

The limited nature of the definition of 'mine' in the Mines Act was explained in the case of *Serajuddin and Co. v. Workmen (1962) ILLJ 450 SC*, where it was pointed out by the Court that 'mine' in Section 2(j) of the Mines Act clearly excluded an office of a mine which was separately defined by Section 2(k) as meaning an office at the surface of the mine concerned. The office of the mine, even though situated on the surface of the mine, did not fall within the definition of 'mine'.

“Minerals”

Minerals means all substances which can be obtained from the earth

- (i) by mining, digging, drilling, dredging, hydraulicizing, quarrying, or
- (ii) by any other operation and
- (iii) includes mineral oils (which in turn include natural gas and petroleum)

{Section 2(1)(jj)}

Ichchapur Industrial Co-Operative Society Ltd. Vs. The Competent Authority, Oil & Natural Gas Commission & Anr [1996] INSC 1643 (19 December 1996). It was held that the definition would indicate that “Minerals” as substances which can be obtained from the earth by employing different technical devices indicate in the definition, namely, “mining, digging, drilling, dredging, hydraulicizing, quarrying”. These words are followed by the words “by any other operation”. On account of the vicinity of these words with the previous words, namely, mining, digging, drilling etc., they have to be understood in the same sense and, therefore, if “Minerals” are obtained from earth “by any other operation” such operation should be an operation akin to the device or operation involved in mining, digging, drilling etc. Another significant feature of the definition is the use of words “substances which can be obtained from the earth” which indicate that the “Minerals need not necessarily be embodied in the earth or lie deep beneath the surface of the earth. They may be available either on the surface of the earth or down below. If the “Mineral” is available on the surface, the operation which would be obviously employed would be dredging, quarrying or hydraulicizing or any other similar operation. The definition, therefore, is very wide in terms but in spite of its wide connotation, every substance which can be obtained earth would not be a “Mineral”.

In Mineralogy, water is treated, on account of its chemical composition, a mineral. If, therefore, it falls within the definition of “Mineral” as set out in this Act, it should not surprise anyone, not even the common man, as it is a substance which can also be obtained by a process of drilling and notwithstanding that it is available in plenty and everywhere, it is to be treated more valuable than any other “Mineral.”

“Office Of The Mine”

Office of the mine means any office at the surface of the mine concerned; {Section 2(1)(k)}

“Open cast working”

Open cast working means a quarry, that is to say an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground. {Section 2(1)(kk)}

“Owner”

Owner when used,

- (i) in relation to a mine, means
 - any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and
- (ii) in the case of a mine the business whereof is being carried on by liquidator or receiver, such liquidator or receiver .

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But does not include a person

- who merely receives a royalty rent or fine from the mine, subject to any lease grant or licence for the working thereof, or
- who is merely the owner of the soil and not interested in the minerals of the mine;

But any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

{Section 2(1)(l)}

Bharat Coking Coal Ltd. Vs. Madanlal Agrawal, 1996 IXAD (SC) 415: It was observed that the definition of an 'owner' which also includes a lessee or an occupier apart from the immediate proprietor.

In *Industrial Supplies Pvt. Ltd. and anr. Vs. Union of India (Uoi) and ors., AIR 1980 SC 1858*, it was observed by the Court that "From the very collocation of the words 'immediate proprietor, or lessee or occupier of the mine', it is abundantly clear that only a person whose occupation is of the same character, that is, occupation by a proprietor or a lessee-by way of possession on his behalf and not on behalf of somebody else is meant by the word 'occupier' in the definition. Thus, a trespasser in wrongful possession to the exclusion of the rightful Owner would be an occupier of the mine, and so be an 'owner' for the purpose of the Act."

Relay/ Shift

Where work of the same kind is carried out by two or more sets of persons working during different periods of the day each of such sets is called a "relay" (and each of such periods is called a "shift"). {Section 2(1)(p)}

"Reportable Injury"

Reportable Injury means any injury other than a serious bodily injury which involves, or in all probability will involve, the enforced absence of the injured persons from work for a period of seventy-two hours or more. {Section 2(1)(pp)}

"Serious Bodily Injury"

Serious Bodily Injury means any injury which involves; or in probability will involve

- the permanent loss of any part or section of a body or
- the permanent loss of the use of any part or section of a body, or
- the permanent loss of or injury to the sight or hearing or
- any permanent physical incapacity or the fracture of any bone or one or more joints or bones of any phalanges of hand or foot.

{Section 2(1)(q)}

When is a worker said to be employed in or in connection with a mine?

According to sub-section (2) Section 2, a person working or employed or employed in or in connection with a mine is said to be working or employed –

- (a) "below ground" if he is working or employed –
 - (i) in a shaft which has been or is in the course of being sunk; or
 - (ii) in any excavation which extends below superjacent ground; and
- (b) "above ground"
 - If he is working in open cast working or any other manner not specified in clause (a)

Non-applicability of the Act

Section 3 of the Act states that the provision of the Act except sections 7, 8, 9, 40, 45 and 46 shall not apply to the following mines –

- Where any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale provided it satisfies the following conditions:
 - (i) not more than twenty persons are employed on any one day in connection with any such excavation.
 - (ii) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six, metres or, in the case of an excavation for coal fifteen metres: and
 - (iii) no part of such excavation extends below superjacent ground;

{Section 3(1)(a)}
- Where any mine engaged in the extraction of kankar, murrum laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, slate, road metal, earthy fullers earth, marl chalk and lime stone, such mine is eligible for exemption if it satisfies the following conditions:
 - (i) the working do not extend below superjacent ground: or
 - (ii) where it is an open cast working –
 - (a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six metres;
 - (b) the number of persons employed on any one day does not exceed fifty; and
 - (c) explosives are not used in connection with the excavation. (Section 3(1)(b))

Reference to time of day

Section 4 of the Act states that for the purpose of this Act, reference to time of day are reference to Indian standard time, being five and a half hours ahead of Green which mean time. The Central Government may make rules for any area where Indian standard time is not ordinarily observed,–

- o specifying the area;
- o defining the local mean time ordinarily observed therein; and
- o permitting such time to be observed in all or any of the mines situated in the area.

Bandhan Mukti Morch and Others vs. UOI, It was held that since the workings of these stone quarries extend below the superjacent ground and they are not 'open case workings' and moreover, explosives are admittedly used in connection with the excavation, the conditions set out in the proviso to Section 3 (1) are not fulfilled and hence, exclusion to the provisions of the Mines Act, 1952 is not attracted and all the provisions of the said Act apply to stone quarries.

INSPECTORS AND CERTIFYING SURGEONS

Appointment, powers and functions of Inspectors and Certifying surgeons are governed by Chapter II (Section 5-11) of the Act.

(i) Appointment of Chief Inspector and Inspector (Section 5)

Appointing authority: Section 5 of the Act empowers the Central Government to appoint the person possessing

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the prescribed qualifications to be Chief Inspector for all the territories to which this Act extends and such persons as possess the prescribed qualifications to be Inspectors of Mines subordinate to the Chief Inspector.

Who cannot be appointed or continue as Chief Inspector or Inspector: Any person, who is or becomes directly or indirectly interested in any mine or mining rights in India, shall not be appointed to be Chief Inspector or an Inspector, or having been appointed shall not continue to hold such office.

Exercise of powers by the District Magistrate: The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government. But a District Magistrate cannot exercise any of the Powers conferred by section 22 or section 22A or section 61,

Deemed Public Servant: The Chief Inspector and all Inspectors shall be deemed to be public servant within the meaning of the Indian Penal Code.

(ii) Functions of Inspectors

Section 6 of the Act enumerates the following functions of Inspectors:

- (i) *Exercise power of Chief Inspector-* The Chief Inspector may, with the approval of the Central Government and subject to such restrictions or conditions as he may think fit to impose, by order in writing, authorise any Inspector named or any class of Inspectors specified in the order to exercise such of the powers of the Chief Inspector under this Act, as he may specify. But powers relating to appeals, under the Act, can be exercised by the Chief Inspector only.
- (ii) *Curtailment of powers of Inspectors:* The Chief Inspector may by order in writing, prohibit or restrict the exercise by any Inspector named or any class of Inspectors specified in the order of any power conferred on Inspectors under this Act.
- (iii) *Local jurisdiction of Inspectors:* Subject to the other provisions contained in this section, the Chief Inspector shall declare the local area or areas within which or the group or class of mines with respect to which Inspector shall exercise their respective powers.

Powers of Inspectors of Mines

(1) *Power of examination and Enquiry:* In order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made there under are observed in the case of any mine, Section 7 of the Act authorizes Chief Inspectors and Inspectors :

- (a) make such examination and inquiry as he thinks fit,;
- (b) with such assistants, if any, as he thinks fit, inspect and examine any mine or any part thereof at any time by day or night:

This power of conducting examination and enquiry shall not be exercised in such a manner as unreasonably to impede or obstruct the working of mine.

- (c) examine into, and make inquiry w.r.t.
 - the state and condition of any mine, or any part thereof,
 - the ventilation of the mine,
 - the sufficiency of the bye-laws for the time being in force relating to the mine and
 - all matters and things connected with or relating to the health, safety and welfare of the persons employed in the mine.

The Chief Inspector or Inspector can also take whether on the precincts of the mine or elsewhere statements of any person which he may consider necessary for carrying out the purpose of this Act; But

they cannot compel any person to answer any question or make any statement tending to incriminate himself.

- (d) exercise such other powers as may be prescribed by regulation made by the Central Government in this behalf.

(2) *Power of search and seizure:* The Chief Inspector and any Inspector may, if he has reason to believe as a result of any inspection examination or inquiry under this section, that an offence under this Act has been or is being committed, search any place and take possession of any material or any plane section register other records appertaining to the mine. They shall adhere to the provisions of the Code of Criminal Procedure 1973, so far as may be applicable, while conducting any search or seizure made under this Act as to apply to any search or seizure made under the authority of a warrant issued under section 94 of the code.

Powers of special officers to enter, measure, etc.

Section 8 of the Act empower the Chief Inspector or an Inspector to authorise duly any person in the service of Government in this behalf by a special order in writing, for the purpose of surveying, leveling or measuring any mine; or any output therefrom. Such authorized person shall give at least three days' notice to the manager of such mine and then enter the mine and may survey, level or measure, the mine or any part thereof or any output therefrom at any time by day or night.

Provided that, where in the opinion of the Chief Inspector or of an Inspector an emergency exists, he may by order in writing, authorise any such person to enter the mine for any of the aforesaid purpose without giving any such notice.

Facilities to be afforded to inspectors

Section 9 of the Act provides for that every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 8 all reasonable facilities for making any entry, Inspection; survey, measurement, examination or inquiry under this Act.

Section 9A of the Act states provisions for facilities to be provided for occupational health survey as follows:

The Chief Inspector or an Inspector or other officer authorised by him in writing in this behalf, may undertake safety and occupational health survey in a mine at any time during the normal working hours of the mine or at any time by day or night as may be necessary. He shall give minimum three day's advance notice in writing to the manager of the mines.

The owner, agent or manager of the mine shall afford all necessary facilities (including facilities for the examination and testing of plant and machinery for the collection of samples and other data pertaining to the survey and for the transport and examination of any persons employed in the mine chosen for the survey) to such Inspector or officer.

Every person employed in a mine who is chosen for such examination shall present himself for such examination and at such place as may be necessary and shall furnish all information regarding his work and health in connection with the said survey. The time spent by any person employed in a mine who is chosen for examination in the safety and occupational health survey, shall be counted towards his working time, so however that any overtime shall be paid at the ordinary rate of wages.

Explanation: Here "ordinary rate of wages" means the basic wages plus any dearness allowance and underground allowance and compensation in case including such compensation, if any accruing through the free issue of foodgrains and edible oils as persons employed in a mine may, for the time being, be entitled to, but does not include a bonus (other than a bonus given as incentive for production) or any compensation accruing through the provision of amenities such as free housing, free supply of coal, medical and educational facilities, sickness allowance, supply of kerosen oil baskets, tools and uniforms.

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If on such examination any person is found medically unfit to discharge the duty which he was discharging in a mine immediately before such presentation, he shall be entitled to undergo medical treatment at the cost of the owner, agent and manager with full wages during the period of such treatment.

If the person, even after such medical treatment, is declared medically unfit to discharge the duty which he was discharging in a mine immediately before absenting himself from the said examination and such unfitness is directly describable to his employment in the mine before such presentation, the owner, agent and manager shall provide such person with an alternative employment in the mine for which he is medically fit. If no such alternative employment is immediately available, such person shall be paid by the owner, agent and manager disability allowance determined in accordance with the rates prescribed in this behalf. Where such person decides to leave his employment in the mine, he shall be paid by the owner, agent and manager a lump sum amount by way of disability compensation determined in accordance with the rates prescribed in this behalf. The rates for the said purpose shall be determined having regard to the monthly wages of the employees, the nature of disabilities and other related factors.

