

**विधायी विभाग**  
**Legislative Department**

विधि और न्याय मंत्रालय  
Ministry of Law and Justice

**REPORT OF THE COMMITTEE TO  
IDENTIFY THE CENTRAL ACTS WHICH  
ARE NOT RELEVANT OR NO LONGER  
NEEDED OR REQUIRE REPEAL/  
RE-ENACTMENT IN THE PRESENT  
SOCIO-ECONOMIC CONTEXT**

**VOLUME IV  
(PART-I)**

**[COPIES OF REPORT/EXTRACTS OF  
REPORTS OF VARIOUS  
COMMISSIONS/SOCIETIES CITED IN THE  
REPORT OF THIS COMMITTEE]**

**OCTOBER, 2014**

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**REPORT  
OF THE COMMISSION  
ON  
REVIEW OF ADMINISTRATIVE LAWS**

**VOLUME - I**



**DEPARTMENT OF ADMINISTRATIVE REFORMS  
AND PUBLIC GRIEVANCES**

**MINISTRY OF PERSONNEL,  
PUBLIC GRIEVANCES AND PENSIONS**

**GOVERNMENT OF INDIA**

**SEPTEMBER 1998**

**ERRATA**

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P. C. Jain IAS (Retd.)  
Chairman

Commission on Review of  
Administrative Laws

Dated : September 30, 1998

Dear Shri Prabhat Kumar,

I have great pleasure in forwarding herewith the Report (in two Volumes) of the Commission on Review of Administrative Laws.

2. The short time available to the Commission, the constraints under which it functioned and to which a reference in detail has been made in the Report and the formidable nature of the task assigned to it hardly need to be emphasised here.

3. In the absence of an universally accepted definition of the term "Administrative Laws", the Commission has considered nearly all those Central laws which were considered by various Ministries/Departments for purposes of review, repeal and amendments, as well as those which were mentioned by the user groups and were also relevant to our terms of reference, particularly, (b) and (c).

4. There is a perception among many people that despite a fairly extensive State intervention and a regulatory regime in our country there is no real deterrence and effective enforcement for the benefit of society in general and the average citizen in particular. Be that as it may, it can hardly be disputed that multiplicity and complexity of laws, rules, regulations and procedures and lack of adequate information about these, is one of the major reasons for their misuse by officers and staff, particularly at the cutting-edge level, resulting in delays, harassment and corruption on a massive scale. The cost of all these consequences to the society and to the country's growth is enormous. Thus any further delay in bringing about adequate reforms in such a regulatory regime can be at our own peril. The Commission has been able to recommend in its Report repeal of over 1300 Central laws out of a total of approximately 2500 such laws.

5. Equally important, if not more, is the urgent need to bring about a radical change in the mindset of administration at almost all levels. Officers are not accessible to people for whom they exist. Grievance redressal mechanism exists only on paper. Complaints are either not received or are not acted upon. Reply to the complaints is an



exception rather than the rule, particularly in the public sector banks, organisations providing public utilities, e.g. electricity, water, street lighting, sanitation, sewerage, telephones etc. Intervention of an MP/MLA/MLC or publication of the complaint in an important newspaper, or payment of speed money do help. The helplessness of an average citizen is to be objectively assessed to be believed. A system of 'open house' to be held on fixed dates, announced in advance, periodically at district, tahsil and block levels might meet, to a considerable extent, the requirement of motivating the functionaries at the cutting-edge level towards their duty to the public, and in the direction of taking concrete steps for trying to ensure a responsive administration. If, however, motivation and orientation do not bring about the desired improvement in the mindsets, there is no better alternative than to strictly enforce individual accountability for delays and harassment within specified time frames without any compunction.

6. One more aspect needs to be highlighted. It is often said that as economic reforms proceed towards more liberalisation and globalisation, ensuing competition would take care of the problems of deficiency in products and services. Such a perception obviously has its limitations in the conditions of our country. Lower middle class-what to say of poor people, cannot afford to change their consumer durables, such as televisions, refrigerators, washing machines, air-conditioners, generating sets, two and four wheelers, etc. on coming to know that better products have since come in the market, or that there are manufacturers or suppliers who provide better after-sales service. For majority of people these are virtually lifetime purchases. Thus it is imperative that manufacturers and business in their own long-term interests adopt standards and practices which are ethical, and that if they do not do it, they are organisationally made to set up, at their own cost, voluntary disputes settlement mechanisms. Professional associations and bodies should not work only in the interest of their members, but also discharge their duties towards the society in general and the aggrieved persons in particular.

7. Before concluding, I must place on record my personal gratitude towards my colleagues in the Commission. Mr. H.D. Shourie, whom I call a young man of 87 years, has greatly helped the Commission with his insight into the problems of consumers and his personal experience in the area of public interest litigation. Mr. S. Ramaiah has made highly valuable contribution to the task of cleansing the statute book. Dr. P.S.A. Sundaram our Member Convenor, is a man of academic pursuits with strong commitment to administrative reforms. He has been a driving force for the Commission to be able to do what it has done in this short period.

8. I would also like to place on record my personal appreciation of the excellent support provided to the Commission by the Secretariat of the Deptt. of Administrative Reforms & Public Grievances led by Shri Nikhilesh Jha, Director and all his colleagues.

With warm regards,

Yours Sincerely,

Sd/=  
(P.C. Jain)

**Shri Prabhat Kumar,  
Cabinet Secretary,  
Govt. of India,  
New Delhi.**

# Report of the Commission on Review of Administrative Laws

## INTRODUCTION

A Commission on Review of Administrative Laws was set up with the approval of the Prime Minister on 8<sup>th</sup> May, 1998, vide Office Memorandum No. K-11022/19/98-P issued by the Department of Administrative Reforms and Public Grievances. Following is the composition of the Commission :

- |     |  |                 |
|-----|--|-----------------|
| (1) | Shri P.C. Jain, Retired Secretary to the Government of India   | Chairman        |
| (2) | Shri H.D. Shourie, Director, Common Cause  | Member          |
| (3) | Shri S. Ramaiah, Retired Legislative Secretary, Government of India  | Member          |
| (4) | Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms & Public Grievances | Member-Convenor |

2. The terms of reference of the Commission were as follows:-

- a) To undertake an overview of steps taken by different Ministries/Departments for the review of administrative laws, regulations and procedures administered by them, and the follow-up steps thereafter, for repeal and amendment.
- b) To identify, in consultation with Ministries/Departments and client groups, proposals for amendments to existing laws, regulations and procedures, where these are in the nature of law common to more than one department, or where they have a bearing on the effective working of more than one Ministry/Department and State Governments, or where a collectivity of laws impact on the performance of an economic or social sector, or where they have a bearing on industry and trade.
- c) To examine, in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable.
- d) To make, on the basis of this exercise, recommendations for repeal/amendments of laws, regulations and procedures, legislative process, etc.

3. Subsequently, the Government asked the Commission also to look into the report of the Inter-Ministerial Committee on Cyber Laws.

4. The Commission was initially required by the Government to submit its report within a period of three months. Subsequently, the period was extended by the Government till the end of September 1998. Copies of the Office Memorandum constituting the Commission as well as the subsequent Office Memorandum extending its tenure are enclosed as *Annexure-1*.

5. The Commission held all its meetings in the Committee Room of the Department of Administrative Reforms and Public Grievances. It had 43 meetings over the period starting from third week of May 1998 till the end of September 1998. The Commission interacted with the Secretaries and other senior officials of a large number of Ministries/ Departments and Central agencies, the representatives of Chambers of Commerce and Industry, such as Confederation of Indian Industry, ASSOCHAM, FICCI and PHD Chamber of Commerce and Industry. The Commission also interacted with representatives of consumer and user groups, the Pensioners' Association in addition to joint interactive discussions with the Ministries/Departments and user groups. The Commission was also provided with reports on regulatory reform prepared by individual Ministries/Departments, the Chambers of Commerce and Industry and consumer representatives. The Commission called on Union Minister of State for Personnel Shri K.M.R. Janarathanan to ascertain Government's views on the terms of reference. The Commission also called on Justice B.P. Jeevan Reddy, Chairman, Law Commission for discussion on specific issues. As desired by the Cabinet Secretariat, the Commission forwarded an interim report on Cyber Laws after discussions with Secretary, Department of Electronics and officials of National Informatics Centre.

6. The Commission is deeply appreciative of the excellent secretarial support provided by the Department of Administrative Reforms and Public Grievances including Director – Shri Nikhilesh Jha and other officials in the Department. Apart from the arrangements for conducting all the meetings of the Commission, the Secretariat was tireless in securing for the Commission virtually all the desired information and reports from different sources. The Commission also records its appreciation on the help provided by the Consultant, Shri Gautam Banerjee, Supreme Court Advocate.

## The Statement of the Problem

7. The task entrusted to the Commission is obviously huge. As will be evident from the Terms of Reference, it comprises: overview of administrative laws and the regulations, rules and procedures under them; to formulate proposals for amendment where required; to determine specific changes required in rules and procedures in relation to certain important economic and social areas; and to identify the laws, regulations, rules and procedures which need to be repealed. The task required a much longer time and far greater preparatory work than what was available to the Commission.

8. The other problem confronted by the Commission related to the term "Administrative Law" itself. Either on the basis of Supreme Court judgements or discussions with the Law Commission, the Commission was not able to locate an acceptable definition of this term. In the books written by some Indian authors on the subject of administrative law, the term has been largely defined in terms of what is known as subordinate legislation comprising rules, regulations, statutory orders and administrative instructions, flowing from the Ministry/Department/Central agency on the strength of the authority conferred by a statute on the executive. This is the broad sense in which the Parliamentary Committees on Subordinate Legislation review the various rules and regulations framed under different Central Acts. The famous work of Lord Hewart on "New Despotism", referring to the uncontrolled and despotic nature of the exercise of delegated power of the executive in U.K., also gives the same connotation to administrative law.

9. One way to resolve the problem was to interpret administrative law as distinct from constitutional law, in the sense of the laws and regulations administered by different Central Ministries/Departments by virtue of legislative authority, but subject to judicial review. It would also include the complex of bodies responsible for dispute resolution, ranging from civil courts, tribunals, quasi-judicial authorities, to officials exercising judicial powers, etc. From this interpretation, the Commission would not be confined merely to looking at subordinate legislation, but would also be required to look at related main legislations wherever it is necessary. In the context of containing proliferation of the problems of the people, which have inevitable relation to the administration of laws and procedures, the Commission considers it appropriate to focus attention on those regulations and procedures which affect people the most, and where alterations and amendments are required in the interest, especially, of industry, trade commerce, environment, housing, real estate and consumer protection.

10. While following this approach, the Commission was seriously constrained by the fact that it did not have access to a complete set of subordinate legislation in the form of rules, regulations and administrative instructions, issued under different Central Acts, by individual Ministries and Departments. It appears that the Legislative Department itself did not have such a complete compilation of rules, regulations and procedures issued by the Ministries. The problem is compounded by the fact that, in terms of certain laws like the Essential Commodities Act, as many as 13 Ministries have issued over 150 orders. The Expert Groups and Task Forces set up by most Ministries and Departments have chosen to concentrate on amendments to laws, and not on the rules and regulations. Another handicap was that the Central Ministries did not have full information about the rules and regulations issued by State Governments by virtue of the authority vested in them by Central laws such as Prevention of Food Adulteration Act, Drugs and Cosmetics Act, labour legislations, etc. The Commission was further struck by the fact that, excepting a few Ministries, the Ministries and Departments did not project the inter-related nature of legal and regulatory reform, and the extent to which the laws administered by other Departments impacted on their own efforts to improve the regulatory conditions in their sectors. This isolated approach was strengthened by the fact that different aspects of operation of particular sectors like industry and trade were fragmented among Departments in the same Ministry or among different Ministries. The Central agencies of direct and indirect taxation were more guided by revenue realisation, and did not always see eye to eye with the promotional Departments in charge of industry and trade. The Commission was concerned to find that there has been little effort to converge laws and regulations administered by different Departments, including the Legislative Department, in order to address the problems of industry and users in a focussed manner. The effort made in this regard, as a part of National Housing Policy, could be undertaken by other Ministries acting in concert.

11. In various important spheres in the Concurrent List, such as labour welfare, land acquisition, levy of stamp duty, registration of instruments, etc., State Governments have enacted their own legislation, and have provided their own procedures for enforcement. Thus, a strategy for tackling the procedural aspects of constraints faced by industry, trade and consumer groups can emerge only after examining procedures and related laws at the state level. The State Governments, on the other hand, have been representing to the Central Government about the effect on industry and trade of Central laws and procedures in the field of environmental protection and forest, the Urban Land (Ceiling and Regulation) Act, Boilers Act, general laws like Transfer of Property Act, and sectoral laws in the areas of Power, Telecommunications, Railways and Surface Transport. The entire question of Centre-State interface in the

administration of laws and regulations is beyond the scope of this report. It has also not been comprehensively addressed either by the Law Commissions or the Task Forces. The Commission feels that this important exercise may be taken up immediately by the Inter-State Council with the help of an Expert Group comprising Central and State officials and legal experts. Meanwhile, State Governments may take up the task of integrating their laws on the same subject applicable to different regions of a State, such as Vidarbha and other regions in Maharashtra, Acts in old Berar area, Pre-Reorganisation Acts in different parts of Kerala etc. As noted later, the State Governments also may consider incorporating sunset provisions in their operative laws, wherever possible.

