Section 85).

Definitions

“Adult”

Adult means a person who has completed his eighteenth year. {Section 2(1)(b)}

“Agent”

Agent when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof. {Section 2(1)(c)}

“Day”

Day means a period of twenty-four hours beginning at mid-night; {Section 2(1)(f)}

“District Magistrate”

District Magistrate means, in a presidency-town, the person appointed by the Central Government to perform the duties of a district magistrate under this Act in that town; {Section 2(1)(g)}

“Employed”

A person is said to be “employed” in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with knowledge of the manager, whether for wages or not:

- (i) in any mining operation (including the concomitant operations of handing and transport of minerals up to the point of despatch and of gathering sand and transport thereof to the mine)
- (ii) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations:
- (iii) in operating, servicing, maintaining or repairing any part or any machinery used in or about the mine;
- (iv) in operations, within the premises of the mine of loading for despatch of minerals;
- (v) in any office of the mine:

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- (vi) in any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the premises of the mine excluding residential area; or
 - (vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with mining operations;
- {Section 2(1)(h)}

“Inspector”

Inspector means an Inspector of Mines appointed under this Act, and includes a district magistrate when exercising any power or performing any duty of an Inspector which is empowered by this Act to exercise or perform; {Section 2(1)(i)}

“Mine”

Mine means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes -

- (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
- (ii) all shafts, in or adjacent to and belonging to a mine, where in the course of being sunk or not;
- (iii) all levels and inclined planes in the course of being driven;
- (iv) all opencast workings;
- (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
- (vi) all adits, levels, planes, machinery works, railways, tramways and sidings in or adjacent to and belonging to a mine;
- (vii) all protective works being carried out in or adjacent to a mine;
- (viii) all workshop and store situated within the precincts of a mine and the same management and used primarily for the purposes connected with that mine or a number of mines under the same management;
- (ix) all power stations, transformer sub-stations converter stations : rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
- (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operations in connection with such and refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine:
- (xi) any premises in or adjacent to and belonging to a mine or which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on;

{Section 2(1)(j)}

All power stations, convertor stations, rectifier stations, etc. used for supplying electricity (D.L.F. Power Ltd v. UOI, AIR 2002 Jhar.,) are also being covered under the ambit of mining.

Whether any excavation is a mine depends on the mode in which it is worked not on the substance obtained from it.[Certain-teeed Products Cor. V. Comly, 1939 WY 7)

In *Bandhan Mukti Morcha and others vs. UOI, 1984, SC*. The Supreme Court held that the stone quarries in the instant case were held to be ‘mines’ within the meaning of Section 2 (j) of the Mines Act, 1952, since they are excavations where operations for the purpose of searching for or obtaining stone by quarrying are being carried on but they are not ‘open cast working’ since admittedly excavations in these stone quarries extend below superjacent ground.