Secrecy information obtained

Section 10 provides for the mandatory duty of maintaining confidentiality of any information or records procured during inspection or survey under this Chapter. It states that all copies of, and extracts from registers or other record appertaining to any mine and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection or survey of any mine under this Act or acquired by any person authorised under section 8 or section 9A in the exercise of his duties thereunder, shall be regarded as confidential and shall not be disclosed to any person or authority. However, disclosure can be made only if the Chief Inspector or the Inspector considers disclosure necessary to ensure the health, safety or welfare of any person employed in the mine or any other mine adjacent thereof.

But this clause of maintaining confidentiality is not applicable to the disclosure of any such information (if so required) to –

- (a) any court;
- (b) a Committee or court of inquiry constituted or appointed under section 12 or section 24, as the case may be;
- (c) an official supervisor or the owner, agent or manager of the concerned mine;
- (d) a Commissioner for workmen's compensation appointed under the Workmen's Compensation Act, 1923;
- (e) the Controller Indian Bureau of Mines.
- (f) any registered or recognised trade union;
- (g) such other officer, authority and organisation as may be specified in this behalf by the Central Government.

If the Chief Inspector, or an Inspector or any other person as stated above discloses contrary to the provisions of this section, any such information as aforesaid without the consent of the Central Government, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

No court shall proceed to the trial of any offence under this section except with the previous sanction of the General Government.

Certifying Surgeons

Section 11 of the Act authorize the Central Government to appoint qualified medical practitioners to be certifying

surgeons for the purpose of this Act within such local limits or for such mine or class or description of mines as it may assign to them respectively.

A certifying surgeon can also authorise any qualified medical practitioner to exercise all or any of his powers under this Act for prescribed period subject to the approval and conditions prescribed by the Central Government and references to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

No person shall be appointed to be or authorised to exercise the powers of certifying surgeon, or, having been so appointed or authorised, continue to exercise such powers, who is or becomes the owner, agent or manager of a mine, or is or becomes directly or indirectly interested therein, or in any process or business carried on therein or in any patent or machinery connected therewith, or is otherwise in the employment of the mine.

The certifying surgeon shall carry out such duties as may be prescribed in connection with --

- o the examination of persons engaged in a mine in such dangerous occupations or processes as may be prescribed:
- o the exercise of such medical supervision as may be prescribed for any mine or class or description of mines where-
- o cases of illness have occurred which it is reasonable to believe are due to the nature of any process carried on or other conditions of work prevailing in the mine.

In *Banwarilal Agarwal v. State of Bihar (AIR 1961, S.C. 849)*, the Supreme Court held that the provision under the Mines Act, 1952, before framing regulations was mandatory and failure to consult the Mining Boards (Constituted under Section 12 of the Act) invalidated the regulations.

COMMITTEES

Constitution of committees, their powers etc. are dealt by Chapter III of the Act containing sections 12-15.

Committees

Section 12 imposes a duty on the Central Government to constitute a Committee for the purposes of this Act w.e.f. such date as it may specify by notification in the Official Gazette. The Committee shall consist of -

- a person in the service of the Government, not being the Chief Inspector or an Inspector, appointed by the Central Government to as Chairman:
- the Chief Inspector of mines;
- two persons to represent the interests of miners appointed by the Central Government;(at least one person shall be for representing the interests of workers in coal mines)
- two persons to represent the interests of owners of mines appointed by the Central Government;(at least one person so appointed shall be for representing the interests of owners of coal mines).
- two qualified mining engineers not directly employed in the mining industry, appointed by Central Government :

In addition to mandatory constitution of Committee, the Central Government may constitute one or more Committees to deal with specific matters relating to any part of the territories to which this Act extends or to a mine or a group of mines and may appoint members thereof and the provisions w.r.t. composition of Committee as stated above shall apply for the constitution of any Committee. However, the requirement of having at least one person for representing the interests of workers in coal mines and at least one person so appointed among owners to be for representing the interests of owners of coal mines, will not be applicable for such Committees.

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Existence of any vacancy among its members or any defect in the constitution of the Committee shall not invalidate any act or proceeding of a Committee.

Functions of the committee

According to section 13 of the Act, the Committee constituted by the Central Government under the mandatory provisions of section 12 shall perform the following functions:

- (a) consider proposal for making rules and regulations under this Act and make appropriate recommendations to the Central Government;
- (b) enquiry into such accidents or other matters as may be referred to it by the Central Government from time to time and make reports thereon; and
- (c) subject to the provisions of such-section(2), hear and decide any appeals or objections against notices or orders under this Act or the regulations, rules or bye-laws thereunder as are required to be referred to it by this Act or as may be prescribed.

The Chief Inspector shall not take part in the proceedings of the Committee with respect to any appeal or objection against an order on notice made or issued by him or act in relation to any matter pertaining to such appeal or objection as a member of the Committee.

Powers, etc. of the Committees

Section 14 of the Act provides for the following powers of any Committee under section 12 :

- (i) It can exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purposes of discharging its functions under this Act.
- (ii) For the purposes of discharge its functions, it shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :-
 - (a) discovery and inspections;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) compelling the production of documents; and
 - (d) such other matters as may be prescribed.

Recovery of expenses

Section 15 provides for who shall bear the expenses of any inquiry conducted by a committee constituted under section 12. It states that the Central Government may direct that such expenses shall be borne in whole or in part by the owner or agent of the mine concerned. The owner or his agent has to pay the amount within six weeks from the date of receiving the notice from the Central Government or the Chief Inspector of Mines. If the owner or his agent does not pay within such time, then on application by the Chief Inspector or an Inspector to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, the amount so directed to be paid may be recovered by the distress and sale of any movable property within the limits of the magistrates jurisdiction belonging to such owner or agent.

MINING OPERATIONS AND MANAGEMENT OF MINES

Chapter IV containing sections 16-18 makes provisions for notice, appointment of managers etc.

Notice to be given of mining operations

Section 16 provides for mandatory obligation of the owner, agent or manager of a mine to give notice in writing to the following authorities before the commencement of any mining operation to

- the Chief Inspector,
- the Controller,
- Indian Bureau of Mines and
- the District Magistrate of the district in which the mine is situated.

The notice shall be in such form and contain such particulars relating to the mine, as may be prescribed and the notice shall reach the persons concerned at least one month before the commencement of any mining operation.

Managers

Save as may be otherwise prescribed, section 17 makes it mandatory for the owner or agent of every mine to appoint a person having prescribed qualifications to be the manager of the mine and every mine shall be under a sole manager. The owner or agent may appoint himself as manager if he possesses the prescribed qualifications. The responsibility of the sole manager is subject to any instruction given to him by or on behalf of the owner or agent of the mine. The manager shall be responsible for the overall management, control, supervision and direction of the mine subject to such instructions given by the owner or agent which shall be confirmed in writing forthwith. Except in case of an emergency, the owner or agent of a mine or anyone on his behalf shall not give otherwise than through the manager, instructions affecting the fulfilment of his statutory duties, to a persons, employed in a mine, who is responsible to the manager.

Duties and responsibilities of owners, agents and managers

Section 18 provides for the duties and responsibilities of owners, agents and managers as follows:

(1) the owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act and the regulations, rules, bye-laws and orders made thereunder.

(2) The responsibility in respect of matters provided for in the rules made under clauses (d), (e) and (p) of section 58 shall be exclusively carried out by the owner and agent of the mine and by such person (other than the manager) whom the owner or agent may appoint for securing compliance with the aforesaid provisions.

(3) If the carrying out of any instructions given directly or given otherwise than through the manager under section 17 results in the contravention of the provisions of this Act or of the regulations, rules, bye-laws or orders made thereunder, every person giving such instructions shall also be liable for the contravention of the provision concerned.

(4) Subject to the provisions of sub-sections (1), (2) and (3) the owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act and of the regulations, rules, bye-laws and orders made thereunder.

(5) If any person whosoever contravenes any of the provisions of this Act or of the regulations; rules, bye-laws or orders made thereunder except those which specifically require any person to do any act or thing, or prohibit any person from doing an act or thing, besides the person who contravenes, each of the following persons shall also be deemed to be guilty of such contravention unless he proves that he had used due diligence to secure compliance with the provisions and had taken reasonable means to prevent such contravention:

- (i) the official or officials appointed to perform duties of supervision in respect of the provisions contravened;

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- (ii) the manager of the mine;
- (iii) the owner and agent of the mine;
- (iv) the person appointed, if any, to carry out the responsibility under sub-section (2).

It is provided that any of the persons aforesaid may not be proceeded against if it appears on enquiry and investigation that he is not prima facie liable.

(6) However the owner or agent of a mine cannot take defence in any proceedings brought against them under this section that the manager and other official have been appointed in accordance with the provisions of this Act or that a person to carry the responsibility under sub-section (2) has been appointed.

PROVISION AS TO HEALTH AND SAFETY

Chapter V (Section 19 to 27) provides for mandatory provisions w.r.t. drinking water, medical aid, notice of accident etc. There are some other sections which provide penalty for contravention of provisions of this Chapter.

In *Bandhua Mukti Morcha versus Union of India AIR 1984 SC 802*, it was held by Supreme Court that State of Haryana in which the stone quarries are vested by reason of Haryana Minerals (Vesting of Rights) Act, 1973, and which is therefore owners of the mines cannot while giving its mines for stone quarrying operations, permit workmen to be denied benefit of various social welfare and labour laws enacted with a view to enable them to live a life of human dignity.

Drinking water

In every mine effective arrangement shall be made to provide and maintain at suitable points conveniently situated a sufficient supply of coal and wholesome drinking water for all persons employed therein.

In case of persons employed below ground the Chief Inspector may, in lieu of drinking water being provided and maintained at suitable points, permit any other effective arrangements to be made for such supply.

All such points shall be legibly marked 'DRINKING WATER' in a language understood by a majority of the persons employed in the mine and no such point shall be situated within six metres of any washing place, urinal or latrine, unless a shorter distances is approved in writing by the Chief Inspector.

The Central Government is further empowered to make rules in respect of all mines or any class or description of mines for securing compliance w.r.t. the above provisions of supplying drinking water and for the examination by prescribed authorities of the supply and distribution of drinking water.

Conservancy

Section 20 makes it mandatory to provide sufficient number of latrines and urinals of prescribed types separately for males and females in every mine, so situated as to be convenient and accessible to persons employed in the mine at all times. All latrines and urinals so provided shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition.

The Central Government is further empowered to specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interests of the health of the persons employed.

Medical appliance

Section 21 deals with medical facilities to be mandatorily provided and maintained in every mine. It states that there shall be provided and maintained such number of first-aid boxes or cupboards equipped with such

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contents as may be prescribed in every mine and they shall be readily accessible during all working hours. Such first-aid box or cupboard or room shall not contain anything except the prescribed contents.

Every first-aid box or cupboard shall be kept in the charge of a responsible person who is trained in such first-aid treatment as may be prescribed and who shall always be readily available during the working hours of the mine.

Every mine shall have readily available such arrangements as may be prescribed for the conveyance to hospitals or dispensaries of persons who, while employed in the mine suffer bodily injury or become ill.

In every mine wherein more than one hundred and fifty persons are employed, there shall be provided and maintained a first-aid room of such size with such equipment and in the charge of such medical and nursing staff as may be prescribed.

In *Bandhua Mukti Morcha versus Union of India AIR 1984 SC 802*, the Apex Court issued directions to the Central government, the government of Haryana and various authorities as:

- The Central Government and State Government will immediately ensure that mine lessees and stone crusher owners start supplying pure drinking water to the workmen on a scale of at least 2 litres for every workmen at conveniently accessible points, in clean and hygienic conditions. In case of default, action to be taken against defaulter.
- The mine owners and stone crusher owners are to obtain water from unpolluted sources and transport it by tankers to the work site with sufficient frequency so as to keep the vessels filled up for supply of clean drinking water for workmen.
- The State Government must ensure that conservancy facilities in the shape of latrines and urinals in accordance with the Section 20 of the Mines Act 1952 and Rules 33 to 36 of the Mines Rules, 1955 were to be provided at the latest by 15th February 1984.
- To ensure that appropriate and adequate medical and first aid facilities are provided to workmen as required by Section 21 of the Mines Act 1952 and Rules 40 to 45-A of the Mines Rules 1955.
- To ensure that every workmen who is required to carry out blasting with explosives is trained under the Mines Vocational Training Rules, 1966 and also holds first aid qualifications and carries a first aid outfit while on duty.
- To ensure that the mine lessees and owners of stone crushers provide proper and adequate medical treatment to the workmen and their families free of cost.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous

Section 22 of the Act bestows powers upon the Chief Inspector or an Inspector to give notice in writing to the owner, agent or manager of the mine to remedy the matter, thing or practice that appears to be dangerous or defective to them.