12. In the case of the Central Government Committees, the Commission noted that the Fifteenth Law Commission has been asked by the Government, inter-alia, to look at the review/repeal of obsolete laws, to consider in a wider perspective suggestions given by Expert Groups in various Ministries/Departments, and to consider references made to the Law Commission by Ministries in respect of legislation having a bearing on the working of more than one Ministry/Department. It is understood that a number of Ministries have forwarded specific suggestions to the Law Commission on these issues, and that the Commission has sent an interim report to the Government. Given the limited inputs received by the Commission on the issue of interrelated legal reform, and the problems faced by State Governments, this report has naturally addressed the issues on the basis of available material.

13. Another issue which is of paramount importance in a democratic country with a large number of people below the poverty line, and over 70% of the population living in rural areas, is the entire complex of laws, regulations and procedures which affect the quality of life of poor people and disadvantaged sections of the population, their access to basic services like education, healthcare and nutrition, and their inability to take advantage of the opportunities and benefits provided under various schemes administered by the Central and State Governments, financial institutions, etc. More than the question of securing access to basic services is often the basic question of survival and economic activity itself for sections of the population like the tribals, poor women in many remote villages or even cities, the tardy implementation of land reform and tenancy legislation, difficulty of women in the inheritance of properties, violence and oppression of majority groups, insensitive attitude of administration, etc. The problem has been highlighted in a number of studies made by officials and voluntary groups in different States. Specific proposals in respect of shelter for the poor, security of tenure for slum dwellers, rehabilitation of hawkers and pavement dwellers, assistance

to tribal women to form associations, etc. have been mooted. However, a widespread effort to amend the laws, regulations and procedures to focus specifically on their disabilities, or to reform procedures and inherent political factors to ensure the flow of assured benefits to the poor, or to sensitise banks and financial institutions for making prompt loans to the poor are yet to be initiated on a larger scale at the Central and State level. Again, for want of specific submissions on the subject by individual Ministries and Departments, the Commission has not been able to address the issue, but would like to suggest a separate deeper study by the Government as soon as possible. The Law Commission could also consider this issue as it falls within its present terms of reference.

## APPROACH

14. Against this background, the Commission approached the overall question of legal and regulatory reform from the point of view of :

- a) The repeal of old and dysfunctional legislation.
- b) Unification and harmonisation of statutes and regulations.
- c) Procedural law and dispute resolution.
- d) Subordinate legislation and procedures of Government agencies.
- e) Proposals for necessary new legislation in the present context of economic and social reform, and compliance with international Conventions.
- f) The inter-face of State legislation.

15. It has been noted by the Commission that it is only in the last few years that the importance of legal and regulatory changes for the success of macro economic policies and people-friendly administration have been universally recognised by Central and State Governments. What is important is that there is a consensus amongst the political leadership as reflected in the Statement issued after the Conference of Chief Ministers held in May 1997. The progress so far on statutory reform has been on three fronts. Firstly, there are changes found necessary because of multilateral agreements such as the Conventions of World Trade Organisation and bio-diversity. These include proposed amendments in the Patents Act, 1970 and Copyright Act, 1957. Secondly, there are changes connected with deregulation and the reduction of State involvement in the number of sectors such as recent legislation in the power and highways sector, proposed amendments in the areas of telecommunications, insurance and banking. Thirdly, there are legislative changes which are part of economic reform as well as responses to the problems of abuse of the existing system such as the proposed repeal of the FERA and Urban Land (Ceiling and Regulation Act) 1976 an introduction of Money-Laundering Bill, 1998, an introduction of Amendments to Income Tax Act, etc. The related set of amendments flow from the perception of a need for review of a structure of penalties and prosecution such as Essential Commodities Act, 1955 and FERA. While some amending Acts have been passed quickly by Parliament, number of important Bills are still pending before either of the two Houses such as the Sick Industrial Companies (Special Provisions) Amendment Bill, the Urban Land (Ceiling and Regulation)



Amendment Bill, the Delhi Rent Control Amendment Bill, the Essential Commodities Amendment Bill, the Code of Civil Procedure Amendment Bill, the Companies Amendment Bill, Insurance Regulatory Authority Bill, the Conservation of Bio-diversity Bill, and a number of Bills related to the organisational structure for coffee, aquaculture, narcotic drugs and psychotropic substances, National Cooperative Development Corporation, Multi-State Cooperative Societies, etc. There are some Acts which have been passed but not notified such as the Hire-Purchase Act and the Delhi Rent Control Act. The time available to Parliament to take up and conclude legislative business quickly will be a critical factor in promoting reform of legislation in the country.

## **RECOMMENDATIONS ON TERMS OF REFERENCE**

16. We shall now outline the specific observations and recommendations on various terms of reference:

### **16.1 THE OVERVIEW OF STEPS TAKEN BY DIFFERENT MINISTRIES/ DEPARTMENTS**

With the help of the Secretariat, the Commission has been able to obtain from 45 Ministries/Departments, the present status of review of laws and orders administered by them. A statement containing present status and the observations of the Commission in respect of the suggestions made by Task Forces/Expert Committees appointed by Ministries/Departments is placed at Statement 1 (Vol. II). It has not been possible within the given time, nor found necessary, to comment on specific legal provisions for amendments in all the Central laws numbering 1079 (the exact number of Central laws at present is not clear although the Legislative Department mentioned that the entire set of laws has been placed on the internet). Some referred to the number as 2,000 inclusive of Regulations. The position is elaborated in Para 16.4.. The Commission does not consider it necessary, given the limited managerial time with the Government and the pressing business before Parliament, to take up simultaneous amendment to all the Central laws. It would be more useful to focus attention on about 109 important laws, from the point of view of decision-making and impact on users, that would require significant changes. Given the focus of the Prime Minister in suggesting repeal/amendment of administrative laws and regulations during his address to the Confederation of Indian Industry, the perspective of industry, trade and the consumers in respect of laws affecting their transactions between themselves and the Government, as well as at the global level, ought to dictate the selection of the priority list for enactment. While many of these Acts are included in the review of the status of action taken by the Ministries in the Statement 1 (Vol II), many have been added by the Commission. The list of these important Acts is enclosed separately in Appendix-E and also they are highlighted in the status of action.

16.1.1 As mentioned earlier, the specific details of proposed amendments to legislations are given by very few Ministries/Departments in the course of their reply to the Secretariat. The reports of the Expert Committees/Task Forces are also available only in the case of a few like the Department of Consumer Affairs, Ministry of Mines and the Department of Agriculture and Cooperation. It is possible that number of Ministries have not given the details of amendments since they are reflected in the Cabinet Note under submission, but it would have been useful if at least the nature of amendments had been indicated by these Ministries. The Commission noted that action has been initiated/taken already by concerned Ministries/Departments to amend/replace the following legislations :

- i. Air Corporations Act, 1953.
- ✓ ii. Agricultural Produce Cess Act, 1940.
- iii. The Agricultural and Processed Food Products Export Development Authority Act, 1983.
- iv. Advocates Act, 1961.
- v. Arms Act, 1959.
- ✓ vi. Bankers' Books Evidence Act, 1891 (Bill drafted).
- vii. Bureau of Indian Standards Act, 1986.
- ✓ viii. Banking Regulation Act, 1949 (Bill drafted).
- ✓ ix. Central Excises and Salt Act, 1944.
- x. Central Sales Tax Act, 1956.
- ✓ xi. Code of Civil Procedure, 1908 (Bill introduced).
- xii. Code of Criminal Procedure, 1973 (Bill being drafted).
- xiii. Companies Act, 1956 (for repeal and replacement).
- ✓ xiv. Coffee Act, 1942.
- xv. Contract Labour (Abolition and Regulation) Act, 1970.
- xvi. Child Labour (Prohibition and Regulation) Act, 1986.
- xvii. Consumer Protection Act, 1986.
- xviii. Customs Act, 1962.
- ✓ xix. Drugs and Cosmetics Act, 1940.
- ✓ xx. Destructive Insects and Pests (DIP) Act, 1914.
- xxi. Dentists Act, 1948.
- ✓ xxii. Designs Act, 1911.
- xxiii. Electricity (Supply) Act, 1948 (Bill passed).
- xxiv. Environment (Protection) Act, 1986.
- ✓ xxv. Essential Commodities Act, 1955 (Bill introduced).
- ✓ xxvi. Evidence Act, 1872.
- xxvii. Emblems and Names (Prevention of Improper Use) Act, 1950.

- xxviii. Explosives Act, 1864.
- xxix. FERA Act, 1973 (for repeal and replacement).
- xxx. Forward Contracts (Regulation) Act, 1952.
- xxxi. Foreign Trade (Development and Regulation) Act, 1992.
- xxxii. Hire Purchase Act, 1972 (Act not yet notified).
- xxxiii. Income tax Act, 1961 (some amendments already passed).
- xxxiv. Indian Penal Code.
- xxxv. Indian Stamp Act, 1899 .
- xxxvi. Indian Telegraph Act, 1885.
- xxxvii. Industries (D and R) Act, 1951.
- xxxviii. Prisons Act, 1894.
- xxxix. Indian Boilers Act, 1923.
- xl. Indian Medical Council Act, 1956.
- xli. Industrial Disputes Act, 1947.
- xlii. Insecticides Act, 1968.
- xliii. Land Acquisition Act, 1894.
- xliv. Multi State Cooperative Societies Act, 1984.
- xlv. Marine Products Export Development Authority Act, 1972.
- xlvi. Medical Termination of Pregnancy Act, 1971.
- xlvii. Mines and Minerals (Regulation and Development) Act, 1957.
- xlviii. Merchant Shipping Act, 1958.
- xlix. Multi-modal Transportation of Goods Act, 1993.
- i. National Cooperative Development Corporation Act, 1962.
- ii. Notaries Act, 1952.
- iii. Official Secrets Act, 1923.
- iiii. Prevention of Food Adulteration Act, 1954.
- liv. Patents Act, 1970.
- lv. Produce Cess Act, 1966.
- lvi. Payment of Bonus Act, 1965.
- lvii. Payment of Wages Act, 1936.
- lviii. Reserve Bank of India Act, 1934.
- lix. Rubber Act, 1947.
- lx. Standards of Weights and Measures Act, 1976.
- lxi. Standards of Weights and Measures (Enforcement) Act, 1985.
- lxii. Spices Board Act, 1986.
- lxiii. Tea Act, 1953.
- lxiv. Trade and Merchandise Marks Act, 1958.
- lxv. Trade Unions Act, 1926.

16.1.2 A number of Ministries have moved proposals to introduce new laws to meet the WTO obligations such as the appointment of an Expert Committee to consider amendments to Patent Law and Copyright Law, and to fill the missing gaps in legislation such as trade secrets. In order to reduce the controls on industry and trade and to minimise the curbs on movement of essential commodities, a number of orders and rules have been repealed, or taken up for simplification by Departments like Agriculture and Cooperation, Sugar and Edible Oil, and the Ministry of Mines. Many Central agencies have continued to pursue action to amend and simplify procedures, issue consolidated instructions, open websites on the internet, reduce forms and returns, integrate processing of matters involving inter-departmental consultation, etc. The Department of Industrial Policy and Promotion has been successfully operating an inter-Ministerial mechanism for the sanction of industrial licences and approvals for foreign investment.

16.1.3. While the Commission was encouraged by the fact that many Ministries/ Departments are contemplating amendments to legislation and orders, it was not clear as to how long it would take for them actually to bring the amending legislation, rules and orders before Parliament or carry out the repeal/amendment of regulations, rules and orders. The latter process ought to be less time consuming since it does not require approval of Parliament. It was, however, mentioned that even this process takes considerable time for concurrence by the Law Ministry, subsequent translation and notification. In some cases, the Commission had the benefit of only views of the Expert Group, but it is not clear as to whether the Department has taken a decision on the report of the Expert Group and what if any and the proposed amendments. The Departments like Food and Civil Supplies which deal with State Governments had proposed initial consultations with State Governments for the review of rules and regulations relating to food grains policy/ procedures but it was not indicated when this consideration would be completed.

16.1.4. Some specific points relating to other areas may be noted to supplement the Commission's observations in the overview statement. There is firstly the question of the continued justification of regulation and supervision under the IDR Act over licensed industries, when they are liable to control by other Central agencies under sectoral laws. Secondly, there is the oft-repeated exercise of legislation and re-legislation with every change in the incumbency of the Secretary and Minister in charge of a Department. Thirdly, legislation in certain areas like labour seems to call for early tripartite discussions to evolve a consensus, while in other areas like Civil Aviation or Environment, a national policy has to emerge first. Fourthly, there is the criticality of nodal responsibility by one designated agency in areas like Essential Commodities Act, Drugs manufacture and pricing, food adulteration and standards, etc., to whom other Central agencies would pay adequate regard for harmonising their own orders.