If, in respect of any matter for which no express provision is made by or under this Act, it appears to the Chief Inspector or an Inspector that any mine or part thereof or any matter, thing or practice in or connected with the mine, or with the control, supervision, management or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice, in writing thereof to the owner, agent or manager of the mine and shall state in the notice the particulars in respect of which he considers the mine or part thereof or the matter, thing or practice to be dangerous or defective and require the same to be remedied within such time and in such manner as he may specify in the notice.

Where the owner, agent or manager of a mine fails to comply with the terms of the notice so given within the period specified therein, the Chief Inspector or the Inspector, as the case may be, may by order in writing,

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prohibit the employment in or about the mine or any part thereof any person whose employment is not in his opinion reasonably necessary for securing compliance with the terms of the notice.

In addition to this, the Chief Inspector or the Inspector as the case may be, give an order in writing addressed to the owner, agent or manager of a mine and thereby, prohibit the extraction or reduction of pillars or blocks of minerals in any mine or part thereof, if,

- (i) in his opinion such operation is likely to cause the crushing of pillars or blocks of minerals or the premature collapse of any part of the working or otherwise endanger the mine or the life or safety of persons employed therein or
- (ii) if, in his opinion, adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by fire or flooding.

If the Chief Inspector, or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector, is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until he is satisfied that the danger is removed the employment in or about the mine or any part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

Every person whose employment is so prohibited shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition in employment and the owner agent or manager shall be liable for payment of such full wages of that person. Instead of paying full wages, the owner, agent or manager may provide such person with an alternative employment at the same wages which such person was receiving in the employment which was prohibited.

Appeal to the Chief Inspector: In pursuance of notice so given or an order so made by an Inspector under the above stated provisions, the owner, agent or manager of the mine may appeal against the same to the Chief Inspector within ten days after the receipt of the notice or order. The Chief Inspector may confirm, modify or cancel the notice or order.

Report to the Central Government: The Chief Inspector or the Inspector sending a notice or making an order in accordance with the above provisions and the Chief Inspector making an order in appeal (other than an order of cancellation in appeal) shall forthwith report the same to the Central Government.

Objections to be sent to the Central Government: If the owner, agent or manager of the mine objects to a notice sent by the Chief Inspector or to an order made by the Chief Inspector as stated above, he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision on appeal, as the case may be, send his objection in writing stating the grounds thereof to the Central Government which shall, ordinarily within a period of two months from the date of receipt of the objection, refer the same to a Committee. Every such notice or order to which objection is made to the Central Government shall be complied with, pending the receipt at the mine of the decision of the Committee.

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a notice so given pending its decision on the objection.

Nothing in this section shall affect the powers of a magistrate under section 144 of the Code of Criminal procedure 1896. Act V of 1898).

Power to prohibit employment in certain cases

According to section 22A of the Act, where in respect of any matter relating to safety for which express provision is made by or under this Act, the owner, agent or manager of mine fails to comply with such provisions, the Chief

Inspector may give notice in writing requiring the same to be complied with within such time as he, may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

Where the owner, agent or manager fails to comply with the terms of the notice so given) within the period specified in such notice or, as the case may be, within the extended period of time as may be specified, the Chief Inspector may, by order in writing, prohibit the employment in or about the mine or any part thereof of any person whose employment is not, in his opinion reasonably necessary for securing compliance with the terms of the notice.

Every person, whose employment is so prohibited, shall be entitled to payment of full wages for the period for which he would have been, but for the prohibition, in employment, and the owner, agent or manager shall be liable for payment of such full wages of that person. However, the owner, agent or manager may, instead of paying such full wages, provide such person with an alternative employment at the same wages which such person was receiving in the employment which was so prohibited.

The provisions of section 22 relating to report to the Central Government, Objections to be sent to Central Government shall apply as it is to the notice or order given under this section.

Penalty for contravention of section 22 and section 22A

Whoever continues to work in a mine in contravention of any order issued under section 22 or section 22A shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine shall not be less than two thousand rupees.

Special provision provides for contravention of law with dangerous results

Section 72C of the Act that whoever contravenes any provision of the Act or of regulation, rule or bye-law or of any order made under section 22 or under section 22A shall be punishable -

- (a) If such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both, or
- (b) If such contravention results in serious bodily injury with imprisonment which may extend to one years, or with fine which may extend to three thousand rupees, or with both; or
- (c) If such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgement of the court, such fine, in the case of a contravention referred to in clause (a), shall not be less than three thousand rupees.

(2) Where a person having been convicted under this section is again convicted thereunder, shall be punishable with double the punishment provided by sub-section (1).

(3) Any court imposing or confirming in appeal, revision or otherwise a sentence of fine passed under this section may, when passing judgement, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative;

Provided that if the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed of, if an appeal has been presented, before the decision of the appeal.

Notice to be given of accidents

Section 23 imposes an obligation upon the owner, agent or manager of the mine to give notice to prescribed authority in such form and within such time as may be prescribed, if any of the following event occurs in or about a mine:-

- (a) an accident causing loss of life or serious bodily injury, or
- (b) an explosion, ignition, spontaneous heating, outbreak of fire or irruption or inrush of water or other liquid matter, or
- (c) an influx of inflammable or noxious gases, or
- (d) a breakage of ropes, chains or other gear by which persons or materials are lowered or raised in a shaft or an incline, or
- (e) an overwinding of cages of other means of conveyance in any shaft while persons or materials are being lowered or raised, or
- (f) a premature collapse of any part of the workings, or
- (g) any other accident which may be prescribed,

Upon the occurrence of any of the above accident, the owner, agent or manager of the mine shall also simultaneously paste one copy of the notice on a special notice-board in the prescribed manner at a place where it may be inspected by trade union officials, and shall ensure that the notice is kept on the board for not less than fourteen days from the date of such posting.

Where a notice so given relates to an accident causing loss of life, the authority shall make an inquiry into the occurrence within two months of the receipt of the notice and, if the authority is not the Inspector, he shall cause the Inspector to make an inquiry within the said period.

Sub-section (1) of section 70 of the Act provides that anyone who fails to give notice of any accidental occurrence or to post a copy of the notice on the special notice board referred above and to keep in there for the period specified shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupee or with both.

Whenever there occurs in or about a mine an accident causing loss of life or serious bodily injury to any person, the place of accident shall not be disturbed or altered before the arrival or without the consent of the Chief Inspector or the Inspector to whom notice of the accident is required to be given under this section, unless such disturbances or alteration is necessary

- to prevent any further accident,
- to remove bodies of the deceases; or
- to rescue any person from danger, or
- unless discontinuance of work at the place of accident would seriously impede the working of the mine.

However, work may be resumed at the place of the accident if the Chief Inspector or the said Inspector fails to inspect the place of accident within seventy-two hours of the time of the accident.

Whenever there occurs in about a mine an accident causing reportable injury to any person, the owner, agent or manager of the mine shall enter in a register such occurrence in the prescribed form and copies of such entries shall be furnished to the Chief Inspector once in quarter.

The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in this section which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding twenty-four hours shall be entered in a register in the prescribed form or shall be

subject to the provision of this section. A copy of the entries in the register so made shall be sent by the owner, agent or manager of the mine, on or before the 20th day of January in the year following that to which the entries relate to the Chief Inspector.

Sub-section (2) of section 70 of the Act provides that anyone who contravenes the direction made by the Central Government and fails to record in the prescribed register to give notice of any accidental occurrence shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to three months or with fine which may extend to five hundred rupees, or with both.

Power of Government to appoint court of enquiry in cases of accidents

According to section 24, when any accident of the nature referred to in any of the clauses of sub-section(1) of sections 23 occurs in or about a mine, the Central Government may if it is of opinion that a formal inquiry into the causes of and circumstances attending the accident ought to be held, appoint a competent person to hold such inquiry and may also appoint one or more persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

The person appointed to hold such an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.

Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

Notice of certain diseases

According to section 25, where any person employed in a mine contracts any disease notified by the Central Government in the official Gazette as a disease connected with mining operations the owner, agent or manager of the mine, as the case may be, shall send notice thereof to the Chief Inspector and to such other authorities in such form and within such time as may be prescribed.

If any medical practitioner attends on a person who is or has been employed in a mine and who is or is believed by the medical practitioner to be suffering from any disease so notified, the medical practitioner shall without delay send a report in writing to the Chief Inspector stating --

- (a) the name and address of the patient.
- (b) The disease from which the patient is or is believed to be suffering, and
- (c) The name and address of the mine in which the patient is or was last employed.

Where such report is confirmed to the satisfaction of the Chief Inspector by the certificate of a certifying surgeon or otherwise that the person is suffering from a notified disease, the Chief Inspector shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land revenue from the owner, agent or manager of the mine in which the person contracted the disease.

If any medical practitioner fails to comply with the provisions of this section, he shall be punishable with fine which may extend to fifty rupees.

Power to direct investigation of causes of diseases

Section 26 of the Act provides that the Central Government may, if it considers it expedient to do so, appoint a competent person to inquire into and report it on any case where a disease notified under section 25 has been

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or suspected to have been contracted in a mine, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

The provisions of section 24 relating to inquiry shall apply to an inquiry under this section in the same manner as they apply to any inquiry under that section.

Publication of reports

Section 27 authorise the Central Government to cause any report submitted by a Committee under section 12 or any report or extracts from report submitted to it under section 26, and shall cause every report submitted by a Court of Inquiry under section 14 to be published at such time and in such manner as it may think fit.

HOURS AND LIMITATION OF EMPLOYMENT

Chapter VI provides for weekly day of rest, compensatory days of rest, maximum hours of work above and below ground, night shift, overtime wages, notice regarding hours of work, special provisions for women etc. in sections 28 to 48.

Weekly day of rest

Section 28 that any person shall not be allowed to work in a mine for more than six days in any one week.

Compensatory days of rest

Section 29 (1) states that where in pursuance of action under section 38 or as a result of exempting any mine or the persons employed therein from the provisions of section 28, any person employed therein deprived of any of the weekly days of rest for which provision is made in section 28, he shall be allowed, within the month in which such days of rest was due to him or within the two months immediately following that month, compensatory days of rest equal in number to the days of rest of which he has been deprived.

The Central Government may prescribe the manner in which the days of rest for which provision is made in sub-section (1) shall be allowed.

Hours of work above ground

According to section 30, no adult employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in any week or for more than nine hours in any day. The daily maximum hours specified to this sub-section may exceed in order to facilitate the change of shifts after obtaining the previous approval of the Chief Inspector.

The periods or work of any such adult shall be so arranged that along with his interval for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than five hours continuously before he has had an interval for rest of at least half an hour. However, the Chief Inspector may, for reasons to be recorded in writing and subject to such conditions as he may deem fit to impose, permit the spread over to extend over a period not exceeding fourteen hours in any day.

Persons belonging to two or more shifts shall not be allowed to do work of the same kind above ground at the same time and for this purpose, persons shall not be deemed to belong to separate shifts by reason only of the fact that they receive their intervals for rest at different times.

Hours of work below grounds

Section 31 stipulates that no person employed below ground in a mine shall be allowed to work for more than forty-eight hours in any week or for more than eight hours in any day. But the daily maximum hours so specified may be exceeded in order to facilitate the change of shifts with the previous approval of the Chief Inspector.

No work shall be carried on below ground in any mine except by a system of Shifts so arranged that the period of work for each shifts is not spread-over more than the daily maximum hours stipulated above.

No person employed in a mine shall be allowed to be present in any part of a mine below ground except during the periods of work shown in respect of him in the register maintained under sub-section (4) of section 48.

Night shifts

Section 32 makes provisions w.r.t. night shift of the workers employed in a mine or part thereof. Where a person employed in a mine works on a shift which extends beyond midnight –

- (a) for the purposes of sections 28 and 29, a weekly day of rest shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends.
- (b) the following day for him shall be deemed to be the period of twenty four hours beginning when such shifts ends, and the hours he has worked after midnight shall be counted in the previous day.

Extra wages for overtime

Section 33 states that where in a mine, a person works above ground for more than nine hours in any day or works below ground for more than eight hours in any day or works for more than forty-eight hours in any week whether above ground or below ground, he shall in respect of such overtime work be entitled to wages at the rate of twice his ordinary rate of wages, the period of overtime work being calculated on a daily basis or weekly basis whichever is more favourable to him.

Where any person employed in a mine is paid on piece rate basis, the time-rate shall be taken as equivalent to the daily average of his full-time earning for the days on which he actually worked during the week immediately preceeding the week in which overtime work has been done, exclusive of any overtime, and such time-rate shall be deemed to be the ordinary rate of wages of such person. But if such person has not worked in the preceeding week on the same or identical job, the time rate shall be based on the average for the day he had worked in the same week excluding the overtime or on the daily average of his earnings in any preceding week whichever is higher.

Explanation - For the purpose of this section. “ordinary rate of wages” shall have the same meaning as in the Explanation to sub-section (3) of section 8A.”

The Central Government may prescribed the register to be maintained in a mine for the purpose of securing compliance with provisions of this section.

Prohibition of employment of certain persons

Section 34 that no person shall be required or allowed to work in a mine if he has already been working in any other mine within the preceding twelve hours.

Limitation of daily hours of work including over-time work

According to section 35, any person employed in a mine shall not be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime except in respect of cases failing within clause (a) and clause (e) of section 39.

Notices regarding hours of work

Pursuant to the provisions of section 36, the manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form:

- the time of the commencement and the time of end of work at the mine and,

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- if it is proposed to work by a system of relays, the time of the commencement and of the end of work for each relay.

In the case of a mine at which mining operations commence after the commencement of this Act, the said notice shall be posted at least seven days before the commencement of work.

Such notice shall also state the time of the commencement and of the intervals for rest for persons employed above ground and a copy thereof shall be sent to the Chief Inspector, if he so requires.

Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any relay or in the rest intervals fixed for persons employed above ground, an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change.

Every person shall work in a mine only in accordance with the notice required by this section.

Supervising staff

Section 37 states that nothing in section 28, section 30, section 31, section 34 or sub-section (5) of section 6 shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

Exemption from provisions regarding employment

According to section 38, in case of an emergency involving serious risk to the safety of the mine or of persons employed therein or in case of an accident, where actual or apprehended, or in case of any act of God or in case of any urgent work to be done to machinery, plant or equipment of the mine as the result of break-down of such machinery, plant or equipment, the manager may, subject to the provisions of section 22 and section 22A and in accordance with the rules under section 39, permit persons to be employed in contravention of section 28, section 30, section 31, section 34 or sub-section(5) of section 36, work as may be necessary to protect the safety of the mine or of the persons employed therein.

Provided that in case of any urgent work to be done to machinery, plant or equipment under this section, the manager may take the action permitted by this section, although the production of mineral would thereby be incidentally affected, but any action so taken shall not exceed the limits necessary for the purpose of avoiding serious interference with the ordinary working of the mine.

Every case in which action has been taken by the manager as stated above shall be recorded together with the circumstances relating thereto and a report thereof shall also be made to the Chief Inspector or the Inspector.

Power to make exempting rules

According to section 39, the Central Government may make rules providing for the exemption to such extent, in such circumstances and subject to such conditions as may be specified from (5) the provisions of sections 28, 30, 31, 34 or sub-section 50 of section 36 -

- (a) of all or any of the persons employed in a mine, where an emergency involving serious risk to the safety of the mine or of the persons employed therein is apprehended;
- (b) of all or any of the persons so employed in case of an accident, actual or apprehended.
- (c) of all or any of the persons engaged in work of a preparatory or complementary nature, which must necessarily be carried on for the purpose of avoiding serious interference with the ordinary working of the mine.
- (d) of all or any of the persons engaged in urgent repairs and

- (e) of all or any of the persons employed in any work, which for technical reasons must be carried on continuously.

Employment of persons below eighteen years of age

The *minimum age of employment has been stipulated to be eighteen years of age in Section 40 of the Mines Act, 1952*. The Mine (Amendment) Act, 1983 prohibits employment of any person below eighteen years of age in any mine or part thereof.

However, Apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager. But prior approval of the Chief Inspector or an Inspector shall be obtained before allowing trainees, other than apprentices, to work.

Explanation - In this section and in section 43, “apprentice” means an apprentice as defined in clause (a) of section 2 of the Apprentices Act, 1961.

Power to require medical examination

According to section 43, where an Inspector is of opinion that any person employed in a mine otherwise than as apprentice or other trainee is not an adult or that any person employed in a mine as an apprentice or other trainee is either below sixteen years of age or is no longer fit to work, the Inspector may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs, be employed or permitted to work in any mine until this has been so examined and has been certified that he is an adult or, if such person is an apprentice or trainee that he is not below sixteen years of age and is fit to work.

Every certificate granted by a certifying surgeon on a reference under sub-section(1), shall, for the purpose of this Act, be conclusive evidence of the matters referred therein.

Prohibition of the presence of persons below eighteen years of age in a mine

According to section 45, subject to the provisions of sub-section (2) of section 40, after such date as the Central Government may by notification in the official Gazette, appoint in this behalf, no person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.

Employment of women

Section 46 of the Mines Act prohibits women from working in part of the mine which is below the ground and also, further, there is a fixed time range within which women are allowed to be on the premises of the mine for working, which is anytime between 6 A.M. to 7 P.M. for any day. This is an overriding section over any other law for the time being in force. At least an interval of eleven hours shall be given to every woman employed in a mine above ground between the termination of employment on any one day and the commencement of the next period of employment.

However irrespective of above provisions, the Central Government may, by notification in the official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any woman between the hours 10 am and 5 am is permitted thereby.

This particular section is constitutionally protected by virtue of the Article 15(3) and Article 19(6) of the Constitution of India. According to these article of the constitution, the state can make reasonable restrictions and special provisions for women and children, and therefore be keeping in mind that women and children are the most vulnerable and the most exploited sections of the workforce, the work time restrictions imposed upon women by virtue of this section is justified.

Register of persons employed

According to section 48, for every mine there shall be kept in the prescribed form and place register of all persons employed in the mine showing in respect of each such person –

- (a) the name of the employee with the name of his father or, of her husband, as the case may be, and such other particulars may be necessary for purpose of identification,
- (b) the age and sex of the employee;
- (c) the nature of employment (whether above ground or below ground, and if above ground, whether in opencast working or otherwise) and date of commencement thereof;
- (e) Such other particulars as may be prescribed, and the relevant entries shall be authenticated by the signature or the thumb impression of the person concerned,

The entries in the register shall be such that workers working in accordance there with would not be working in contravention of any of the provisions of this Chapter.

A person can be employed in a mine until the particulars required under this section have been recorded in the register in respect of such person and no person shall be employed except during the period of work shown in respect of him in register.

For every mine other than a mine which for any special reason to be recorded, is exempted by the Central Government by general or special order, there shall be kept in the prescribed form and place separate registers showing in respect of each person employed in the mine:-

- (a) below ground
- (b) above ground in opencast workings, and
- (c) above ground in other cases :-
 - (i) the name of the employees;
 - (ii) the class or kind of his employment
 - (iii) where work is carried on by a system of relays, the shift to which he belongs and the hours of the shift.

The register of persons employed below ground referred above shall show at any moment the name of every person who is then present below ground in the mine.

No person shall enter any opencast working or any working below ground unless he has been permitted by the manager or is authorised under this Act or any other law to do so.

LEAVE WITH WAGES

Chapter VII (Section 49 to 56) contains provisions w.r.t. Leave, annual leave wages, wages during leave period, power of Central Government to exempt wages.

Application of Chapter VII

Section 49 of the Act provides that the provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service. But if such award, agreement or contract of service, provides for a longer annual leave with wages than that provided in this Chapter, the quantum of leave, which the person employed shall be entitled to, shall be in accordance with such award, agreement or contract of service but leave shall be regulated in accordance with the provisions of section 50 to 56 (both inclusive) with respect of matters not provided for in such award, agreement or contract of service.”

Definition of Leave

Section 50 states that for the purposes of this Chapter, leave shall not include weekly days of rest or holidays or festivals or other similar occasions whether occurring during or at either end of the period.

Calendar year defined

Section 51 defines calendar year for the purpose of this Chapter to mean the period of twelve months beginning with the first day of January in any year.

Annual leave wages

Section 52 provides for annual leave wages of person employed in a mine.

Every person employed in a mine who has completed a calendar years' service therein shall be allowed, during the subsequent calendar year leave with wages, calculated –

- (a) in the case of a person employed below ground, at the rate of one day for every fifteen days of work performed by him, and
- (b) in any other case, at the rate of one day for every twenty days of work performed by him. {Section 52(1)}

A calendar years' service referred to in this section shall be deemed to have been completed:-

- (a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and
- (b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

Explanation – For the purpose of completion of calendar's year service, following shall be deemed to be the days on which the employee has worked in mine for the purpose of computation of the attendances but he shall not earn leave for these days:

- (a) any days of lay-off by agreement or contract or as permissible under the standing order:
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed:

A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified above, if –

- (a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one half of the total number of days during the remainder of the calendar year: and
- (b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.

Any leave not taken by a person to which he is entitled in any one calendar year under sub-section(1) or sub-section(3) shall be added to the leave to be allowed to him under sub-section(1) during the succeeding calendar year subject to the condition that the total number of days of leave which may be accumulated by any such person shall not at any one time exceed thirty days in all. It is further provided that any such person who has applied for leave with wages but has not been given such leave in accordance with sub-section(6) shall be entitled to carry forward the unavailed leave without any limit. {Section 52(4)}

Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under sub-section

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(1), (3) and (4). However, the number of times in which leave may be taken during any one calendar year shall not exceed three.

An application for such leave made in accordance with sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.

If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (5).

If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable under section 53 in respect of the leave not taken and such payment shall be made where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such termination, and where a person himself quits his employment, on or before the next pay day.

The unavailed leave of a person employed in mine shall not be taken into consideration in computing the period of any notice required to be given before the termination of his employment.

Where the person employed in a mine is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, he or his heirs or wages in lieu of leave due to him calculated at the rate specified in sub-section (1), if-

- (a) in the case of a person employed below ground in a mine, he has put in attendance for not less than one-half of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and
- (b) in any other case, he has put in attendance for not less than two thirds of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and payment of such wages shall be made by the owner, agent or manager of the mine at the rate specified in section 53, where the person is discharged or dismissed from service or quits employment or is superannuated, before the expiry of the second working day after such discharge dismissal, quitting of employment or superannuation, as the case may be and where the person employed dies while in service within a period of two months of his death."

Explanation – For the purpose of sub-section (1), and (10), any fraction of leave of half day or more, half a day shall be omitted.

Wages during leave period

Section 53 deals with the wages to be paid during leave period.

For the leave allowed to a person employed in a mine under section 52, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any accruing through the free issue of foodgrains and other articles as persons employed in the mine may, for the time being, be entitled to.

If no such average earning are available, then the average shall be computed on the basis of the daily average of the total full time earnings of all persons similarly employed for the same months.

Payment in advance in certain cases

Section 54 allows advance payment to a person employed in a mine who has been allowed leave for not less than four days. Such person shall be paid the wages due for the period of the leave allowed even before his leave begins.

Mode of recovery of unpaid wages

According to section 55, any sum required to be paid by the owner, agent or manager of a mine under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the payment of Wages Act, 1936.

Power to exempt mines

Section 56 provides that where the Central Government is satisfied that the leave rules applicable to persons employed in any mine provide benefits which in its opinion are not less favourable than those provided for in this Chapter it may, by order in writing and subject to such conditions as may be specified therein exempt the mine from all or any of the provisions of the Chapter.

REGULATIONS, RULES AND BYE-LAWS

Chapter VIII (Section 57 to 62) contains provisions of power of Central Government to make regulations, rules, posting of abstract from Act and regulations etc.

Power of Central Government to make regulations

Section 57 of the Act provides that the Central Government may, by notification in the official Gazette make regulations consistent with this Act for all or any of the following purposes, namely:

- (a) for prescribing the qualifications required for appointment as Chief Inspector or Inspector;
- (b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;
- (c) for prescribing the duties of owners, agents and managers of mines and persons acting under them and for prescribing the qualifications (including age) of agents and managers of mines and of persons acting under them.
- (d) for requiring facilities to be provided for enabling managers of mines and other persons acting under them to efficiently discharge their duties.
- (e) for regulating the manager of ascertaining, by examination or otherwise, the qualification of managers of mines and persons acting under them and the granting and renewal of certificates of competency.
- (f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates.
- (g) For determining the circumstances in which and the conditions in respect to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications.
- (h) For providing for inquiries to be made under this including any inquiry relating to misconduct or incompetence on the part of any person holding a certificate under this Act and for the suspension or cancellation of any such certificate and for providing where ever necessary, that the person appointed to hold an inquiry shall have all the powers of a civil court under the Code of Civil Procedure 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects.