16.1.5 A number of Ministries have moved energetically to introduce new laws to meet the needs of economic reform, or to remove disabilities faced by sections of the population. These proposals include Money Laundering Bill, FEMA Bill, Electricity Conservation Bill and Electricity Regulatory Authority Bill (passed by Parliament). A number of orders and rules have been repealed or taken up for repeal. Considerable action has been taken to amend and simplify procedures, issue consolidated instructions, reduce forms and returns, integrate inter-departmental consultation on approvals, etc.

16.1.6 Some Acts have become obsolete due to the pace of development. The Copyright Act, inter-alia, had to be amended in 1994 to define the special rights of the author of the work to authorship or to claim damages. The Electricity (Supply) Act, 1948 was amended only recently to define transmission services independently, and to bring the Act in line with power sector reform. The Patents Act, 1970 requires urgent amendment to bring it in line with WTO obligations. A number of laws need changes to enable electronic data and fund transfer, digital rights, computer crime and electronic commerce, simply because these developments have overtaken the scheme of the Acts. The emergence of multi-storeyed construction and apartment ownership and commercial condominiums has been blocked by the concept of title tied to land ownership rather than alienable occupancy rights, and this has led to independent laws to provide for apartment ownership. Definitions have to be changed in many Acts such as for Aircraft, Electricity Supply, Telegraph or even the connotation of document. New forms of instruments in the financial sector and capital market, and of conveyance and mortgage, and innovative ways of evading registration of documents, have necessitated amendments in relevant legislations. The tortuous process of foreclosure of mortgage and huge delays suffered by financial institutions have led to alternate laws for debt recovery. The entire process of Alternate Disputes Resolution is more a commentary on the failure of the legal system to use the Civil Procedure Code for speedy disposal of civil cases.

16.1.7 Even if statutory reform is taken up, it will be of little utility in the expeditious and proper disposal of cases without the reform of procedural laws, and operative general laws like Transfer of property Act, 1882, Contract Act, 1872, Limitation Act, 1963 as well as Land Acquisition Act, 1894 and the Environment (Protection) Act, 1986, which affect the functioning of different sectors. Then, there are demands for liberalisation of older laws like EC Act containing excessive provisions for penalties and minimum punishment, and, on the other hand, steps to enable the enforcement agencies to have greater probability of prosecution and conviction in the face of devious methods employed by evaders of law. There are complications introduced by parallel State laws in Concurrent List on related fields or rules under Central Acts, either by way of powers to appropriate Government to make rules or by way of delegated powers under Central Act.

16.1.8 The recommendations on repeal of certain laws and amendments to identified Acts follow from these considerations. These are described separately in Para 16.4.

16.1.9. Among the Terms of Reference, the issue of détermination of repeal and amendments in the laws is obviously of primary importance, and the Commission has considered it necessary to highlight it at this stage before putting forth our recommendations. There are now nearly 2500 Central laws in force. While our focus in this study has been on the Central laws, it is worthwhile keeping in view the fact that there is not even a rough estimate available about the number of laws operating as State laws. In one State alone the number is stated to be of the order of 1100. There might, thus, be 25000 to 30000 laws of States. Such proliferation of the laws and ineffective enforcement of large numbers of these Laws inevitably lead to various problems of functioning of Government and the administration of justice. These contain, among them, laws enacted a century ago or numerous decades ago. They are antique, and have long outlived their utility and are now anachronisms. Particulars of analysis of these outdated Central laws appear in Para 16.4.

16.1.10. Another matter of major importance connected with the repeal of obsolete and outdated laws is the amendment of those laws which are old but have a bearing on certain religious customs and practices and rights which cannot be disregarded. These laws are contained in Appendix D.

The Commission feels that all such laws should be urgently examined by constituted groups of experts who should have the competence and expertise to re-draft them to bring them to be in accord with the present day requirements. These should, thus, be given the new garb, retaining the basic rights and privileges embodied in the old statutes.

16.1.11 Connected with the requirements of thus giving new garb to such antique laws which in essence have to be retained, the Commission is of the definite view that each of the various Pre-Constitution statutes which have to be retained on the Statute Book, should be reviewed in order to bring their provisions in accord with the present day requirements. The overview has referred to the need for amendments in the case of many Acts. Presently, most of such Statutes are loaded with amendments which from time to time have been necessitated. Indian Penal Code, as an instance, was enacted as long ago as 1860; it continues to be in force as such, having been amended quite a few times. Civil Procedure Code, which prescribes the entire gamut of procedures determining the administration of justice in the civil courts, and was enacted in 1908, has had about 100 amendments. The amendments inevitably make the

phraseology of relevant clauses complex, making them open to various interpretations by legal experts and complicating the processes of justice. Indian Electricity Act, Indian Posts Act and Indian Telegraph Act were enacted many decades ago which, in the context of far reaching changes that have come about in these fields, give the feeling of these enactments being anachronistic. The Commission hopes that all such laws will be included in the list of those which require to be re-drafted by Groups of Experts. Thereafter, relevant rules, regulations and procedures can be recast. In this context, the Commission refers particularly to a practice now adopted in the U.S.A. which comprises of incorporation of "sunset provision" in the Statute which would automatically make the Statute inoperative after the date prescribed for the purpose in the Statute. This would of course primarily apply to laws of a temporary nature or dealing with dynamic situation such as that in infra-structure. This would inevitably persuade the concerned authorities to take necessary steps to re-enact the provisions of such Statute with suitable and requisite modifications which would bring the Statute up-to-date.

## 16.2 HARMONY AND INTEGRATION

16.2.1 We need to look at laws harmoniously from the point of view of groups like domestic and foreign investors, trade, industry, consumer protection, builders, exporters importers, etc. This is as much an issue of unification and harmonisation of laws, as of assessing the impact of individual provisions of different Acts with reference to the objectives of specific sectoral policies and the need matrix of the stakeholders. Unfortunately, this has not been addressed by most Ministries in the course of review of laws and regulations, barring the Ministry of Urban Affairs and Employment. The lack of harmonious approach has a number of facets such as not looking at Statutes enacted at different points of time in the same subject area or having impact on other sectors, such as Labour Laws stretching from 1855 to 1991, and informal sector, or the Statutes from 1860 to 1971 covering currency and coins; varying definitions in the Statutes such as definitions of child, workmen, employee, wages, factory and industry in Labour Laws, and the varying concepts of compensation in laws providing for acquisition of land and property at Central and State level; proliferation of orders under one Act by different Ministries, sometimes with differing definitions, as in the case of EC Act in Central Government or the rules under Labour Laws by States, or the Prevention of Food Adulteration Rules in States, or the individual practices of State Pollution Control Boards; or the laws on the subjects in the Concurrent List by Central and State Governments and transactions on different States being subject to different treatment. On a different footing, there are contrasting perspectives of the Government, industry and the consumer/users on the implementation of laws, rules and procedures such as the City Master Plan, or EC Act, Pollution Control, Banking Regulations and Building Regulations, Capital Market Regulation, Consumer Protection, Land Acquisition, Industrial Disputes, Contract Labour Abolition, Sick Industries, Registration of Societies and Control of Voluntary Agencies, nature of penalties and prosecution, dispute resolution, etc.

This is aggravated by differing approaches among different Central Ministries on important issues like EXIM policy and concessions to trade, environmental preservation, patents, land acquisition, direct and indirect taxation, consumer protection, enforcement of standards and quality, removal of regulation and barriers to entry and movement, transparency and release of information, administered pricing, privatisation, role of public sector, approach to NGOs and citizen participation. The revenue agencies like CBDT and CBEC look askance at concessions and look with suspicion on motives of trade and assessees, while Directorate General of Foreign Trade and the Department of Industrial Policy and Promotion are promotional agencies that try forever to counter biases of regulatory agencies. The Ministry of Environment and Forests has posed problems for all development Ministries and the States, as well as the industry. But, the efforts of the Ministry and public interest litigation petitions before Supreme Court seek to uphold environment quality, forests and rehabilitation over timely approval. The effect of Master Plan standards on the cost of shelter for the poor is often not seen, and has led to slums and unregulated development. Old laws create their own mindset in officials. As Keynes put it, the biggest problem before society is not original sin but uncorrected obsolescence.

16.2.2 As noted earlier, the Commission did not have the time or opportunity to interact with State officials on the reform of State laws and regulations. However, the user organisations brought to the notice of the Commission, the criticality and urgency of amending State laws and procedures in the areas of industry, trade, environment, real estate, urban development, labour, consumer protection, levy and collection of various State and local taxes, and approvals for starting different activities. This was mentioned prominently as seen from report relating to foreign investors and financial institutions in the course of their interactions with Indian delegations which visited different countries. As the State Governments account for majority of transactions involving interface of the public and the delivery of basic services, and the administration of various schemes for rural population, the State and local laws have a significant bearing on the quality of life of the population as a whole. Apart from the large body of Central laws, there are on an average 700 to 800 laws in each State besides rules, regulations and procedures framed under them. Karnataka is in fact in favour of a separate law on administrative procedures. The State Government have enacted laws in respect of subjects in the State List and Concurrent List. More importantly, many Central laws such as those relating to urban land ceiling, prevention of food adulteration, and the entire labour sector, are implemented through State agencies. Prosecution for the violations and offences under these Acts are initiated often by competent authorities in the State. Majority of inspections of factories and industrial units are carried out by State and local officials. It is these inspections which have attracted the criticism of *inspector raj*. The functional Departments of the State Governments prescribe a large number of forms and returns, and often act as outposts for Central Government Ministries like Industry. The judicial administration through the civil courts, and many tribunals set up under Central and State Acts are dependent on the State Governments for funds, infrastructure and staff. This explains the variation in the level of enforcement of Central laws such as Consumer Protection Act, 1986, labour legislation, Prevention of Food Adulteration Act, 1954, Essential Commodities Act, 1955, etc.



16.2.3 In addition to this, the functioning of the economic and social sectors is affected by State laws like Rent Control Act, parallel laws for acquisition of land and property, land revenue and land reform laws, legislation governing different utilities in the field of health, industry, housing, transport, etc., laws for town planning, municipality, building bye-laws and regulations, State and local taxation of land and property, etc. The burden, of levies on housing and real estate and the recurring costs of industries are enforced by the level of incidence of State and municipal taxes, and the systems for registration of documents. A study by National Institute of Public Finance and Policy showed how the administration of the Registration Act, 1908 and Stamp Act, 1899 in different States distort the operations of capital market and the establishment of companies, because of the differing procedures and duties.

### 16.3. CHANGES IN RULES AND PROCEDURES

16.3.1 The Commission has been asked to examine in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable. The Commission was provided by the Secretariat with a paper on the subject of Regulatory Reform for Responsive Administration in India, which was written by the Member-Convener. Copy of the paper is enclosed at **Annexure-2**. The paper brings out the context of regulatory reform in the light of people-friendly and responsive administration. It has also provided the historic background of reform measures in the past including the exercise undertaken by different Central Government Departments at the instance of the Finance Ministry in 1995.

16.3.2 The Commission received considerable inputs from the Chambers of Commerce and user organisations on various regulatory and procedural aspects covering the Industries (Development and Regulation) Act, Company Law, foreign investment, environment, excise, direct taxation, banking, investor protection, labour, power, working of the judicial system, urban development and housing authorities, and health authorities. Suggestions were also received from Consumer Coordination Council and the Consumer Education and Research Council, Ahmedabad as well as some members of the public. The Pensioners' Association presented problems relating to treatment and reimbursement of expenses in the CGHS. The Chambers of Commerce drew attention to the excessive penalties provided in different Statutes and the scope for arbitrary prosecution and award of punishment under different laws. The Small Scale Industries represented specific difficulties faced at the State level. The Commission had the opportunity to interact with Secretaries and senior officials of different Ministries/Departments and Central agencies. It was able to obtain oral and written responses to various suggestions received by the Commission as well as specific queries made by the Commission except in a few cases. The list of persons and organisations with whom the Commission interacted, is at List 1 **Vol.II**.

16.3.3 In order to facilitate the analysis of the issues, the views of the concerned Ministry/Department, the observations of the Commission, and the subject areas have been grouped in a number of statements relating to power, industry, foreign investment, foreign trade, company laws, environment, Central excise and customs, income tax, labour, banking, housing and real estate, consumer protection, and health. Separate notes received from railways, surface transport and telecommunications departments are also *annexed (Notes 1,2 & 3 – Vol.II)* These statements contain suggestions for specific changes in existing rules and procedures so as to make them objective and more user friendly. As mentioned earlier, the problem is not only that of laws and regulations, but also of the existing administrative procedures and practices, requirement of approvals from multiple agencies, centralisation of authority in the Central or State Government, lack of delegation and decentralisation, conflicting instructions to different Departments dealing with industry and trade, lack of transparency, inter-manoeuvre of location and time limits, inaccessibility of authorised officials, problem of accessing necessary forms and returns, and above all the unhelpful and apathetic attitude of officials at different levels. It is encouraging to note recent instructions by Central and State Governments about the widespread and easy access of public to information about regulations and procedures, circulars of different Departments, and details of decisions on land acquisition, award of tenders, issue of licences, etc. This has been facilitated by the thrust for computerisation and the use of internet, and the access of the public to information provided on the website as well as information counters opened by different Departments. It is hoped that the enactment of the Freedom of Information Act will confer enforceable Right to Information for the citizens.

#### 16.3.4 Evaluation

Despite this long narration of the activities reported by Central and State agencies, the submissions made by CII, FICCI, ASSOCHAM and different user groups, a number of evaluations at the field level as well as responses received in seminars attended by Indian and international delegates reveal the persistence of dissatisfaction with existing procedures, red tape, delays and harassment, the complexity of administrative laws in India, attitude of officials, etc. There is also continuing concern about a huge volume of pending cases in the High Courts and subordinate courts, and delay in the disposal of cases in various tribunals. While it is difficult to narrate fully evaluations which have been done by the Chambers of Commerce and different experts, the following is a broad idea of the perception of the clients of Government.

- o A citizen was required to incur three types of costs for the use of public service namely, the official fees and charges, the speed money at different stages, and finally the cost of unproductive investments the citizens incur in order to compensate for the inefficiency and unreliability of the service provided such as water tank, water pump, bore well, voltage stabiliser, generating set, etc.

- o The responsiveness of agencies varied widely across villages, cities and States in terms of staff helpfulness, time taken to attend to the problem, time taken to solve the problem, number of visits required to be made to the agency and the number of problems actually solved.
- o Lack of customer orientation, inadequate provision of information, non-transparent procedures and practices, inefficient management systems, multiple windows for approvals and permits, lack of accountability for outputs and services, and failure to evaluate performance in terms of user satisfaction.
- o Problems of delays, harassment and corruption after starting the business or manufacture in the form of multiple inspections by inspectors from different Departments, difficulty in securing services from different utilities, demand for extortion payments by inspectors and staff, and generally a lack of responsive attitude. Here again, the position varied across different States.

#### 16.3.5 Highlighting Sectoral Issues

The Commission particularly wishes to highlight the following issues :

- a) Amendments to Company Law including cumbersome procedures for winding up companies, and protection of investors.
- b) The draft Bill to amend Sick Industrial Companies (Special Provisions) Act, 1985 to address the deficiencies pointed out by Expert Committees, industry and financial institutions.
- c) To ensure a balance among all laws relating to trade and consumers like the Essential Commodities Act, 1955, Standards of Weights and Measures Act, 1976, Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1986.
- d) The deficiencies in the working of the Consumer Protection Act, and the need for comprehensive steps for informing, enabling and protecting consumers of various services provided by public and private agencies, whether paid for or not.
- e) Reduction of cases filed by Government agencies, especially at the appellate level.
- f) The procedures for dispute resolution in civil courts, tribunals and alternate mechanisms.
- g) Problems of foreign investors.
- h) Inspector Raj.
- i) Labour Laws.
- j) Import and Export Procedures.

### 16.3.6 Penal Provisions

16.3.6(1) The amendment proposed in the Civil Procedure Code Amendment Bill in so far as they relate to expeditious disposal of cases can be extended to the cases before tribunals, etc. This can be facilitated by the use of computer software for monitoring cases and sharing information on decisions similar to that adopted in the Supreme Court. Another way to reduce frivolous appeals on minor technical details is to provide powers with superior officers for the rectification of obvious deficiencies in the order.

16.3.6(2) The Federation of Indian Chambers of Commerce and Industry laid emphasis on the need to distinguish economic offences from criminal offences for purposes of trial and punishment. It may not be easy to make such a distinction across the boards, but the Government could consider provisions of commercial legislation where such a distinction could rightfully be made and then adopt corrective legal measures. The penal and punitive provisions under some major Acts could be reviewed for necessary amendments in order to distinguish economic offences from criminal offences. This is the approach adopted in the FEMA Bill.

16.3.6(3) This leads to the general suggestions from different quarters about reforms in the judicial system where the enormous delays in the disposal of cases affect all sections of citizens and business for which The Commission has made a reference later.

### 16.3.7 Housing and Urban Development

16.3.7(1) A major regulatory constraint confronting both the real estate industry and the ordinary citizens is the complex of laws, regulations and procedures at the Central and State level which cover the housing sector also. These have been listed in the revised National Housing Policy placed before Parliament in 1998, and analysed with considerable force by different research institutions, Chambers of Commerce, real estate industry, etc. As in the case of a number of economic sectors, the laws and regulations affecting housing activities are implemented by a number of Departments and agencies at the Central, State and local level, all of whom may not have the same objectives, but the net result had been a freeze on land and housing supply, steady increase in the growth of slums and unauthorised colonies, and placing decent housing beyond the reach of bulk of the population. Government has introduced in the 1998 Budget Session a Bill to repeal the Urban Land (Ceiling and Regulation) Act, 1976 while the proposal to amend the Delhi Rent Control Act, 1995 is also pending consideration in Parliament. The laws include :

- (1) Relating to land such as the Urban Land (Ceiling and Regulation) Act, 1976, the Land Acquisition Act, 1894, Land Revenue and Tenancy Laws.
- (2) Laws relating to rental housing and rent control.

- (3) Town and Country Planning legislations and building bye-laws, and development authorities, slum improvement boards, laws regulating industrial planning and environmental planning.
- (4) Laws concerning transfer of house property and taxation of conveyance of properties.
- (5) Fiscal laws.
- (6) Regulation of apartment ownership and activities of promoters and builders as well as laws regulating cooperatives (this has been effected in a number of States already).
- (7) Laws relating to housing agencies and municipal corporations.

16.3.7(2) This legal structure for housing is overlaid with procedures specified at the State and local levels for securing approvals to land development and housing activity, repairs and re-constructions of property, securing various services, development of new township, etc. and often permissions are required to be obtained from a large number of Central, State and local agencies before construction can be started. The amended bye-laws in a number of States eliminate the need for permissions in the case of construction as per standard plan for small plots or low income development, and for authorising architects to issue permission subject to broad controls. However, no significant break through has been made on a perceptible scale in any urban area in checking unauthorised construction and use conversion or unregulated development. The regularisation of this development is dictated by political decisions, but imposes huge costs on the budget and pressure on scarce urban infra-structure. The legitimisation of deliberate violation of law by illegal developers penalises law-abiding individuals.

### 16.3.7(3) Land Acquisition, Urban Regulations and Conveyance

On the land acquisition law, the approach to acquisition of land in urban areas has to be a mix of compulsory acquisition within a more flexible legal framework, and efforts to induce voluntary use/surrender of land by land owners for different purposes required for orderly urban development and services. The Commission commends various proposals drafted by the Department of Rural Development for amending the Land Acquisition Act, 1894 as mentioned in the Statement 2, Vol. II. At the same time, the Commission emphasised the need to fundamentally alter the present cycle of land acquisition in order to delink the process of vesting possession of land to Government officials' from the process of determining compensation. This has been universally recommended by a number of bodies including the National Commission for Urbanisation, 1988, and is envisaged also in the draft law prepared by the Department of Urban Development. This practice is also followed in countries like Singapore and has led to rapid acquisition of land without affecting right of land owners to secure adequate compensation at the level of administration and through appeals to tribunals.

The Commission would further recommend that the acquiring Departments should clearly identify the purpose for which land is required, propose for acquisition only as much land as is really required, and complete all preparatory actions for commencing the project as soon as possession is given. Wide publicity should be given for the purpose of acquisition including public hearing in the case of large projects as envisaged in the draft Bill for Freedom of Information. In order to prevent the tendency for unnecessary acquisition of land, the Commission recommends that in case the acquired land is not utilised for public purpose in demonstrable terms within five years of taking possession, the land should be reverted to the original land owner on terms to be prescribed by Government.

16.3.7(4) The other aspect of land assembly is to emulate the practice followed in Maharashtra to secure land for road widening, essential public services and preservations by granting transferable development rights, permission to develop the land by the owner subject to construction of the reserved facility, negotiated land sharing, alternate methods of payment of compensation, etc. The Commission understands that these measures have been recommended to all the State Governments by the Department of Urban Development. This will help reduce the burden on the administration for compulsory land acquisition, promote speedy availability of land for public purposes, encourage negotiated compensation, and result in greater involvement of land owners in the development process. Along with this, land acquisition should be accompanied by measures for rehabilitation of the displaced families, grant of alternate plots etc. as attempted in a number of Cities like New Bombay.

16.3.7(5) The Commission is aware of the efforts being made by Central and State Governments to simplify and streamline planning standards and building regulations, which are demonstrated by development authorities, Town Planning Departments and municipalities. However, both the common man, business and builders continue to suffer from cumbersome complex standards and norms, multiple authorities for approval, lack of coordination, lack of transparency, failure to update regulations, lack of delegation, etc. which has led to the complaints about corruption, delays and harassment. We recommend that the innovative efforts of city authorities for single window systems, planning standards, automatic approval for construction by slum dwellers and poor families, approvals to architects, delegation and decentralisation, simplified systems for repairs, reduction and simplification of documents, computerisation, updating rules and regulations, dialogue with users, etc. should be widely adopted. It should be recognised that past policies of monopolistic land acquisition and development and unrealistic standards have in fact led to the growth of unauthorised colonies and slums. The liberalisation of land policy and the entry of private sector should reduce the incentive for unregulatory development. At the same time, it should be ensured that the regularisation of unauthorised settlements is only on the basis of payment of cost-covering payments for services since such subsidies are at the expense of revenue collected for other productive purposes, and will invite similar unauthorised development in future.

16.3.7(6) Along with the question of policies and procedures for promoting housing activity, the Commission would like to lay emphasis on the constraints and levies of duties for the holding and conveyance of land and property in urban and rural areas. These issues have been substantially addressed in a report prepared by the National Institute of Public Finance and Policy for the Ministry of Finance in 1995. It is necessary, in the interest of both the housing industry and financial institutions, to consider the complete revamping of the structure of the ancient Transfer of Property Act, 1882, in order to amend the concept of categorisation of mortgages in line with recent practices of housing and financial institutions, in particular English mortgage and equitable mortgage, lay down uniform mortgage documents, introduce speedy and predictable systems of foreclosure of mortgages for default, and give legal shape to rights of owners in multi-storeyed cooperative societies or apartments. Amendments to the Indian Registration Act, 1908 and the Indian Stamp Act, 1899 should be considered together by the Legislative Department on the basis of proposals being formulated by the Department of Revenue in consultation with State Governments. This is because of the fact that the payment of stamp duty is integrally linked with registration of documents, especially those involving transfer of land and property. The Commission supports the suggestion for de-linking registration process from the payment of stamp duty as in advanced countries, and to liberate the registration process from the requirement of submitting various no objection certificates under Income Tax Act, 1961, Urban Land (Ceiling & Regulation) Act, 1976 Land Reforms legislation, etc. The high rates of stamp duty and the cumbersome procedures of registration are mainly responsible for the avoidance of registration of sale deeds, and the recourse to evasive methods like the power of attorney and the Will for the transfer of possession of properties in a number of Cities. It is estimated that the power of attorney transactions lead to the loss of huge amounts of revenue for Central, State and local Governments, generate black money, and compel even law-abiding citizens to violate the law. The solution to the problem has been well-stated in the report of the Committee of State Finance Ministers on Stamp Act. While implementing this report, Government should take immediate steps in consultation with the States to rationalise stamp duties on various instruments, reduce the level of duty to less than 10% of the value of conveyance, introduce alternate systems for payment of stamp duty by financial institutions and the capital market, simplify and speed-up procedures for registration, and computerise the entire process as has been done in Andhra Pradesh. Over a period, the system of power of attorney for transfer of possession should be discouraged by equating it with conveyance for the levy of stamp duty, and by reducing the rates of duty. These measures will also take care of the problems posed by banks and financial institutions in concluding transactions, especially for major infrastructure projects.

16.3.7(7) Another important area of reform is the assessment of rateable value of land and property in different municipal areas. Due to successive Supreme Court judgements, the fixation of rateable value has been linked to the concept of standard rent under Rent Control laws. This has led to stagnation of municipal revenues, unequal burden of property tax on similar properties constructed or transferred at different times, abuse of discretionary powers vested in the officials, and lack of relationship of property tax to the level of services in a locality. The Commission has noted the reform of the existing systems in Andhra Pradesh and Patna, and an alternate proposal for the assessment of rateable value made to State Governments by the Department of Urban Development in the course of the communication sent recently. In the interest of buoyant revenues of municipalities, equitable assessment of rateable value on similar properties in a City, and fixation of property tax based on rational and transparent parameters, the Commission would urge the Department of Urban Development to frame a model chapter on property law for inclusion in all the State municipal laws as well as the Cantonment Boards Act. The passage of this legislation can be leveraged through conditions attached to distributions by the Eleventh Finance Commission as well as grants under Central Schemes. Along with this, the State Governments should also reform other aspects of property tax administration such as the structure of property tax, separation of user charges from consolidated tax, exemptions, liability of Central Government properties for taxation, database on properties, computerised systems of assessment and collection, improving the skills of personnel etc. Ultimately, it would be useful to develop common systems of valuation for property tax, stamp duty, income tax, wealth tax, etc. as envisaged by the Department of Revenue, and as already adopted in a number of countries. This will also provide acceptable systems of valuation for land acquisition also.