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- (i) For regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage, conveyance and use of explosive,
- (j) For prohibiting, restricting or regulating the employment of women in mines or in any class of mines of on particular kind of labour which are attended by danger to the life, safety, or health of such persons and for limiting the weight of any single load that may be carried by any such person;
- (k) For providing for the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom the number of shafts or outlets to be furnished; and the fencing of shafts, pits, outlets, pathway and subsidences;
- (l) For prohibiting the employment in a mine either as manager or in any other specified capacity of any person except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine;
- (m) For providing for the safety of the roads and working places in mines, including the siting; maintenance and extraction or reduction of pillars or blocks of minerals and the maintenance of sufficient barriers between mine and mine;
- (n) For the inspection of workings and sealed off fire-areas in a mine, and for the restriction of workings in the vicinity of the sea or any lake or river or any other body of surface water, whether natural or artificial, or of any public road or building and for requiring due precaution to be taken against the irruption or inrush of water or other matter into, outbreak of fire in or premature collapse of any workings;
- (o) For providing for the ventilation of mines and the action to be taken in respect of dust fire, and inflammable and noxious gases, including precautions against spontaneous combustion, under ground fire and coal dust;
- (p) For regulating subject to the provisions of the Indian Electricity Act, 1910 and of any rules made thereunder, the generation, storage, transformation transmission and use of electricity in mines and for providing for the care and the regulation of the use of all electrical apparatus and electrical cables in mines and of all other machinery and plant therein.
- (q) For regulating the use of machinery in mines, for providing for the safety of persons employed on or near such machinery and on haulage roads and for restricting the use of certain classes of locomotives underground;
- (r) For providing for proper lighting of mines and regulating the use of safety lamps therein and for the search of persons entering a mine in which safety lamps are in use;
- (s) For providing against explosions or ignitions of inflammable gas or dust or irruption or accumulations of water in mines and against danger arising therefrom and for prohibiting restricting or regulating the extraction of minerals in circumstances likely to result in the premature collapse of workings or to result in or to aggravate collapse of workings or irruption of water or ignitions in mines;
- (t) For prescribing under clause(g) of sub-section(1) of section 2, the types of accidents and for prescribing the notices of accidents and dangerous occurrences and the notices reports and returns of mineral output; persons employed and other matters provided for by regulations to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished the particulars to be contained in them and the time within which they are to be submitted;
- (u) For requiring owners, agents and managers of mines to have fixed boundaries for the mine, for prescribing the plans and sections and field notes connected therewith to be kept by them and the manager and places in which such plans, section and field notes are to be kept for purposes of record for the submission of copies thereof to the Chief Inspector; and for requiring making of fresh surveys

and plans by them and in the event of non-compliance, for having the survey made and plans prepared through and other agency and for the recovery of expenses thereof in the same manner as an arrear of land revenue:

- (v) For regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines for dealing effectively with the situation.
- (w) For prescribing the form of, and the particulars to be contained in the notice to be given by the owner, agent or manager of a mine under section 16;
- (x) For prescribing the notice to be given by the owner, agent or manager of mining before mining operations are commenced at or extended to any point within forty-five metres of any railway subject to the provisions of the Indian Railways Act, 1890, (IX of 1890) of any public roads or other works, as the case may be which are maintained by the Government or any local authority.
- (y) For the protection from injury, in respect of any mine when the workings are discontinued, property vested in the Government or any local authority or railway company as defined in the Indian Railways Act, 1890.
- (yy) for requiring protective works to be constructed by the owner, agent or manager of a mine before the mine is closed, and in the event of non-compliance, for getting such works executed by any other agency, and for recovering the expenses, thereof from such owner in the same manner as an arrear of land revenue;
- (z) for providing for the appointment of Courts of Inquiry under quarry, incline, shaft pit or outlet, whether the same is being worked or not or any dangerous or prohibited area, subsidence haulage, tramline or pathway, where such fencing is necessary for the protection of the public; and
- (zz) any other matter which has to be or may be prescribed Section 72A of the Act provides for that whoever contravenes any provision of any regulation or of any bye-law or of any order made thereunder, relating to matters specified in clauses (d), (i), (m), (n), (o), (p), (r), (s), and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Power of Central Government to make rules

Section 58 lists out the powers of the Central Government to make rules to carry out the provisions of the Act.

The Central Government may, by notification in the official Gazette, make rule consistent with this Act for all or any of the following purposes, namely –

- (a) for providing the term of office and other conditions of service of and the manner of filling vacancies among, the members of a Committee and for regulating the procedure to be followed by a Committee for transacting its business.”
- (b) For prescribing the form of the register referred to in sub-section (3) of section 23;
- (c) For providing for the appointment of Courts of Inquiry under section 24, for regulating the procedure and powers of such Courts for the payment of travelling allowance to the members, and for the recovery of the expenses of such courts including any other expenses connected with the inquiry in the same manner as an area of land revenue from the manager, owner or agent of the mine concerned;
- (cc) for providing the inspection of mines to be carried out on behalf of the persons employed therein by a technical expert (not less than an overman in status) the facilities therefore, the frequency at which and the manner in which such inspections are to be carried out and the manner in which reports of such inspections are to be made.

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- (d) for requiring the maintenance of the mines wherein any women employed or were employed on any day of the preceding twelve months of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number of standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;
- (e) for requiring the maintenance at or near pitheads of bathing places equipped with shower baths and of locker rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed and for prescribing either generally or with particular reference to the numbers of men and women ordinarily employed in a mine, the number and standards of such places and rooms.
- (f) For prescribing the standard of sanitation to be maintained and the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking water.
- (ff) for providing for the supply and maintenance of medical appliances and comforts and for prescribing the contents and number of first-aid boxes and cupboards, the training in first-aid work, the size and equipment of first-aid rooms and staff in charge thereof and the arrangements for conveyance of injured persons to hospitals or dispensaries;
- (fff) for requiring the imparting of practical instruction to, or the training of, persons employed or to be employed in mines otherwise than in a position of such instruction and training;
- (g) for prohibiting the possession or consumption of intoxicating drinks or drugs in a mine and the entry or presence therein of any person in a drunken state;
- (h) for prescribing the form of notices required under section 36, and for requiring such notices to be posted also in specified languages;
- (i) for defining the person who shall, for the purpose of section 37, be deemed to be persons holding positions of supervision of management employed in a confidential capacity;
- (j) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner to have completed their fifteenth year, and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;
- (kk) for requiring persons employed or seeking employment at mines to submit themselves for medical examination and for prohibiting on medical grounds the employment of any person at a mine either absolutely or in a particular capacity or in particular work;
- (l) for prescribing the form of registers required by section 48 and the maintenance and form or registers for the purposes of Chapter VII;
- (m) for prescribing abstracts of this Act and of the regulations and rules and the language in which the abstracts and bye-laws shall be posted as required by section 61 and 62;
- (n) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners; agents and managers of mines and for prescribing the forms of such notices returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted;
- (o) for requiring the provision and maintenance in mines; wherein more than fifty persons are ordinarily employed, of adequate and suitable shelters for taking food with provisions for drinking water.
- (p) For requiring the provision and maintenance in any mine specified in this behalf by the Chief Inspector or Inspector wherein more than two hundred and fifty persons are ordinarily employed of a canteen or canteen for the use of such persons;

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- (q) For requiring the employment in every mine wherein five hundred or more persons are ordinarily employed of such number of welfare officers as may be specified and for prescribing the qualifications and the terms and conditions of, and the duties to be performed by, such welfare officers;
- (r) For requiring the establishment of rescue stations for specified mines or groups of specified mines or for all mines in a specified area and for prescribing how and by whom such stations shall be established;
- (s) For providing for the management of rescue stations
- (sa) for providing for the standards of physical fitness and other qualifications of the persons constituting rescue brigades;
- (sb) prescribing the places of residence of the persons constituting rescue brigades;
- (t) for prescribing the position, equipment, control, maintenance and functions of rescue stations;
- (u) for providing for the levy and collection of a duty of excise (at a rate not exceeding twenty five paise per tonne) on coke and coal produced in and despatched from mines specified under clause (r), the creation of a rescue stations fund for such mines, the crediting to such fund of such sums of money as the Central Government may, after due appropriation made by Parliament by law in this behalf, provide from out of the proceeds of such cess credited to the Consolidated Fund of India, the manner in which the money from such fund shall be utilised and the administration of such fund;
- (v) for providing for the formation, training composition and duties of rescue brigades and generally for the conduct of rescue work in mines;
- (vv) for providing for the constitution of safety Committees for specified mine or groups of specified mines or for all mines in a specified area for promoting safety and for laying down the composition, manner of formation and functions of such safety Committees and
- (w) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

Posting of abstracts from Act, regulations etc.

Section 62 makes it mandatory to keep posting up at or near every mine in English and in such other language or languages as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

PENALTIES AND PROCEDURE

Chapter IX (Sections 63 to 81) details out penalties and procedures for contravention of the various provisions of the Act.

Obstruction

Section 63 of the Act provides that whoever commits the following offences:

- o obstructs the Chief Inspector and inspector or any person authorised under section 8 in the discharge of his duties under this Act or
- o refuses or wilfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine

shall be punishable with imprisonment of a term which may extend to three months, or with fine which may extend to five hundred rupees, or both.

A fine up to three hundred rupees shall be imposed as punishment on anyone whoever

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- o refuses to produce on the demand of the Chief Inspector or any registers or other documents kept in pursuance of this Act or
- o prevents or attempts to prevent or does any thing which he has reason to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act.

Falsification of records

Section 64 provides for imposition of punishment with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both on anyone, whoever –

- (a) counterfoils, or knowingly makes a false statement in any certificate, or any official copy of a certificate, granted under this Act, or
- (b) knowingly uses as true any such counterfeit or false certificate, or
- (c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false for the purpose of obtaining for himself or for any other person a certificate or the renewal of a certificate under this Act, or any employment in a mine, or
- (d) falsifies any plan, section, register or record, the maintenance of which is required by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false or;
- (e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true.

Use of false certificates of fitness

Section 65 states that whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 43; a certificate granted to another person under that section, or having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Omission to furnish plans etc.

Section 66 of the Act provides that any person who, without reasonable excuse the burden of providing which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, section return, notice, register; record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to one thousand rupees.

Contravention of provisions regarding employment of labour

Section 67 states that whoever, save as permitted by section 38, contravenes any provision of this Act or of any regulation rule, bye-law or of any order made thereunder prohibiting restricting or regulating the employment or presence of persons in or about a mine 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 employment of persons below eighteen years of age

Section 68 provides for that if a person below eighteen years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine which may extend to five hundred rupees.

Failure to appoint manager

Section 69 provides for punishment with imprisonment for a term which may extend to three months or with fine which may extend to two thousand and five hundred rupees, or both for anyone, whoever fails to appoint a manager in contravention of the provisions of section 17 of the Act.

Owner etc. to report to Chief Inspector in certain cases

Section 71 of the Act imposes a duty on the owner, agent or manager of a mine, as the case may be, that if he takes proceeding under this Act against any person employed in or about a mine in respect of an offence under this Act, he shall within twenty-one days from the date of the judgement or order of the court report the result thereof to the Chief Inspector.

Obligations of persons employed in a mine

Section 72 of the Act provides that a person employed in a mine shall not do the following acts:

- (a) willfully interfere with or misuse any appliance convenience of other thing provided in a mine for the purpose of securing the health, safety or welfare of the person employed therein.
- (b) willfully and without reasonable cause do any thing likely to endanger himself or others;
- (c) willfully neglect to make use of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed therein.

General provision of disobedience of others

Section 73 of the Act provides for penalty for contravention of the Act for which no specific penalty is provided in the Act. It states that whoever contravenes any provision of this Act or of any regulation, rule or bye-laws or of any order made thereunder for the contravention of which no penalty is herein before provided 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.

Enhanced penalty after previous conviction

If any person who has been convicted for an offence punishable under any of the foregoing provisions (other than section 72B and 72C) is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be punishable for each subsequent conviction with double the punishment to which he would have been liable for the first contravention of such provision. {Section 74}

Prosecution of owner, agent or manager

Section 75 stipulates that owner, agent or manager can be prosecuted for any offence under this Act only at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

Provided that the Chief Inspector or the District Magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.

Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the approval of the Chief Inspector.

Determination of owner in certain cases

Section 76 states that if any mine is owned by firm, association of individual, company, Government or Local Authority, following shall be treated as owner and may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable

- (i) Where the owner of a mine is firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a company;
- (ii) all or any of the directors thereof ;
- (iii) where the owner of a mine is a Government or any local authority, as the case may be, to manage the affair of the mine

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated -

- (a) in the case of a firm, any of its partners or managers:
- (b) in the case of an association, any of its members or managers;
- (c) in the case of a company any of its directors or managers.

Who is resident in each case in any place to which this act extends and who is in each case either in fact in charge of the management or holds the largest number of shares in such firm, association or company, to assume the responsibility of the owner or the mine for the purposes of this Act, such partner, member, director or manager, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the owner of the purposes of this Act unless a notice in writing canceling his nomination or stating that he has ceased to be a partner, member, director or manager as the case may be, is received by the Chief Inspector.