#### 16.3.8 Company Law

16.3.8(1) The Commission found that considerable problems were faced by the industry, and even foreign investors, on account of the complex provisions of company law, the registration process, elaborate forms, returns and registers, inconvenience to companies in making various operational changes, payment of fees, issue and buy-back of shares, merger, winding up of companies, payment of dividends, etc. This was aggravated by the bureaucratic ways of the offices of Registrar of Companies, manual systems, delays in settling disputes through Company Law Board, etc. The industry has welcomed the introduction of the comprehensive Bill for revision of the Act in Parliament, based on the report of the Working Group and consultation with industry and other groups. However, the Bill has not been taken up for enactment and only a few urgent amendments are processed. The Commission would urge that the Government refer the Bill to a Select Committee for taking note of all suggested improvements from Government agencies, industry, and consumer groups, and then enact the Bill in the next six months. This is a much needed legal measure. The rules



in force may then be revised and consolidated. Along with this, the proposed steps by the Department of Company Affairs to computerise operations, inter-link various offices, increased staff, professionalise the management, minimise forms and returns, and reduce paperwork for companies should be completed in three months with adequate support from Finance Ministry. The Company Law Board needs to be streamlined in terms of procedures and infrastructure to handle the new responsibilities.

16.3.8(2) While finalising the draft Bill, the Government may take note of the views of the Commission in Statement-3, Vol. II such as greatly improved winding up procedures, as suggested earlier, buy-back of shares, investor protection, setting up separate fund out of unpaid dividends, etc.

16.3.8(3) While revising the legal structure for companies, the Government should simultaneously resolve the confusion surrounding the role of SEBI and RBI as regards the jurisdiction over companies, in matters like issue of shares, acceptance of deposits, capital market operations, etc. It appears that the amendment proposed in 1993 to define their respective jurisdictions in relation to the Department of Company Affairs and Company Law Board is still not clear. It is proposed to bring listed companies under SEBI, unlisted companies under the Department of Company Affairs, and the non-banking finance companies under the Reserve Bank of India. However, the Company Law Board is still the tribunal for dealing with violations, but it has no powers to enforce its decisions. In this process, the investor is tossed from one authority to another to get redress and recover his losses. Since the Finance Ministry already deals with SEBI and Reserve Bank of India, it might be useful for a harmonious policy to place the Department of Company Affairs in the form of a Division in the Department of Economic Affairs.

16.3.8(4) On the subject of winding up of companies, the deficiencies in the present procedures for sick and non-sick companies have been well-described in the report of the Goswami Committee on Sick Companies set up by the Department of Banking. The Commission has given its observations on this subject in the statement relating to Company Law in Vol. II. While the Government pursues the possibility of setting up an alternate legislation for winding up of companies and bankruptcy similar to U.K., it could consider amendments to the Company Law and the suggestions made by the Goswami Committee to minimise the procedures involved in appointing the liquidator, take over of assets and books of the company, effecting the sale of assets, and distribute the proceedings of sale to various creditors. Instead of burdening the Company Law Board with winding up of companies, it would be better to rely on fast track tribunals proposed by the Goswami Committee. At the same time, it is necessary to explore the reasons for growing volume of non-performing assets and bad debts of banks and financial institutions, and investigate the reasons for providing new loans to incipient sick companies

### 16.3.9 Sick Industrial Companies

16.3.9(1) The Commission noted that the Department of Banking had introduced in 1997, a Bill for comprehensive amendment of Sick Industrial Companies (Special Provisions) Act 1985, but this Bill lapsed with the dissolution of Parliament. This Bill was based on the recommendations of the Goswami Committee report and hoped to address the deficiencies in the existing Act. It aims at changes in the definition of sickness of companies, the overall procedure to be adopted by BIFR, the increased powers of BIFR for enforcing the scheme, takeover and sale of assets, etc. It is, however, found by the Commission that, despite many improvements made in the 1985 Act, the Draft Bill does not fully address the deficiencies pointed out by Expert Committees, industry and financial institutions.

16.3.9(2) The Draft Bill may not shorten the time for finalising the scheme for rehabilitation or winding up the sick company, because it prescribes a number of sequential procedures. It is possible to combine sections 15 to 17 and enable BIFR to finalise a mandatory scheme based on concurrent consultation of the company, creditors and employees' representatives. The provisions relating to bar of jurisdiction of all civil courts have to be clarified to retain the writ jurisdiction of High Courts and the Supreme Court.

16.3.9(3) Section 22 should be retained in the present form to freeze existing litigation. With the changes proposed by us in the Statement-6, Vol.II, Government should take expeditious action to introduce a new Bill.

### 16.3.10 Investor Protection and Non-Banking Finance Companies

16.3.10(1) On the subject of investor protection, the Commission is concerned both about the large volume of small investors who are exploited and defrauded by shady companies and promoters, as well as the depositors who are unable to claim refund from non-banking finance companies (NBFCs) and other companies who accept deposits. It is recognised that existing mechanisms devised by SEBI for appeals against brokers and promoters by small investors are inadequate, and the Company Law Board is not able to provide relief and compensation in time for the investor. It is not within the scope of this report to discuss the reasons for the speculation and rigging of shares by a few operators in the capital market and the failure of SEBI to check such practices which lead to huge losses for unsuspecting investors. However, the Commission would emphasise the urgency of Government and SEBI acting together to improve disclosure requirements for companies issuing prospectus and shares, discipline violators of SEBI directives, and arrange for speedy compensation to the investors by adjudicating bodies. It is also possible to consider starting an insurance scheme for investors similar to the

one in the banks through contributions from various companies listed for trading. It is also possible to consider enacting a provision in the Company Law similar to the recommendation made by the Working Group for setting-up an investor protection fund by utilising the unpaid dividends which accrue to the Government after seven years. This fund could be administered by an independent body which will have the objective of administering an insurance scheme, providing partial or full compensation to investors similar to deposit insurance scheme, disseminate information to investors and depositors about companies and institutions offering different products, and also providing legal advice.

16.3.10(2) The Commission noted with great concern that the regulatory framework in regard to the NBFCs came into existence only very recently, i.e. in January 1997 through an Ordinance issued by the Government, but the actual implementation of this mechanism by the Reserve Bank of India started after one year. However, judging from the representations received by the Commission, and as seen from frequent reports in the newspapers, even present regulatory machinery devised by the Reserve Bank of India cannot be said to be either adequate or effective. The Commission was concerned to note that huge sums of money of the public, many of them belonging to the middle and lower income groups, which were deposited with defaulting NBFCs before and after the date of the above Ordinance, have been jeopardised with no sign of a reasonable solution to the problem or actual repayment to the investors. The ineffective role of the Reserve Bank of India and Company Law Board in this connection has come under severe criticism. It was the Commission's view that Government cannot shirk its overall responsibility in the matter of protection of depositors in the NBFCs.

16.3.10(3) The Commission was informed by officials of Reserve Bank of India that number of steps have been taken after the enactment of the Reserve Bank of India (Amendment) Act 1997. These include :

- a) The introduction of the statutory registration scheme, according to which all NBFCs existing as on 1<sup>st</sup> January 1997 and the new NBFCs, were required to submit application for certificate of registration by 8<sup>th</sup> July 1997. Certificates of registration were issued to about 6,000 companies out of 37,500 applicants.
- b) The introduction of a new regulatory framework in January 1997 to ensure healthy growth of NBFCs and to provide greater protection to the depositors. This covers the categorisation of NBFCs, the definition of public deposits, and the requirement of capital adequacy for borrowing, eligibility requirement of net owned fund of more than Rs. 25.00 lakhs, and linking the raising of deposits to the level of credit rating. Two-dimensional norms have been prescribed for NBFCs, along with percentage of liquid assets, and greater degree of disclosure.

- c) Constitution of study group to identify difficulties and inadequacies in the existing system and to propose further amendments.
- d) Mass publicity campaign for educating the public on the regulatory system and the risks involved in placing deposits with unregistered NBFCs.

The Commission was informed that Reserve Bank of India has appointed a Working Group for considering the extension of deposit protection scheme for the NBFC depositors, but it is envisaged that the scheme would be considered only for registered and rated NBFCs. It was clarified that the *nidhi* companies which are notified under Section 620(A) of the Companies Act are administered by the Department of Company Affairs, and hence they are exempted from the provisions of the NBFC directions. Similarly, NBFCs like insurance and housing finance companies which are regulated by other statutory bodies are also exempted from RBI regulations.

16.3.10(4) Under the amended Act, the RBI has acquired power to impose penalties directly on the NBFCs for non-compliance of the provisions of the Act, and to file winding up petitions against them. The RBI can require the NBFCs to create reserve fund and compulsorily transfer at least 20% of their profits to this fund. They can also give directions to the companies and the auditors on matters relating to balance sheet. If any NBFC fails to repay deposits, the affected depositor can file a complaint with the concerned regional branch of CLB or with the consumer disputes forum. If the company fails to honour the order of the CLB, the Reserve Bank of India can launch prosecution against the erring company. It was stated that the Bank has appointed nodal officers at its regional offices for instituting prosecution, although it was admitted that the present administrative machinery of Reserve Bank of India would be highly inadequate to launch large number of prosecutions, especially against unregistered NBFCs.

16.3.10(5) The Commission was encouraged to know that the Government has recognised the severity of the problems faced by organisations and individuals who had deposited their savings with the NBFCs, and the need for increased regulation as well as transparency in the operation of NBFCs. The Commission recognises that these companies have some inherent advantages as they have greater reach and flexibility in attracting resources, provide better returns, and offer retail services to small and middle level borrowers and road transport operators. However, because of the inherent greater risk involved in NBFC operations, the depositors are exposed to larger risks. The objective of a regulatory framework should be to promote the growth of a healthy NBFC sector while at the same time providing greater confidence and

security to the depositors by enabling them to take well informed decisions on investment, and by providing them avenues for quick and inexpensive justice for securing repayment from defaulting companies. The Commission was informed that the Government has constituted a Task Force to go into the adequacy of the present legislative framework, to devise improvements in procedures relating to customer complaints, and involvement of the State Governments in the regulation of NBFCs. The Commission was also informed that a Conference was convened on 14<sup>th</sup> September, 1998 by the Finance Minister for discussions with Chief Ministers and Finance Ministers of the State Governments on this issue. This Conference has resulted in the expression of strong support by the State Governments to the effective implementation of the regulatory system introduced recently by the Reserve Bank of India, and for initiating swift action against unregistered NBFCs accepting deposits in violation of the provisions of the Reserve Bank of India Act. In particular, there was an agreement for enacting legislation in all the States similar to Tamil Nadu Protection of interests of Depositors (in Financial Establishments) Act, 1997 to take action against unincorporated bodies which have defaulted in repayment of deposits. It has been decided that the Reserve Bank of India and State Governments will make joint efforts to prosecute unregistered NBFCs and warn the depositors against investing their savings in such companies. It is also proposed that Reserve Bank of India may authorise officials of State Governments to launch prosecutions against NBFCs for failure to implement the decisions of the CLB.

16.3.10(6) The Commission urges that the Government should clearly vest responsibility in the Reserve Bank of India for strictly and effectively enforcing the regulatory mechanism, and give wide publicity to various measures which are proposed to be undertaken by the Central and State Governments for registration and regulation of NBFCs, protection of depositors, action against erring companies, and easily accessible avenues for grievance redressal. The mechanism should concentrate not only at prosecuting the offenders but also in arranging for the early repayment of deposits. The immediate introduction of the proposed insurance scheme would be helpful in this regard. Along with the regulation of NBFCs, the Central and State Governments should also install and enforce regulatory system for the NBFCs and unincorporated bodies not covered by the Reserve Bank of India regulations, but which are accepting deposits from the public. It would be useful if the Expert Group and the Special Secretary(Banking) also evaluate the Tamil Nadu legislation so as to devise a more improved model legislation for States. It is hoped that the Government would take urgent action on the recommendations of this Expert Group.

### 16.3.10(7) Problems of Foreign Investors

The Commission noted the sustained efforts made by Government since 1991, and in recent months, to increase the inflow of foreign investment in different sectors, especially infrastructure. The Department of Industrial Policy and Promotion, Department of Economic Affairs and Reserve Bank of India acquainted the Commission with steps to opening most of the sectors of industry, trade and services to NRI and foreign investors and institutions, automatic entry according to specified norms for equity holding, approvals within 90 days, single point registration, liberal repatriation of dividends and profits, counselling and guidance services etc. Despite these measures, the general perception of foreign institutions and investors is one of red tape, bureaucratic hurdles, inconsistent and unpredictable standards, cumbersome documentation, problems of purchase and renting of property, multi-tier approvals, delays in clearance, field level hassles, etc. This is reflected in the low proportion of actual inflows to the approved levels of foreign investment. Thus, despite a policy regime comparable to other Asian countries, the benefits are not commensurate with efforts on account of general problems common to foreign and domestic investors and entrepreneurs, and problems unique to the leading sectors like telecom, power, petroleum, etc. This was emphasised by the officials from Industry and Finance Ministries. No doubt, actual inflows are related to perceptions of stability of policy environment and global developments. They are also governed by sectoral policy issues like fuel linkage, counter guarantees, etc. But they are equally influenced by the perceived lack of consistency in policy norms, non-transparency of guidelines and selection procedures, State level delays in approvals, confusion over the role of regulatory authorities in Power, Telecom and other sectors, apprehensions over the delays in dispute resolution and contract enforcement, etc. These apprehensions and impressions need to be detailed and reduced to actionable issues at the level of different authorities, and harmoniously resolved by inter-Ministerial groups. A comparative study of conception to commencement in successful Asian countries and India will facilitate this exercise.

### 16.3.11 Industry

16.3.11(1) The PHD Chamber of Commerce and Industry and other Chambers have conducted a number of studies in a number of States about the factors affecting the growth of industry and trade, and the problems of small industry in particular. These surveys and other inter-actions with officials at different levels reveal :

- The plethora of rules, regulations and procedures and their administration by a huge and unmanageable bureaucracy, which results in alienation of the entrepreneur and promotes corruption.

- The multiplicity of Departments at the State level and the local agencies which an entrepreneur has to deal with in order to set up and continue operations, and his consequent willingness to make payment to middlemen for even legal tasks.
- The failure of the concept of single window service to the entrepreneur in the form of District Industries Centre (DIC), since the officers of the DIC are not provided with adequate information or powers over other Departments for achieving the objective of single window service which alone can reduce delays and cost overruns.
- The lack of a mechanism for dissemination of information of any kind to the officials of State Governments in different directorates and local agencies affecting industrial and urban development, including notifications of a policy and procedural nature, and the very low level of computerisation and computer skills at the operational level.
- The problems created by water-tight compartmentalisation of activities in a number of Departments in the State Governments, especially in the present context of proliferating portfolios of Ministers, and which works against the need for coordination between different Departments to avoid conflicting signals from different field officials.
- Excessively long periods taken for obtaining loan from banks and state financial institutions, especially for small scale units, which results from conservative procedures, eligibility and collateral criteria, type of security, requirements of approval from Government agencies such as electricity board or pollution control board, and the lack of coordination between financial institutions and directorates of industries.
- Problems with urban agencies, land revenue authorities and development authorities in securing land for industrial and other projects, proposals for land use conversion, securing connections for water supply and electricity, problems of compliance with pollution control requirements, problems in securing licences, etc. for rice mills, for establishments requiring municipal and health licences, etc.

16.3.11(2) Continuing exercise for legal and procedural reform to remove redundant rules and regulations, for the revision and consolidation of forms, reduction/elimination of inspection requirements, minimise sequential processing of files, genuine single window services at State and local levels, etc. has been attempted by a number of States, and to disseminate successful examples in the whole country; the industry associations should pro-actively interact with the Government for revision of rules, regulations and forms and overcome the vested interest of bureaucracy in continuing the existing systems.

### 16.3.11(3) Inspector Raj

In the course of this report, the Commission has made a number of references to representations from industry and trade about the harassment and alleged corrupt practices of inspectors and enforcement agencies at different levels and different Departments, which has been described both by Government functionaries as well as industry as the *inspector raj*. This takes the form of :

- a) Large number of forms and returns prescribed under different Central and State laws for compulsory submission by industry and trade in the course of manufacturing operations, at the time of exports and imports, or under different revenue laws.
- b) The approach to different regulatory and development agencies for securing licenses and permits, or for periodic renewal, or for additions to existing licences, or for change of location of business, or compliance with various provisions of company law.
- c) Periodic inspections by employees of different Departments and Central and State Governments, in the course of the enforcement of various provisions of law, rules, regulations and procedures, and complying with various requests made by the inspectors during their visit to the establishment.
- d) Taking follow up action by way of compliance with various inspection reports, or defending before the court of law or any authority the charges brought against the establishment on account of penalties and violations pointed out by the inspectors.

16.3.11(4) As pointed out in field services in a number of cities, the *licence raj* may have been diluted because of recent industrial policies, but *inspector raj* is still thriving. The Users' Associations pointed out that on an average at least two to three inspectors of various regulatory agencies like Excise, Electricity, Sales Tax, Labour etc. visit the enterprises every month. The frequency of inspections varies across States, depending on the number of laws and inspections enforced by the State Governments, and the extent of reforms introduced recently to reduce such inspections. It is reported that unofficial payments are made to the inspectors on a monthly basis as a result of both collusion and extortion, and further that the size of payments has in fact increased in the last two years. It appears that while the State Governments and Central agencies have been active and aggressive in promoting new investment and the establishment of enterprises, similar attention has not been devoted to the problems of these enterprises after they start operations, or when they conduct transactions with different regulatory agencies. The persistence of the phenomenon of *inspector raj* calls for urgent review of the rationale for inspections and documentation under different Central and State Departments, the laws and practices governing inspections, and the need for the adoption of more efficient and transparent surveillance and audit mechanisms. The Commission noted the efforts made by a number of States to rationalise, consolidate, simplify and reduce forms and returns, to introduce single forms with multiple columns for different agencies, and reduce the requirements for the submission



of documentation. Some States have started the practice of giving licences and permits for long periods and for giving renewals for a similar period, subject to stringent action for violation of licence conditions. Some States follow the practice of different inspectors under the same Department or related Departments like Labour and Environment combining the inspection forms and returns in order to share common set of information, and arranging for inspectors of one Department to record observations for other Departments also. The Chambers of Commerce have welcomed such initiatives, and have requested that this may be extended to other States and Central agencies. They have offered to take up the inspection of enterprises themselves and to cooperate with the authorities in streamlining the present systems. At the same time, they have also pleaded for simple and easily understood sets of procedures and instructions implemented by Excise and Customs, Sales Tax, etc., which are uniformly interpreted by all the field staff, without any scope for displeasure. The Commission supports these suggestions and requests the Central Ministries in charge of Industry, Labour, Environment, Power and other Departments to interact with State Governments for widespread adoption of various good practices. Along with these measures for reduction of the *inspector raj* and red tape, it is equally important to look into the genuine problems faced by inspectors and field staff as regards overload of work, transport, working conditions, career improvement, political pressure, etc. in order that these problems are discussed periodically by the top management with staff representatives for prompt resolution.

#### 16.3.12 Essential Commodities Act, 1955.

16.3.12(1) This is of considerable significance for the orderly conduct of wholesale trade, to ensure fair practices and protect the interests of consumers. However, the traders have been representing against the draconian provisions of the Essential Commodities (Special Provisions) Act, 1981, about the penal provisions of the principal Act, the scope for misuse of power by field functionaries, provisions for seizure of entire stock, problems of licensing and stock limits. It was encouraging to note that, based on the report of the Expert Committee, the Government decided not to extend the Essential Commodities (Special Provisions) Act, 1981, and to issue an Ordinance in April 1998 to amend the Act. Subsequently, a Bill was introduced in the Budget Session 1998 to amend the Essential Commodities Act, 1955, in order to implement most of the suggestions of the Expert Committee, and this was welcomed by the trade associations.

16.3.12(2) The Commission considers that some improvements are needed in the amending Bill as noted in the Statement-7, Vol.II. These include a provision to enable Government to review the list of essential commodities periodically and reduce the number gradually, to raise the period of imprisonment for grave offences to more than two years, and to enable the removal of confusion on account of varying specifications in the orders issued by different Ministries under the Essential Commodities Act.

16.3.12(3) More importantly, there is an urgent need to harmonise the various control orders issued by different Ministries from the point of view of specifications for essential commodities, and further to harmonise the standards for the same foodstuff (such as use of artificial sweetener in pan masala) under Prevention of Food Adulteration Act, 1954 and Essential Commodities orders. Government should back the on-going efforts of the Department of Consumer Affairs to persuade the 13 Ministries (mentioned in Annexure 10, Statement-7) to reduce the list of essential commodities, review repeal/consolidate the 129 orders, promote long term licensing, simplify provisions for licensing and stock limits, remove restrictions on movement wherever not found necessary, and reduce the scope for arbitrary exercise of powers by field staff.

16.3.12(4) Ultimately, in the case of laws relating to trade and consumers like the Essential Commodities Act, 1955, Standards of Weights and Measures Act, 1976, Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1976, the interests of trade and consumers have to be balanced. In this process, the problems of the distributive trade and commercial long distance transport should be resolved amicably in order to avoid frequent disruption of movement of goods at great cost and trouble to the economy and the public.

### 16.3.13 Health Sector

16.3.13(1) The Commission considered the health sector primarily from the viewpoint of the legislation to prevent and punish food adulteration, the manufacture and sale of drugs, regulation of private nursing homes, the disposal of hospital wastes, problems of CGHS pensioners, etc. We have not had occasion to look at issues relating to treatment in public hospitals, control of epidemic diseases, frequent disruption in the working of public hospitals, regulation of unauthorised and unqualified practitioners, etc. important as they are for the general public.

16.3.13(2) Our views on proposed amendments to the Prevention of Food Adulteration Act, 1954, Drugs and Cosmetics Act, 1940, and the regulation of private nursing homes are available in the Statement-8 Vol.II. The Commission agrees with many observations of Justice Venkatramiah Task Force (set up by the Confederation of Indian Industry) on the rationalisation of Prevention of Food Adulteration Act, especially the reorganization and strengthening of the present administrative set up in the Centre for laying down standards, and proposing periodic improvements and legal amendments for better administration of the Act. The time taken to revise or fix standards, through various Committees and then the Governmental hierarchy, is too long, and is not also aligned with the BIS standards due to lack of communication between concerned organisations. The standards are also required to be aligned with international standards over a period as the basis for defining adulteration in India is different from many countries. The Prevention of Food Adulteration Act, 1954, and the rules and orders made by Centre and State are so riddled with technicalities, and the staff so insufficient, that they are powerless to prevent or move against adulteration, or when a crisis like mustard oil dropsy erupts. For example, the definition of adulteration mentions insects

but not worms or micro-organisms, and so the person selling mirchi powder with worms is acquitted. Delays in Central Food Laboratory reports lead to acquittal. The approach has to be one of action to amend the Act and the Rules after consideration of the recommendations of Confederation of Indian Industry Task Force, restructuring the Central Committee for Food Standards and streamlining its procedures, strengthening its staff support, and revamping field machinery.

16.3.13(3) The Commission favours a unified administrative set up in the Central Government for implementing the Drug Policy covering manufacture, quality control and pricing, instead of the present division between the Ministry of Health and Family Welfare, and the Ministry of Chemicals and Fertilizers. We have referred earlier to the inadequate enforcement of the Drug Policy and exploitation of consumers. The authorities do not appear to be in a position to ensure that drugs and formulations, banned from time to time under section 26(A) of the Drugs and Cosmetics Act, 1940, through various Central Gazette Notifications, do not surface in the market, or enforce a mechanism to recall such drugs quickly. The report of Expert Committee set up by the Supreme Court in May 1998 on this issue needs to be processed urgently for early action by Central and State Governments. It is possible in this context to pursue the Ministry's idea of permitting authorised citizen's groups to inspect retail drug dealers. This is, however, no substitute for strengthening the enforcement staff in the States, rationalising the cadre and career prospects for inspectors, improving inspection procedures without harassment, etc. One aspect of reform would be to bring the over-the-counter drugs in India on par with the practice in developed countries. This would reduce the need for getting doctor's prescription for drugs and also the workload on retailers to keep registers.

16.3.13(4) As regards nursing homes, the Commission noted that only a few States have legislation regulating them, but the enforcement of standards is inadequate. It is necessary to proceed on the basis of a model legislation for statutory control in all the States. It would be desirable to start with accreditation of nursing homes and private clinics by medical associations.

16.3.13(5) This brings us to the problem of controlling the practice of quacks and unauthorised practitioners. This practice flourishes in part because of the poor and insensitive functioning of Primary Health Centres and public hospitals, and the non-availability of health care in remote villages and even parts of cities. The indiscriminate disposal of hazardous hospital waste poses huge health problems for rag-pickers and for environmental health. The Central Pollution Control Board had notified guidelines under the directions of the Supreme Court. These need to be enforced by the Central and State authorities.

16.3.13(6) The frequent disruption of hospital services and emergency care by striking workers has brought to fore the need to amend the Contract Labour (Regulation and Abolition) Act, 1970 to exempt emergency services in hospitals from the purview of the Act, and permit contracting of sweeping, cleaning, security, and emergency services in hospitals as proposed by the Health Ministry. The pro-active effort by Government would be the implementation of a Patient's Charter with full commitment at all levels.

16.3.13(7) The Health Ministry operates a large network of dispensaries and health care for serving and retired employees. The Ministry referred to a number of employee-friendly initiatives for improving services, including the computerised processing of claims, permitting treatment in accredited private hospitals, decentralisation of powers to doctors in charge of dispensaries, and arrangements for visits by specialists. The pensioners' representatives pointed out a number of disabilities unique to the pensioners in contrast to serving employees. They referred to the inadequacy of dispensaries, lack of information on procedures for reimbursement of claims and treatment, non-access to treatment in State hospitals, lack of specialist's presence in dispensaries, difficulty in securing medicines, etc. The Commission hopes that the shortfall in dispensaries would be redressed soon, and that the problems pointed out by pensioners are attended to as soon as possible on the basis of regular dialogue and attention to issues like prompt reimbursement of claims, direct payment to accredited hospitals for treatment including in emergencies, quality of medicines supplied, treatment in State hospitals, etc. Unless there are special reasons for a different approach, the objective should be to treat the pensioners on par with the serving employees in the matter of medical care and treatment in the CGHS. The programme for opening of new dispensaries should be prepared in advance and adequately publicised. In this connection, requirement of facilities in areas where these do not exist should be given priority.