Explanation: - Where firm, association or company has different establishment or branches or different units in any establishment or branch, different persons may be nominated under this proviso in relation to different establishment or branches or units and the person so nominated shall, with respect only to the establishment, branch or unit in relation to which he has been nominated, deemed to be the owner of the mine.

Exemption of owner, agent or manager in certain cases

Where the owner, agent or manager of a mine, accused of an offence under this Act, alleges that another person is the actual offender, he shall be entitled, upon complaint made by him in this behalf and on his furnishing the known address of the actual offender and on giving to the prosecutor not less than three clear day's notice in writing of his intention to do so, to have that other persons brought before the court on the date appointed for the hearing of the case; and if after the commission of the offence has been proved, the owner, agent or manager of the mine, as the case may be proves to the satisfaction of the court -

- (a) that he has used due diligence to enforce the execution of the relevant provisions of this act, and
- (b) that the owner person committed the offence in question without his knowledge, consent or connivance, the said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the owner, agent or manager of the mine and the owner, agent or manager, as the case may be, shall be acquitted,

The owner, agent or manager of the mine as the case may be, may be examined on oath and his evidence and that of any witness who he calls in support shall be subject to cross examination by or on behalf of the person he alleges as the actual offender and by the prosecutor.

If inspite of due diligence the person alleged as the, actual offender cannot be brought before the court on the

date appointed for the hearing of the case, the court shall adjourn from the hearing thereof from time to time so however that the total period of such adjournments does not exceed three months, and if by the end of the said period the person alleged as the actual offender cannot be brought before the court, the court shall proceed to hear the case against the owner, agent or manager as the case may be. {Section 77}

Power of court to make orders

Section 78 provides for the powers of the court to make following orders under the Act:

- (1) Where the owner, agent or manager of mine is convicted of an offence punishable under this Act, the court may in addition to awarding him any punishment by order in writing require him within a period specified in the order which may be extended by the court from time to time on application made in this behalf to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.
- (2) Where an order is made under sub-section(1), the owner, agent or manager of the mine, as the case may be, shall not be liable under this Act in respect of the continuance of the offence during the period or extended period, if any but if on the expiry of such period or extended period the order of the court has not been fully complied with the owner, agent or manager, as the case may be, shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or with both.

Limitation of prosecutions

Section 79 sets out time limit for making complaint under the Act.

No court shall take cognizance of any offence under this Act, unless complaint thereof has been made –

- (i) within six months of the date on which the offence is alleged to have been committed, or
- (ii) within six months of the date on which the alleged commission of the offence came to the knowledge of the Inspector, or
- (iia) In any case in which the accused is or was a public servant and previous sanction of the Central Government or of the State Government or of any other authority is necessary for taking cognizance of the offence under any law for the time being in force, within three months of the date on which such sanction is received by the Chief Inspector; or
- (iii) in any case where a Court of inquiry has been appointed by the Central Government under section 24, within one year after the date of the publication of the report referred to in sub-section(4) of that section, whichever is later.

Explanation - For the purposes of this section –(a) In the case of continuing offence, the period of limitation shall be computed with reference to every point of time during which the offence continues,(b) Where for the performance of any act time has been extended under this Act, the period of limitation shall be computed from the expiry of the extended period.

In *State of Bihar v. Dev Karan* : 1973 Cri. LJ347 Supreme Court held that “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 involve a penalty, the liability for which continues until the rule or its requirement 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 or omission which continues and therefore constitutes a fresh offence every time or

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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.”

Cognizance of offences

Section 80 provides for which Court shall take cognizance of offences under the Act.

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

Reference to Committee in lieu of prosecution in certain cases

Section 81 states about the Court’s discretionary power to stay the criminal proceedings and report it to the Central Government as follows:

- (1) If the court trying any case instituted at the instance of the Chief Inspector or the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Committee it may stay the criminal proceedings and report the matter to the Central Government with a view to such reference being made.
- (2) On receipt of a report under sub-section(1) the Central Government may refer the case to a Committee or may direct the court to proceed with the trial.

MISCELLANEOUS

Chapter X contains miscellaneous provisions regarding enforcement of the Act.

Decision of question whether a mine is under this Act

Section 82 of the Act provides for that if any question arises as to whether any excavation or working or premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale or minerals or of coke is being carried on in a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

Power to exempt from operation of Act

Section 83 of the Act provides for that the Central Government may by notification in the official Gazette, exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any of the provisions of this Act or the regulations, rules or bye-laws.

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 40 and 45 unless it is also exempted from the operation of all the other provisions of this Act.

The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose authorise the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations, rules or bye-laws if the Chief Inspector or such authority is of opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.

Power to alter or rescind any orders

Section 84 provides for following powers of the Central Government :

- (1) The Central Government may reverse or modify any order passed under this Act.
- (2) The Chief Inspector may for reasons to be recorded in writing, reverse or modify any order passed by him under this Act or under any regulation, rule or bye-law.
- (3) No order prejudicial to the owner, agent or manager of a mine shall be made under this section unless such owner, agent or manager has been given a reasonable opportunity of making representation.

85A. Persons required to give notice etc. legally bound to do so.

Every person required to give any notice or to furnish any information to any authority under this Act shall be legally bound to do so within the meaning of section 176 of the Indian Penal Code, 1860.

Signing of returns, notices etc.

All returns and notices required to be furnished or given or communications sent by or on behalf of the owner of a mine in connection with the provisions of this Act or any regulation, rule, bye-law or any order made thereunder shall be signed by the owner, agent or manager of the mine or by any person to whom power in this behalf has been delegated by the owner by a power of attorney (Section 85B).

No fee or charge to be realised for facilities and conveniences

No fee or charge shall be realised from any person employed in a mine in respect of any protective arrangements or facilities to be provided, or any equipment or appliances to be supplied under the provisions of this Act. (Section 85C)

Application of certain provision of Act 63 of 1948 to mines

Section 86 states that the Central Government has power to direct that, by notification in the official Gazette, the provisions of Chapter III and IV of the Factories Act, 1948 as specified in the notification shall apply to all mines and the precincts thereof.

Protection of action taken in good faith

Section 87 protects the persons who take action in good faith under the Act. It provides for that no suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

LESSON ROUND UP

- The Act is aimed for the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them.
- Mine as per section 2(j) of Mines Act means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried from the earth by means of tunnelling and shafting as well as it includes open working or quarries.
- Owner as per section 2(l) means any person who is the lessee (person who holds the lease of a property), immediate proprietor or occupiers of the mine or any part of the mine. It also includes the contractor and the claimant, but it does not include a person who merely receives a royalty, rent or fine from the mine, or is merely proprietor of the mine, subject to any lease, grant or license or license for the working thereof, or is merely the owner of soil and not interested in the mineral of the mine. Any contractor or sublessee for the working of mine or any part shall be subject to this Act.

- In order to examine the working Central Government has power to appoint Chief Inspectors and Inspectors. Along with it Central Government also is empowered to appoint a committee. The Chief Inspector is a part of the Committee and along with the committee members it look into the issue relating to mining which includes the wages, health care and working hours of the workers.
- The owner, agent or manager of a mine before commencement of mining operation has to provide a notice in writing to the Chief Inspector, the Controller, Indian Bureau of Mines and the District Magistrate in which the mine is situated and the notice should reach the concerned person one month before commencement of any mining operation.
- Minerals have been defined under Section 2(jj) of the Mining Act, which includes all substances which can be obtained from the earth including natural gases and petroleum.
- The provisions of this Act does not applies to mine or a part therefore in which excavation is being made for prospecting purposes and not for the purpose of obtaining minerals for use or for sale.
- The Act provides specifically for women workers in four areas: with respect to the prohibition of underground work (Section 46); prohibition of night work even above ground (Section 46); separate toilet facilities and crèche facilities (Section 58 read with the relevant Rules).
- The Act make provisions as to health and safety of workers employed in mines such as drinking water, conservancy, medical appliances, and responsibility of the owner, agent or manager to give notice of accidents to proper authority. Central Government has also power to appoint certifying surgeons.
- The Act is in the lines of the Factories Act, 1948 and has similar kinds of provisions as to drinking water, Urinals, latrines etc.
- The Act provides for provision relating to hours and limitation of employment such as weekly day of rest, compensatory day of rest, hours of work above ground and below ground night shift, extra wages for overtime work, limitation of daily hours of work, prohibition of the presence of persons below 18 years of age and employment of women.
- It seeks to achieve fair and healthy environment in the mines, through inspecting staff. For the efficient implementation of the Act the Central Government is authorized to appoint Chief Inspector and Inspectors who are assigned various powers and functions under the act.
- The Chapter VI deals with the hours and limitations of employment and provides for weekly one day of rest, compensatory day of rest, hours of work above ground to be not more than 48 hours in any week or for more than nine hours in any day, hours of work below ground to be not more than 48 hours in any week or eight hours in any day.
- The Act also provides for night shift and extra wages for overtime.
- It prohibits employment of persons below eighteen years of age and employment of women below ground and above ground except between the hours of 6 am and 7 pm.
- The Act also provides for penalties for contravention of various provisions of the Act.

SELF-TEST QUESTIONS

1. List out the rules and regulations provided under the Mines Act, 1952.
2. Define (i) Employed (ii) Minerals (iii) Mines (iv) Owner (v) Serious Bodily Injury
3. Briefly explain the provisions w.r.t. Appointment of Chief Inspectors and Inspectors under the Act.
4. When can an Inspector disclose the information or records procured during inspection or survey under this Act?

Section V

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955

LESSON OUTLINE

- History of the Legislation
- Introduction
- Applicability of the Act
- Important Definitions
- Provisions of Industrial Dispute Act 1947 to apply to working journalists
- Payment of gratuity
- Nomination by working journalist
- Hours of work
- Leave
- Wages
- Fixation or revision of rates of wages
- Procedure for fixing and revising rates of wages
- Recommendation by Board
- Powers and procedure of the Board
- Powers of Central Government
- Working journalists entitled to wages at rates not less than those specified in the order
- LESSON ROUND UP
- SELF -TEST QUESTIONS

LEARNING OBJECTIVES

The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, together with the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules 1975, covers rights of journalists like leave (including maternity) and holidays, payment of gratuity, retrenchment, hours of work, compensation for overtime and the setting-up of a wage board.

The Act is a comprehensive piece of legislation dealing with, *inter-alia*, entitlement to gratuity, hours of work, leave as well as fixation of wages payable both to the working journalists and non-journalist newspaper employees, as may be. The Act also made the Industrial Employment (Standing Orders) Act, 1946 and the Employees Provident Fund Act, 1952 applicable in every newspaper establishment employing twenty or more employees. The rights and benefits provided to the working journalists under the Act are in addition to the provisions of general labour welfare legislations. The Act mainly provides for certain special safeguards and payment of fixed wages.

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

An Act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments.

HISTORY OF THE LEGISLATION

Before independence, the Indian Press in general had a single objective in view, namely the political emancipation of the country. Many journalists, imbued with the nationalist fervour of those days, were prepared to make sacrifices for the country's cause. After independence, newspapers became vehicles for the advancement of political and business interests of newspaper proprietors, who failed to appreciate the status and role of journalists. While the Press came to be known as the Fourth Estate, this grandiloquent term had little meaning for the working journalists of the period, who, the employers felt, had no right to a decent wage and better service conditions. This attitude of the employers literally forced the Government of India to intervene in the matter. The wages fixed for the journalists were miserably inadequate; there were no regulated hours of work and the working journalists did not have rest day for months. Any journalist who thought of asserting his rights was shown the door by the employer. Such were the conditions which led journalists to organise themselves into the Indian Federation of Working Journalists. When the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act 1955 was placed on the statute book, protests were voiced by the employers that the provisions of the Act, if implemented, would "kill" the newspaper industry and pose a danger to the freedom of the Press.

Subsequent developments in the newspaper industry established beyond doubt that these fears were totally imaginary. The employers attempted to scuttle the Act by challenging the validity of the Working Journalists (Fixation of Rates of Wages) Act 1958, which empowered the Government to constitute a Committee to fix rates of wages for working journalists.

The first attempt at wage control, as provided for in the Wage Order of the Government of India, did not achieve what the Journalists had hoped for, although working conditions registered some improvement. Every attempt was made by the employers to circumvent the provisions of the Wage Order and journalists were dragged to courts. The litigation however proved beneficial to the working journalists to the extent that it helped plug the loopholes in the laws applicable to them by an amendment of the Act later.

The Industrial Disputes Act, made applicable to working journalists, was a comprehensive Act for settlement and adjudication of industrial disputes. However, the unfettered system of hire and fire, which prevailed in the newspaper industry prior to 1955, no longer obtains in the industry on such a large scale. The Standing Orders helped to maintain discipline in the industry.

While Courts have held that "the power of the management to direct its internal administration, which includes enforcement of the discipline of the personnel, cannot be denied" this power has been subjected to certain restrictions with the emergence of the modern concept of social justice that an employee should be protected against vindictive or capricious action on the part of the management that may affect his security of service.