#### 16.3.14 Environment

16.3.14(1) The Ministry of Environment and Forests is considering consolidation of Water (Prevention and Control of Pollution) Act, 1974 Air (PCP) Act, 1981 and the Environment (Protection) Act, 1986 but no definite exercise has been initiated for this purpose. Indian Forest Act is more than 70 years old, but amendments to the Act are yet to be formulated. More important would appear to be the rules, regulations and procedures, and the notifications issued under the Act relating to approvals to be obtained by the industries from Central and State authorities under Forest (Conservation) Act and the three environment laws before and during operations. The Commission noted that the Ministry was taking action to delegate powers to State agencies, and to reduce the delays and problems involved in compliance with the regulations and procedures. It also noted the countervailing pressures on the Ministry on account of the demand of environmental groups for protecting environment, and of the Supreme Court decisions for strict enforcement of regulations relating to coastal zones, forest preservation, air and water pollution, etc. Often the grant of approval for location of projects on forest areas requires the acquisition of alternate land for forests and the rehabilitation of affected families. This process leads to delays of over two years due to shortage of funds, difficulty in land acquisition, agitation of local groups and court orders. The issue of environment clearance for the 29 notified activities involved the preparation of environment impact assessment report, public hearings, and recommendation by the Appraisal Committee. Apart from the expense over engaging Consultants, this results in delays, which varies according to the time taken by individual Pollution Control Boards to forward reports to Central Government.

16.3.14(2) The Commission appreciates the concern of the Ministry of Environment and Forests for protecting the quality of environment and preventing the pollution of air and water, especially as this had significant implications on the health and well-being of the population in urban and rural areas. At the same time, the Central and State Departments concerned with approvals for infrastructure projects and industrial activity, as well as industry and trade, express serious concern about delays and cost escalation in respect of these projects because of the existing procedures of getting clearance under different environment and forest legislation and rules. Consistent with the enforcement of existing legislation to protect environment and maintain the forest areas, it is possible to streamline and simplify existing procedures such as :

- a) A common consent under the three legislations for air, water and environment protection, along with a supplementary consent for hazardous activities.
- b) Grant of approvals on the basis of uniform guidelines agreed between the Central and State Pollution Control Boards, and the avoidance of the imposition of supplementary conditions by the State Boards.
- c) Agreements on renewal of consents upto three years, to be given on a decentralised basis.
- d) Depending on further dialogue with Chambers of Industry and Commerce, consider the grant of environmental clearance on the basis of recommendations made by the State Pollution Control Board, subject to clearances under other laws and regulations being obtained simultaneously.
- e) Finalise the exercise for prescribing a consolidated form for approval, of which the first part could be filled up by the applicant with all relevant information contained in a floppy; the second part to consist of the comments of concerned authorities, which would be directly obtained by the Ministry of Environment and Forests with the help of State Boards; the third part will consist of submission of the information to one of the six Environment Appraisal Committees headed by a non-official expert, which would submit the matter for decision by the Minister. This decision will be incorporated in Part III, and made available for the information of the applicant and all concerned agencies. This would also be disseminated through the Internet as done by the Ministry of Industry.
- f) Finalise and publicise the zonal atlas in order to guide the industry about the areas where different types of industries would be located and environmental clearance would be given automatically and also information on hot-spots which may generally be avoided unless alternate location is impossible or unless the industry could convince the authorities that the activity will not add to the pollution load.
- g) Reduce the cost of submission of environment impact assessment report, which will be facilitated also by the use of the revised form to avoid the duplication of information submitted for EIA and for getting clearances from State Pollution Control Boards.
- h) Realistic formulation of pollution and emission standards, and a beginning to be made of economic instruments for promoting voluntary compliance of industry with these standards, on the lines of developed countries.

- i) To document and disseminate good practices for environmental clearance in different States. For instance, the Punjab Government classifies the industries falling in red category (highly polluted) and a green category. The entrepreneur who wishes to set up industry falling in green category will apply in prescribed proforma to the Director of Industries. He will get clearance in seven days if the unit is not in the negative list of the State Electricity Board and the Pollution Control Board. For projects located in the red/hazardous category, the entrepreneur will submit the application by registered post for clearance with the Pollution Control Board with a copy to the *Udyog Sahayak*. On receipt of application complete in all respects, if the Board does not take a decision in 30 days, it would be deemed that a clearance has been given. The application would also be entered in the computer system of the Pollution Board which will be linked to the computer system of *Udyog Sahayak*, and the deemed or actual clearance would be communicated through this system to the Director of Industries. An important point to note here is the clearances under other legislations relating to internal environment of the industry such as Boilers Act and Factories Act are processed at the same time. Similar instances of automatic consent for non-polluting industries are available in other States.

16.3.14(3) The Commission would urge the Ministry of Environment and Forests to proceed expeditiously with various important moves for liberalisation and simplification undertaken by them, and the steps for consolidating different laws and regulations. At the same time, the Commission would recommend effective action on the part of Central and State Pollution Control agencies and local authorities for action against those responsible for improper and dangerous disposal of hospital and hazardous wastes, indiscriminate discharge of harmful effluents into water by tanneries and other polluting industries and the indiscriminate burning of material harmful to the population.

#### 16.3.15 Labour Laws

16.3.15(1) Out of the large number of labour laws administered by the Central Government, the Commission has confined its observations to the important provisions of the Industrial Disputes Act, 1947, Payment of Bonus Act, 1965, Factories Act, 1948, Employees Provident Fund Act, 1952, Employees State Insurance Act, 1948, Trade Unions Act, 1926 and the Contract Labour (Regulation and Abolition) Act, 1970. It was noted that the Mitra Committee set up by the Ministry of Labour in October 1997 has made a number of concrete suggestions for amendments to the Industrial Disputes Act, 1947. The Commission endorses the recommendations made by this Committee, and also agrees that the title of the Act should be amended as the Employment Relations Act, in order to shift the focus from disputes to measures for harmonious relations. Some of the important issues to be decided urgently in the context of amendments to this Act would be the concept of lock-outs and strikes, the definition of industry and workman, the establishment of grievance redressal machinery, and prior approval by

Government for lay-off, retrenchment and closure. It is necessary to move forward on the basis of negotiating councils as collective bargaining agents and discourage avoidable multiplicity of trade unions. At the Government level, it would be useful to set up independent and autonomous Industrial Relations Commission in order to relieve the executive from the work load for conciliation and arbitration of labour disputes. The legal norms for the notice for strikes and lock-outs, exemption of essential services, requirement of majority resolution of unions, etc. should be agreed to quickly with employers and labour for enactment. Effort should be to reduce the reference of disputes to labour courts and tribunals, given the huge pendency of cases and inadequate infrastructure, and to promote arbitration and conciliation. It is also possible to lay down norms for the registration of trade unions and their recognition on the lines suggested by the Commission in the Statement No.10, Vol.- II, and reduce the proportion of external office bearers in unions.

16.3.15(2) There is considerable demand from both public and private establishments and Central Government Departments for amending the existing provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The Commission was informed that the matter has been considered in detail by the Committee of Secretaries and the Labour Ministry has been requested to draft proposals for amendments to the Act in a short time and take up formulation of a separate legislation as part of the overall exercise for reforming labour laws. The Commission would urge the Labour Ministry to bring forward these amendments as soon as possible in order to reduce or relax the present legal regime for engagement of contract labour in all the non-core peripheral activities of various Departments and establishments. The engagement of contract labour even in routine services like sweeping, cleaning, security in Government Departments and public sector organisations have been banned by a notification issued by the Labour Ministry, and public sector undertakings are obliged to engage departmental labour for tasks that are not part of their main functions. Because of the Supreme Court judgement in the Air India case, the Central agencies are required to absorb the contract labour after termination of the contract at considerable expense. Given the rate at which some activities will become obsolete because of changes in technologies, or where activities are of a seasonal and temporary nature, there is even greater need for permitting the engagement of contract labour. It should, of course, be ensured by the principal employer that the contractor complies with the requirements of payment of minimum wage, assuring proper working conditions, etc.

16.3.15(3) These observations on different specific laws and sectors should be read with the observations of the Commission on various individual laws and sectors in the statements in Vol. II.

### 16.3.16 Direct and Indirect Taxation

16.3.16(1) While the Commission obtained detailed responses from the officials of CBDT and CBEC, it became apparent after interaction with the user groups that it was necessary to look into the entire framework of Central, State and local taxation, the levy of taxes and duties and the procedures governing them, in order to make a definite impact on the problems faced by different sectors and industry. It was found by the Commission that various Departments in charge of specific sectors have definite expectations from the CBDT and CBEC for providing specific relief and concessions, relaxation of procedures and improving the machinery for resolving disputes. The banking sector made a number of suggestions for reducing the burden of taxation and for amending the existing system of direct taxation. This was contained in the presentations from the Indian Banks Association. The revised National Housing Policy contains a number of suggestions for fiscal concessions to promote housing and urban infrastructure, to raise the level of concessions to individuals, and to promote manufacture of low cost building materials. We have referred to the representations made by the Ministry of Commerce as regards excise and customs concessions and procedures relating to exports and imports. There were many sector specific fiscal concessions such as information technology, power, telecommunications, etc. It is important to note that the cases referred to the Commission were as much in the nature of reduction and relief in respect of direct and indirect taxation, as in the form of improvement and simplification of procedures, consistency of definitions across different laws, reduction of delays and complexities in the settlement of disputes, and reducing scope for harassment and corruption by field functionaries. The Commission notes with satisfaction that the Government has moved purposefully forward in the area of providing positive fiscal concessions relating to exports and imports, housing and real estate, information technology, production of low cost building materials and for the encouragement of various forms of industrial activity. Recent budget has led to positive changes in the rules and procedures governing settlement of disputes in the area of income tax, excise and customs, reduction of tiers for appeal, simplification of forms and returns, substitution of bank guarantees by legal undertakings and the *kar vivad samadhan* procedure for the settlement of taxes and duties under dispute. It is hoped that the *inspector raj* in the area of Central taxation will be considerably eliminated through these procedural changes and legal amendments.

16.3.16(2) The Commission was informed that CBDT has already implemented a number of suggestions submitted by the Working Group set up for comprehensive revision of Income tax Act. It is hoped that the remaining recommendations of the Working Group will be processed early. The Commission was assured by the CBEC that revised comprehensive legislation for Excise as well as Customs would also be finalised for introduction at the time of the next Budget. Meanwhile, the Commission would urge that the Department of Revenue consider the report submitted by the Working Group under the Chairmanship of Shri Chakraborty on amendments to excise rules and regulations, and introduce the amended rules, regulations, procedures and



handbooks as soon as possible. Similar exercise should be undertaken for customs also. It is equally important that improved procedures and regulations are widely communicated not only to industry and the public, but also to all the employees in these Departments, since inadequate understanding of the rules and regulations and the scope for interpretation at field levels often lead to delays and harassment. It is also important to ensure the long term consistency and predictability of the rules and regulations since frequent changes in the taxation regime affects the long term calculations of industry as well as exports and imports. This is equally true in respect of foreign investors where willingness to enter into long term projects like Power, Telecommunications, etc., would depend upon long term expectations about the tax regime.

### 16.3.17 Consumer Protection

16.3.17(1) Consumer Protection Act, 1986, is a very important legislation, enacted for protecting the interests of consumers. It has been in force since 1986 and has proved to be very useful. District Forums in the shape of consumer "courts" have been established in all the Districts, State Commissions are operating at the State levels, and there is National Commission at the apex level. Almost about eleven lakh cases have till now been filed before these consumer "courts", and over seven lakh cases are stated to have been disposed of. There are, however, certain aspects of functioning of these consumer "courts" which have been a matter of concern. It was expected that there would be expeditious decisions in these "courts". This, unfortunately is not happening. The Department of Consumer Affairs has claimed before the Commission that a number of cases have in fact been disposed of within the period of 90 days prescribed in the Rules framed under the Act. This does not appear to be in accord with the facts. Tendency has developed in these consumer "courts" to operate practically on the lines of civil courts, resorting to frequent adjournments, with the result that often the cases take a long time, in some cases two to three years, to be completed. It is important that the concerned Central Department, through the State Governments, should take concrete steps to ensure that the objectives of this Act are satisfactorily fulfilled.