The Act has extended the benefits of gratuity and provident fund to working journalists.

On the question of constitutional validity of the Act, a Constitution Bench of the Supreme Court *Express Newspaper (Private) Ltd. v. The Union of India*, AIR1958 SC 578: [1959] S.C.R.12. upheld the validity of a legislation, named the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1956 (hereinafter as 'the Act') passed by the Parliament, the purpose of which was to ameliorate the conditions of the working journalists and other persons (non journalist) working in the newspaper establishments.

After the amendment in 1974 the Act has been renamed as the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

In exercise of the powers conferred by section 29 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), the Central Government made the Rules, namely called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957 hereinafter referred as "Rules".

INTRODUCTION

On the recommendations of the Press Commission, the Government of India placed on the Statute Book in 1955 an Act to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments. “This Act, called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, mainly deals with the conditions of service and terms of employment including wage rates for working journalists. It provides for the period of notice to be given for retrenchment of a working journalist, prescribes a gratuity scheme, and stipulates working hours, holidays, casual and other kinds of leave. It also provides for the application of the provisions of the Industrial Disputes Act, 1947, for the settlement of disputes, and of the Industrial Employment (Standing Orders) Act, and the Employees Provident Fund Act. Other Acts, applicable to the newspaper industry vis-a-vis employees, are the Payment of Wages Act and the Payment of Bonus Act. The Act provides that for the purpose of fixing or revising rates of wages in respect of working journalists, the Central Government as and when necessary shall constitute Wage Board. The rights and benefits provided to the working journalists under the Act are in addition to the provisions of general labour welfare legislations. The Act mainly provides for certain special safeguards and payment of fixed wages. The Act also requires the management to pay to the workers irrespective of its financial capacity to pay. After receipt of the recommendations of the Board, the Central Government is required to make an order in terms of recommendations and this order becomes applicable on the class of newspaper establishments for which the Board has recommended.

Applicability of the Act

Section 1 of the Act extends its application to the whole of India except the State of Jammu and Kashmir.

Important Definitions

Section 2 provides for that in this Act, unless the context otherwise requires,

“**Board**” means –

- (i) in relation to *working journalists*, the Wage Board constituted under section 9; and
- (ii) in relation to *non-journalist newspaper employees*, the Wage Board constituted under section 13C; {Section 2(a)}

“**Newspaper**” means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the Official Gazette;

{Section 2(b)}

Whether All India Reporter is a newspaper was a question before Bombay High Court and it was held that All India Reporter was not a newspaper in 1983 (*All India Reporter Ltd. vs State of Maharashtra, 1983 II LLJ 387 (Bom.)*) But the Supreme Court held that All India Reporter as a newspaper in 1988, as law reporter contains news, editorial comments, book reviews, ads etc which makes AIR a newspaper (*AIR Karamchari Sangh vs AIR Ltd, AIR 1988, SC 1325*)

“**Newspaper Employee**” means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment;

{Section 2(c)}

Law reports are held to be newspaper and their employees should be extended the benefit of order of Central Government made on the recommendations by Palekar Award, which was constituted under the Working Journalist Act. Palekar Tribunal was the first Wage Tribunal which determined the wage structure for the journalists (*All India Reporter Karamchari Sangh vs. All India Reporter Ltd, AIR 1988 SC 1325*)

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“Newspaper Establishment” means an establishment under the control of any person or body or persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate; and includes newspaper establishments specified as one establishment under the Schedule.

Explanation. –For the purposes of this clause, –

- (a) different departments, branches and centres of newspaper establishments shall be treated as parts thereof;
- (b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper;

{Section 2(d)}

“Non-Journalist Newspaper Employee” means a person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who –

- (i) is a working journalist, or
- (ii) is employed mainly in a managerial or administrative capacity, or
- (iii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature; {Section 2(dd)}

“Tribunal” means, –

- (i) in relation to *working journalists*, the Tribunal constituted under section 13AA; and
- (ii) in relation to *non-journalist newspaper employees*, the Tribunal constituted under section 13DD; {Section 2(ee)}

“Wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a newspaper employee in respect of his employment or of work done in such employment, and includes –

- (i) such allowances (including dearness allowance) as the newspaper employee is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;
- (iii) any travelling concession,

but does not include –(a) any bonus;(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the newspaper employee under any law for the time being in force;(c) any gratuity payable on the termination of his service.

Explanation. –In this clause, the term “wages” shall also include new allowances, if any, of any description fixed from time to time.

{Section 2(eee)}

“Working Journalist” means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishments], and

includes an editor, a leader-writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader,

but does not include any such person who –

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- (i) is employed mainly in a managerial or administrative capacity, or
 - (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature;
- {Section 2(f)}

Even an ex-employee whose employment has come to an end as a result of his resignation, comes within the ambit of the definition of “working journalist”; *Bennett Coleman & Co (P.) Ltd. Vs. Punya Priya Das Gupta, AIR 1970 SC 426.*

All words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 shall have the meanings respectively assigned to them in that Act. {Section 2(g)}

Rule 2(m)“Shifts”: ‘day shift’ means a shift when any hours of work of the shift do not fall between the hours of 11 P.M. and 5 A.M.;

‘Night shift’ means a shift when any hours of work fall between the hours of 11 P.M. and 5 A.M.

WORKING JOURNALISTS

Provisions of Industrial Dispute Act 1947 to apply to working journalists –

According to section 3, the provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act. The period of notice to be given to workers for retrenchment under Section 25F of Industrial Dispute Act is not applicable to working journalists. The period of notice of retrenchment for editor is six months and for any other working journalist is three months.

Bennet Coleman & Co. Ltd v. State Of Bihar, SLP(CRL.) NO.10134/2010 : Supreme Court judgement 2015, as per Section 3 of the Working Journalists Act, the provisions of the I.D. Act have been made applicable to the working journalists, as if they are workmen under the I.D. Act. Thus, being a legislation by reference, provisions of I.D. Act are applicable so far as working journalists are concerned.

The period of notice to be given to workers for retrenchment under Industrial Dispute Act is not applicable to working journalists. The period of notice of retrenchment for editor is six months and for any other working journalist is three months.

Payment of gratuity

Section 5 deals with payment of gratuity for working journalist with three years of service on termination (other than by punishment) or retirement or voluntary resigns or dies in service. Under these circumstances, the working journalist shall be paid 15 days average pay for every completed year of service or part in excess of six months. In accordance with Rule 3 -Gratuity shall be paid to a working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as soon as possible after it becomes due and in any case not later than three months. According to rule 4, If no nomination subsists or if that nomination relates only to a part of the gratuity, the amount of the gratuity or the part thereof to which the nomination does not relate, as the case may be, shall be paid to his family. According to rule 6, The gratuity will be subject to deductions on account of overpayments made to a working journalist by the newspaper establishment liable to pay such gratuity and monies borrowed by the working journalist from such newspaper establishment.

According to section 5 (1), the amount of gratuity payable to the working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as the case may be, shall, be paid, on such termination, retirement, resignation or death, by the employer in relation to that establishment gratuity which shall be equivalent to fifteen days’ average pay for every completed year of service or any part thereof in excess of six months where-

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- (a) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and –
 - (i) his services are terminated by the employer in relation to that newspaper establishment for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action; or
 - (ii) he retires from service on reaching the age of superannuation; or
- (b) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than ten years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July, 1961, from service in that newspaper establishment on any ground whatsoever other than on the ground of conscience; or
- (c) any working journalist has been in continuous service, whether before or after the commencement of this Act for not less than three years in any newspaper establishment, and he voluntarily resigns on or after the 1st day of July, 1961, from service in that establishment on the ground of conscience; or
- (d) any working journalist dies while he is in service in any newspaper establishment;

Note:

1. This benefit is given without prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947,
2. It is provided that in the case of a working journalist referred to in clause (b), the total amount of gratuity that shall be payable to him shall not exceed twelve and half month's average pay:
3. It is provided further that where a working journalist is employed in any newspaper establishment wherein not more than six working journalists were employed on any day of the twelve months immediately preceding the commencement of this Act, the gratuity payable to a working journalist employed in any such newspaper establishment for any period of service before such commencement shall not be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months but shall be equivalent to –
 - (a) three days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service does not exceed five years;
 - (b) five days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds five years but does not exceed ten years; and
 - (c) seven days' average pay for every completed year of service or any part thereof in excess of six months, if the period of such past service exceeds ten years.

Explanation. –For the purposes of this sub-section and sub-section (1) of section 17, “family” means –

- (i) in the case of a male working journalist, his widow, children, whether married or unmarried, and his dependent parents and the widow and children of his deceased son. Provided that a widow shall not be deemed to be a member of the family of the working journalist if at the time of his death she was not legally entitled to be maintained by him;
- (ii) in the case of a female working journalist, her husband, children, whether married or unmarried, and the dependent parents of the working journalist or of her husband, and the widow and children of her deceased son:

Note:

1. If the working journalist has expressed her desire to exclude her husband from the family, the husband and his dependent parents shall not be deemed to be a part of the working journalist's family.

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2. In either of the above two cases, if the child of a working journalist or of a deceased son of a working journalist has been adopted by another person and if under the personal law of the adopter, adoption is legally recognised, such a child shall not be considered as a member of the family of the working journalist.

Any dispute whether a working journalist has voluntarily resigned from service in any newspaper establishment on the ground of conscience shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in any State.

Where a nominee is a minor and the gratuity under sub-section (1) has become payable during his minority, it shall be paid to a person appointed under section 5A. But if there is no such person, payment shall be made to any guardian of the property of the minor appointed by a competent court or where no such guardian has been appointed, to either parent of the minor, or where neither parent is alive, to any other guardian of the minor.

It is provided further that where the gratuity is payable to two or more nominees, and either or any of them dies, the gratuity shall be paid to the surviving nominee or nominees.

Nomination by working journalist

Section 5A empowers the working journalist to nominate a nominee to receive the gratuity and where such a nominee is nominated, the nominee alone shall be entitled to receive the gratuity unless he himself dies before the death of the journalist.

Notwithstanding anything contained in any law for the time being in force, or in any disposition, testamentary or otherwise in respect of any gratuity payable to a working journalist, where a nomination made in the prescribed manner (Form A) purports to confer on any person the right to receive payment of the gratuity for the time being due to the working journalist, the nominee shall, on the death of the working journalist, become entitled to the gratuity and to be paid the sum due in respect thereof to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner (Form B.).

Any such nomination shall become void if the nominee predeceases, or where there are two or more nominees, all the nominees predecease, the working journalist making the nomination.

Where the nominee is a minor, it shall be lawful for the working journalist making the nomination to appoint any person in the prescribed manner (Form AA) to receive the gratuity in the event of his death during the minority of the nominee.

Hours of work

According to section 6, a working journalist shall be required or allowed to work in any newspaper establishment for not more than 144 hours during any period of four consecutive weeks. The period of 144 hours of work does not include the time for meals and every such journalist shall be allowed at least 24 hours of rest during any period of seven consecutive days of work, the period between 10 P.M. and 6 A.M. being included therein.

Explanation. –For the purposes of this section, “week” means a period of seven days beginning at mid-night on Saturday.

Leave

Section 7 of the Act provides that without prejudice to such holidays, casual leave or other kinds of leave as may be prescribed, every working journalist shall be entitled to earned leave on full wages for not less than one-eleventh of the period spent on duty and also leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

Wages

The working journalists are entitled to receive wages at a fixed rate and the wages shall be revised also. The function to fix and revise the wages is that of the Central Government under section 8 of the Act which shall be performed through a wage board constituted under section 9 of the Act. The Central Government has been empowered under section 12 of the Act to enforce the recommendations of the wage board. It is the provisions of section 13 which make the working journalists entitled to fixed wages at rates not less than those specified in the order. S. 13A of the Act also empowers the Central Government to fix interim rates of wages in respect of working journalists and any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages.

Fixation or revision of rates of wages

Section 8 vests the Central Government with the authority to fix rates of wages in respect of working journalists and revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958. The Central Government may fix or revise the rates of wages in respect of working journalists for time work and for piece work. The Central Government shall follow the procedure prescribed in the Act for fixing and revising rates of wages.

Procedure for fixing and revising rates of wages

Section 9 stipulates that for the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of –

- (a) three persons representing employers in relation to newspaper establishments;
- (b) three persons representing working journalists;
- (c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

The court in 1958 laid down that the interest, of journalists and other employees of the press industry, in wages can be regulated by the government and this aspect has nothing to do with the right to freedom of speech and expression under article 19 (1) (a) of the Constitution of India and media in this regard is like any other industry. The court has not changed its opinion till date.

Recommendation by Board

According to section 10, the Board shall, by notice published in such manner as it thinks fit, call upon newspaper establishments and working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit as respects the rates of wages which may be fixed or revised under this Act in respect of working journalists.

Every such representation shall be in writing and shall be made within such period as the Board may specify in the notice and shall state the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation.

The Board shall take into account the representations aforesaid, if any, and after examining the materials placed before it make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages in respect of working journalists; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect.

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In making any recommendations to the Central Government, the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant.

Explanation. –For the removal of doubts, it is hereby declared that nothing in this sub-section shall prevent the Board from making recommendations for fixation or revision of rates of wages on all India basis.

Powers and procedure of the Board

Section 11 lays down powers of the Board and procedure to be followed by it as follows:

- (1) Powers similar to Industrial tribunal under the Industrial Dispute Act, 1947: Subject to the provisions contained in sub-section (2), the Board may exercise all or any of the powers which an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act, and the rules, if any, made thereunder, have power to regulate its own procedure.
- (2) *Inspection of representation:* Any representations made to the Board and any documents furnished to it by way of evidence shall be open to inspection on payment of such fee as may be prescribed, by any person interested in the matter.
- (3) *Casual Vacancy:* If, for any reason, a vacancy occurs in the office of Chairman or any other member of the Board, the Central Government shall fill the vacancy by appointing another person thereto in accordance with the provisions of section 9 and any proceeding may be continued before the Board so reconstituted from the stage at which the vacancy occurred.

Bennet Coleman & Co. Ltd v. State Of Bihar, Supreme Court Judgment, SLP(CRL.) NO.10134/2010 dated 10 February 2015: A bare reading of the provision would show that the same provides for exercise of the powers of the Tribunal by the Wage Board in the process of making its recommendations in regulating its procedure. The provision does not make Wage Board a Tribunal. The Tribunal under the I.D. Act does not make recommendations, it passes award; whereas the Wage Board under the Working Journalists Act is competent only to make a recommendation in terms of Section 10 and after the notification of the recommendations by the Central Government if there is any dispute regarding any amount due under the notification, a dispute is raised under Section 17(2) of the Working Journalists Act and thereafter an award is passed by the Labour Court.

Powers of Central Government to enforce recommendations of the Wage Board

According to section 12, the Central Government shall, as soon as may be, after the receipt of the recommendations of the Board, make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

The Central Government may, if it thinks fit, –(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit.

It is provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or it may also refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature as it thinks fit.

Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order.

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Rule 35 A provides that Notice required to be given under proviso to clause (a) of sub-section (2) of section 12 of the Act shall in Form H and shall be published in the Official Gazette and in leading newspapers.

Working journalists entitled to wages at rates not less than those specified in the order

On the coming into operation of an order of the Central Government under section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order. (Section 13)

Power of Government to fix interim rates of wages

Section 13 A empowers the Central Government to fix interim rates of wages in respect of working journalists if it is of opinion that it is necessary so to do. The Central Government shall do the same, notwithstanding anything contained in this Act, after consultation with the Board, by notification in the Official Gazette.

Any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages so fixed.

Any interim rates of wages so fixed shall remain in force until the order of the Central Government under section 12 comes into operation.

Constitution of Tribunal for fixing or revising rates of wages in respect of working journalists

Section 13AA provides that notwithstanding anything contained in this Act, where the Central Government is of opinion that the Board constituted under section 9 for the purpose of fixing or revising rates of wages in respect of working journalists under this Act has not been able to function (for any reason whatsoever) effectively, and in the circumstances, it is necessary so to do, it may, by notification in the Official Gazette, constitute a Tribunal, which shall consist of a person who is, or has been, a Judge of a High Court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of working journalists under this Act.

The provisions of sections 10 to 13A shall apply to, and in relation to, the Tribunal so constituted, the Central Government and working journalists, subject to the modifications that –(a) the references to the Board therein, wherever they occur, shall be construed as references to the Tribunal;(b) in sub-section (3) of section 11, –(i) the reference to the office of Chairman or any other member of the Board shall be construed as a reference to the office of the person constituting the Tribunal; and(ii) the reference to section 9 shall be construed as a reference to sub-section (1) of this section; and (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

The Tribunal, in discharging its functions under this Act, may act on, the evidence recorded by the Wage Board or partly recorded by the Wage Board and partly recorded by itself. It is provided that if the Tribunal is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as it may permit, the witness shall be discharged.

On the constitution of a Tribunal, the Board constituted under section 9 and functioning immediately before such constitution shall cease to exist and the members constituting that Board shall be deemed to have vacated their offices. It is provided that any interim rates of wages fixed by the Central Government under section 13A in respect of working journalists and in force immediately before the constitution of the Tribunal shall remain in force until the order of the Central Government under section 12 read with this section comes into operation.

Since the fixation of interim wages is in no way a final decision as to fixation of rates of wages, the parties concerned can make further and effective representation to the Wage Board which makes, after due consideration, fresh recommendation to the Central Government for acceptance. Hence, the procedure prescribed under section 12

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of the Act making it incumbent on the Central Government to give hearing to the parties affected or serve notice before or at the stage of fixation of interim wages, is certainly not applicable to section 13 A; (**Ananda Bazar Patrika Ltd vs. Union of India 1989, 74 FJR 401**)

Fixation or revision of rates of wages of non-journalists newspaper employees: *The Central Government may also fix and revise rates of wages in respect of non-journalist newspaper employees under section 13 B of the Act after 1974 amendment to the Act. This is to be done through separate wage board to be constituted by the Central Government under section 13 C of the Act. The provisions of sections 10 to 13A shall apply to, and in relation to, the board constituted under section 13C, by virtue of the provisions of section 13D. Further, where the Central Government is of opinion that the Board constituted under section 13C has not been able to function effectively, it may constitute a tribunal under section 13DD for the purpose of fixing or revising rates of wages, in respect of non-journalist newspaper employees under the Act.*

Fixation or revision of rates of wages of non-journalists newspaper employees

The Central Government may also fix and revise rates of wages in respect of non-journalist newspaper employees under section 13 B of the Act after 1974 amendment to the Act. This is to be done through separate wage board to be constituted by the Central Government under section 13 C of the Act. The provisions of sections 10 to 13A shall apply to, and in relation to, the board constituted under section 13C, by virtue of the provisions of section 13D. Further, where the Central Government is of opinion that the Board constituted under section 13C has not been able to function effectively, it may constitute a tribunal under section 13DD for the purpose of fixing or revising rates of wages, in respect of non-journalist newspaper employees under the Act.

Fixation or revision of rates of wages of non-journalist newspaper employees

According to section 13B, the Central Government may, in the manner hereinafter provided-(a) fix rates of wages in respect of non-journalist newspaper employees; and (b) revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section.

The rates of wages may be fixed or revised by the Central Government in respect of non-journalist newspaper employees for time work and for piece work.

Wage Board for fixing or revising rates of wages in respect of non-journalist newspaper employees

Section 13C states that for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of –

- (a) three persons representing employers in relation to newspaper establishments;
- (b) three persons representing non-journalist newspaper employees; and
- (c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

Application of certain provisions

According to section 13D, The provisions of sections 10 to 13A shall apply to, and in relation to, the Board constituted under section 13C, the Central Government and non-journalist newspaper employees, subject to the modifications that –

- (a) the references to the Board and working journalists therein, wherever they occur, shall be construed respectively as references to the Board constituted under section 13C and to non-journalist newspaper employees;

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- (b) the references in sub-section (3) of section 11 to section 9 shall be construed as a reference to section 13C; and
- (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

Constitution of Tribunal for fixing or revising rates of wages in respect of non-journalist newspaper employees

The provisions of section 13DD overrides the other provisions of the Act. It states overriding power of the Central Government to constitute a Tribunal if it is of opinion that the Board constituted under section 13C for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act has not been able to function (for any reason whatsoever) effectively, and in the circumstances, it is necessary so to do. It may do so by notification in the Official Gazette. The Tribunal shall consist of a person who is, or has been, a Judge of a High Court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of non-journalist newspaper employees under this Act.

The provisions of sections 10 to 13A shall apply to, and in relation to, such Tribunal, the Central Government and non-journalist newspaper employees, subject to the modifications that –

- (a) the references to the Board and working journalists therein, wherever they occur, shall be construed respectively as references to the Tribunal and to non-journalist newspaper employees;
- (b) in sub-section (3) of section 11, –
 - (i) the reference to the office of Chairman or any other member of the Board shall be construed as a reference to the office of the person constituting the Tribunal; and
 - (ii) the reference to section 9 shall be construed as a reference to sub-section (1) of this section; and
- (c) the references in section 13 and section 13A to section 12 shall be construed as references to section 12 read with this section.

The Tribunal, in discharging its functions under this Act, may act on the evidence recorded by the Wage Board or partly recorded by the Wage Board and partly recorded by itself. If the Tribunal is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as it may permit, the witness shall be discharged.

On the constitution of a Tribunal, the Board constituted under section 13C and functioning immediately before such constitution shall cease to exist and the members constituting that Board shall be deemed to have vacated their offices.

It is provided that any interim rates of wages fixed by the Central Government under section 13A read with section 13D in respect of non-journalist newspaper employees and in force immediately before the constitution of the Tribunal shall remain in force until the order of the Central Government under section 12 read with this section comes into operation.

APPLICATION OF CERTAIN ACTS TO NEWSPAPER EMPLOYEES

Chapter III of the Act makes certain enactments applicable to the newspaper employees for the purpose of giving protection to them. Industrial Employment (Standing Orders) Act, 1946 and The Employees' Provident Funds Act, 1952 shall apply to every newspaper establishment wherein twenty or more newspaper employees or persons are employed respectively.

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The Industrial Employment (Standing Orders) Act, 1946 to apply to newspaper establishments

According to section 14, the provisions of the Industrial Employment (Standing Orders) Act, 1946, as in force for the time being, shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the aforesaid Act has been applied by a notification under sub-section (3) of section 1 thereof, and as if a newspaper employee were a workman within the meaning of that Act.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to apply to newspaper establishments

Section 15 makes the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, as in force for the time being, mandatory applicable to every newspaper establishment in which twenty or more persons are employed on any day, as if such newspaper establishment were a factory to which the aforesaid Act had been applied by a notification of the Central Government under sub-section (3) of section 1 thereof, and as if a newspaper employee were an employee within the meaning of that Act.

MISCELLANEOUS

Chapter IV of the Act provides for certain important safeguards to the newspaper employees.

Effect of laws and agreements inconsistent with this Act

Section 16 nullifies the effect of an agreement made, in disregard of the provisions of the Act, by a newspaper employee. It says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. However, if such an agreement etc., is more favourable to the newspaper employee in respect of a matter, he can receive such benefits in respect of that matter.

Employer not to dismiss, discharge, etc., newspaper employees

Section 16 A makes it sure that no employer, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismisses, discharges or retrenches any newspaper employee.

Recovery of money due from an employer

In pursuance to the provisions of section 17, where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him. If the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

The Labour Court shall forward its decision to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

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Rule 36 provides that an application under section 17 of the Act shall be made in Form 'C' to the Government of the State, where the Central Office or the Branch Office of the newspaper establishment in which the newspaper employee is employed, is situated

The State Government concerned (before whom the application for recovery is made) will refer the question as to the amount due to a Labour Court, and the latter upon reaching its decision will forward it to the former, which will then direct the Collector to recover such amount (Samarjit Ghosh vs Bennett Coleman & Co (P) Ltd. 1987, 71 FJR 176)

Following the provisions of section 17 an amount due to a newspaper employee from an employer may be recovered by him through the government. The amount shall be recovered in the same manner as the arrears of land revenue are recovered. In case there is any dispute regarding the amount, the state government may, on its own motion or upon application made to it, refer the matter to a Labour Court constituted by it under the Industrial Disputes Act, 1947.

Maintenance of registers, records, and muster-rolls

Section 17 A of the Act provides that every employer in relation to a newspaper establishment shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

Ministry of Labour & Employment vide Notification dated February 21, 2017 for ease of compliance of Labour Laws reduced the number of Registers to be maintained to 5.

The 5 (five) types of combined registers required to be maintained under the Act now are:

1. Employee Register (Form-A)
2. Wage Register (Form-B)
3. Register of Loans and Recoveries (Form-C)
4. Attendance Register (Form-D)
5. Register of rest/leave/leave wages under The Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1957: (Form-E).

Inspectors

In pursuance to section 17B, the State 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 may define the local limits within which they shall exercise their functions.

The Inspector so appointed may for the purpose of ascertaining whether any of the provisions of this Act or of the Working Journalists (Fixation of Rates of Wages) Act, 1958 have been complied with in respect of a newspaper establishment –

- (a) require an employer to furnish such information as he may consider necessary;
- (b) at any reasonable time enter any newspaper establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the newspaper establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;