16.3.17(2) The Commission has been informed that the consumer movement has till now spread mainly in urban areas, and people in the rural areas have not yet become adequately conscious of the benefits of this important legislation. Under the provisions of this Act, the National Commission at apex level has been given administrative control over the State Commissions in matters relating to disposal of cases, and has also been given the responsibility of generally overseeing the functioning of State Commissions and District Forums for ensuring their proper operation; the State Commissions have been given administrative control over the District Forums. The State Governments exercise the powers of appointing Presidents and Members of the State Commissions and District Forums; whereas the Central Government

appoints the President and Members of the National Commission. It is unfortunate that quite often enormous delay occurs in filling the vacancies caused in the positions of Presidents and Members, particularly of District Forums, with the result that cases languish. At certain places the Presidents of District Forums are operating on part time basis, which hampers the disposal of cases; it needs to be ensured that Presidents are appointed on whole time basis. The Commission notes that there have also been complaints that the Members of District Forums and State Commissions are not being paid appropriate honorarium, with the result that their regular attendance in these "courts" is handicapped. There are instances where the qualifications and background of the Members selected for the purpose are not adequate. Infrastructural requirements of these consumer "courts", including the provision of proper accommodation, staff, equipment and funds, are also not being appropriately attended to by the State Governments. Funds allocated for the purpose by the Central Government to the State Governments are not being fully and expeditiously utilised.

16.3.17(3) The Commission considers it desirable and necessary that the National Commission should decide to function also from a couple of benches at selected places in the country, to enable cases and appeals relating to those areas to be expeditiously disposed of, with the avoidance of expenditure in having to pursue all cases at Delhi. Likewise, the State Commissions should consider the desirability of holding circuit courts at selected places in their States, to take justice to the people rather than persons having to come to the State headquarters for securing adjudication of their cases.

16.3.17(4) The shortcomings and deficiencies can be effectively remedied, and the Commission emphasises the importance and urgency of more effective discharge of the administrative responsibilities in these matters which have been placed under the Act, respectively, on the National Commission and the State Commissions. There is also need of ensuring that Members of the State Commissions and District Forums should be persuaded to attend training courses which have been specially designed for these levels by the Indian Institute of Public Administration.

16.3.17(5) The Commission was surprised to note that, while the representations made by industry and companies about problems faced by them from regulatory authorities often receive prompt attention, there was not much attention given to the survey and documentation of the unethical practice of the industry itself or the exploitation and danger to life of the general public on account of the practices followed by public and private companies. In this context and with a view to reducing the load on consumer courts, the Act could have a provision to oblige each industry or group of manufacturers of different commodities to set up a mechanism to resolve consumer complaints voluntarily, provide information on products and enforce business ethics, through bodies like the Better Business Bureau as in the U.S.A. and Canada. This could go along with the existing Indian Council of Arbitration. At the same time, the Consumer Protection Act should incorporate provisions against unfair terms of contract and product liability similar to the law in U.K. and U.S.A.

16.3.17(6) The operation of Consumer Protection Act over the years has shown certain inadequacies and shortcomings which need to be expeditiously overcome. The Commission understands that certain specific and important recommendations in this regard were made by an Expert Group set up by the Centre, but it is a matter of concern that despite the lapse of three years these recommendations have not yet been incorporated in the Act by effecting the requisite amendments. The Commission also recommends that a provision on the lines of new Section 89 proposed to be included in the CPC by the CPC (Amendment) Bill, now pending in Parliament, may be included in the Consumer Protection Act, 1986, empowering the Consumer Courts to refer cases before them to arbitration, conciliation or to Lok Adalats for the purpose of expeditious disposal.

16.3.17(7) Consumer Protection Act, 1986 has over the past few years actually become the nodal point for protecting the interests of consumers in relation to various types of products and services. It can also be utilised for ensuring effective implementation of legislations in the areas relating, for instance, to health-care, prevention of food adulteration, basic civic services, protection of interests of small investors and depositors, through the intermediacy of concerned Ministries where necessary. It has, as an example, been reported that certain manufacturers of medicine and drugs are flouting the Central Government's price ceilings and that drug pricing policies are presently encountering various problems in regard to appropriate implementation. It is also observed that on occasions essential drugs get categorised as non-essential and unscheduled items for purposes of price control. Such problems are likely to get more complex on the introduction of product patents. Likewise, problems of enforcement of Prevention of Food Adulteration Act, 1954, and problems encountered in the recent years by non-institutional investors, need to be dealt with in such a manner that interests of consumers are safeguarded.

### 16.3.18 Import and Export Procedures

16.3.18(1) As regards the import and export procedures, the Chambers of Commerce, National Institute of Public Finance and Policy and others have pointed out the deficiencies in the present system and the requirements for reform. These are described in the Statement -13, Vol.- II.

16.3.18(2) Both in the case of imports and exports, the problems arise much more from the continuous advice and changes in the Handbook of Procedures, circulars and notifications issued after each budget. This makes it difficult for exporters and importers to enter into long term commitments on the basis of predictable costs, and changes often erode their profit margin. Periodic increase in the number of conditions for compliance is not in consonance with the policy of liberalisation, since the more the authorities increase the number of certifications for getting exemption, the more difficult and harassment-prone becomes the implementation. A wide variety of certificates from different authorities in the Government of India are required to be produced for different

commodities such as the Ministry of Tourism, Directorate General of Health Services, Central Board of Film Certification, Ministry of Defence, Ministry of Information and Broadcasting, Council for Leather Exports, Ministry of Environment and Forest, Ministry of Urban Affairs and Employment, State Finance Corporations, Directorate General of Civil Aviation, Ministry of Petroleum and Natural Gas, Department of Electronics, etc. The Commission recommends that the requirement of various certificates should be closely examined, and the declarations by the party as regards end use should be accepted, as far as possible, subject to simple checks or instances of advance intelligence.

16.3.18(3) Another important area of reform in the case of imports and exports is the disputes over the interpretation of rules and finality of rulings on procedures and classification of goods. Since excise and customs are indirect taxes, simplicity, certainty and early finalisation of the tax liability are more important than a rule-based attitude. The lack of uniformity in classification only increases litigation. There are over 50,000 cases pending before the tribunal and each case takes at least six to seven years. The existing legal provisions have led to serious anomalies; directions given by the courts for classification do not bind the Commissioner (Appeals), and the latter is free to give a judgement at variance from the directions. In order to remove confusion in this regard, it is necessary to provide that the rulings given by the CBEC are binding on everyone, including the Commissioner (Appeals). It should also be possible for the parties to obtain advance rulings from the Board on specific matters. The amendments made in the 1998-99 in this regard, the concept of *samadhan*, reduction in levels for hearing, and the powers to a group of Chief Commissioners to give rulings are welcome.

16.3.18(4) In case of excise and customs duty structure, the Commission notes with satisfaction that the Government would be moving towards a three-fold structure, namely mean, merit and demerit rates. The early implementation of this rate structure would reduce the multiplicity of rates and ensure rationalisation of the present structure. Along with this, the Department could proceed towards delegation and decentralisation, computerisation, frequent training programmes and incentives for good performance. The inspections by the CBEC staff of industrial units should be coordinated with inspections by State authorities in charge of sales tax and other local taxes in order to relieve the establishment from multiple inspections. It is also possible to harmonise the systems of evaluation and commodity description for sales tax and excise as already proposed in the Conference of Finance Ministers. Both CBEC and CBDT have referred to a number of improvements under consideration for minimising forms and procedures, systems of reduction, sanction of MODVAT, refund of excise duty, etc. which should be quickly brought into force. Since excise and customs affect all areas of industrial and foreign trade activity, a non-confidential database in respect of various procedures and transactions should be linked by an Intranet system and inter-connected computer systems for sharing information and decisions based on common understanding. This common database should be extended to airports and sea-ports also. Certain problems pointed out by CBEC and CBDT should be taken into account by the Government. While the aim of the Departments is to reduce the scope of litigation and avoid

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unnecessary appeals by the Government, it was stated that the officials were often constrained to file appeals, since they faced subsequent objections by audit that responsibilities be fixed for not filing appeals against decisions of the tribunal. There have also been vigilance proceedings for not filing appeals. This was stated to be a major reason for the employees looking at all the transactions from the point of view of revenue and not from the perspective of the assesseees and reduced litigation. Secondly, it is possible to reduce litigation in respect of sectorwise incentives and concessions in case concerned Departments themselves recommend the entities for which concessions are to be given during the year according to transparent guidelines. This will avoid the exercise of discretion by the assessing officer and reduce litigation. It was also mentioned by Chairman, CBDT that there is a limit beyond which existing rules and laws cannot be simplified since this exercise cannot be at the expense of effective enforcement and avoiding unnecessary discretion. He also felt that there was much greater improvement to be realised from simplification of rules, procedures and forms in the perspective of the Citizens' Charter. It is equally necessary to ensure the accessibility of officials at different levels to assess and to change their attitudes to one of trust and responsiveness rather than suspicion.

#### **16.3.19 Pendency of Cases and Administration of Justice**

16.3.19(1) The Commission feels particularly concerned with the accumulation of vast backlog of cases in courts, inadequate functioning and malfunctioning of subordinate courts, and generally the administration of justice. The backlog of cases is estimated to be about 28 million, which is a matter of extreme concern because such accumulation of backlog, and non-disposal of individual cases, sometimes for decades, gives a very poor impression about the functioning of our legal system.

16.3.19(2) There are many causes for this unsatisfactory state of affairs. The multiplicity, proliferation and complexity of our laws, rules, regulations and procedures are one of the major reasons. Every possible effort needs to be made to reduce the number of laws to those which are absolutely necessary, to repeal and delete the laws which have become redundant, anachronistic and unnecessary, and to make the laws simple and understandable, keeping them up-to-date. Procedures specified for implementation of the various laws needs to be improved. In this context, the Commission is constrained to observe that the Civil Procedure Code, which forms the basis of adoption of procedures regarding the functioning of civil courts, itself is full of such provisions which inevitably prolong the trial of cases and provides for multiplicity of appeals, and instruments for causing stay of proceedings of the trial of cases. The basic Civil Procedure Code is of the year 1908, nearly a century old; it has of course had a large number of amendments but the accumulation of amendments has inevitably brought about complexities. An Amendment Bill of the Civil Procedure Code has been prepared for effecting the basic and essential amendments in it, but the Bill has been waiting for more than one year for its enactment. The Commission suggests that the recommendations made by Justice Malimath Committee for the expeditious disposal of cases in courts be seriously and expeditiously considered for adoption.

16.3.19(3) The Commission noted that there exists an unfortunate tendency in the Government Departments to resort to filing of appeals practically in all cases where the verdict goes against the Government. There is disinclination on the part of every official to assume responsibility for not filing an appeal, particularly in cases relating to revenue matters, ostensibly on the ground that such an action might be considered motivated or subsequently objected to Audit and/or Vigilance. Definite directions needs to be issued in all Government Departments that appeals against adverse decisions should be filed only after very careful consideration. There is also a tendency to take the safer course of approaching the Court for adjudication of an issue rather than to take decision which normally would be within the scope of the powers of the executive.

16.3.19(4) In relation to criminal cases pending in courts, which are estimated to be of the order of about 10 million, a very important judgement has been secured through a public interest litigation submitted by Common Cause, which has laid down procedures to be followed for closing down cases which have been pending for more than prescribed periods, in relation to offences under various sections of the penal code. Arising from this one judgement, hundreds of thousands of cases which had for long languished, have been closed down. Similar action needs to be initiated in relation to the multiplicity of cases which are presently pending before various Tribunals and adjudicating bodies, and in cases relating to revenue, etc.

16.3.19(5) Initiatives such as 'Samadhan' scheme in the matter of Excise and Income Tax arrears, and the proposal for setting up a Settlement Commission recently announced by the Ministry of Finance, are welcome because these can substantially help to clear the backlog of cases. There are various other steps which need to be considered for streamlining the judicial system and expediting the administration of justice. Status of decisions of Tribunals needs to be kept in view for examining the avoidance of scope of appeals against their decisions to the High Courts where Tribunals are headed by persons of the level of retired Supreme Court judges. There is also need and scope for expansion of the concept of appointment of Ombudsmen; their appointment in the areas of Banking has presently opened up scope for such arrangements being made in the area of Insurance. Areas of appointment of Ombudsmen in other selected fields need to be explored.

#### 16.3.19(6) Alternative Disputes Resolution

A very important aspect which the Commission would like to emphasize is the need of expansion of the system of Alternative Disputes Resolution. More effective utilisation of the Arbitration and Conciliation Act, and greater use of mediation procedures, need to be encouraged and facilitated. An improvement of important significance has been effected through the enactment in 1987 of the Legal Authorities and Services Act which provides for the establishment of National Legal Authority at the apex level, State Legal Authorities at the level of each State, and penetration of this concept to the level of each district. This Act provides for the expansion of areas of functioning of Lok Adalats to all districts of the country. Under the initiative recently taken by the Supreme Court, the National Legal Authority has already been set up and State Legal Authorities are being established. The Commission feels that the States

need to be persuaded to pay special attention to the strengthening of legal authorities and to promote and encourage the establishment of Lok Adalats in the districts and talukas. Entrustment of pending cases of subordinate courts to the Lok Adalats will greatly help to deal with the problem of improvement of administration of justice and substantially reduce the pendency in courts. Simultaneously, there is scope of encouraging and facilitating voluntary arbitration and settlement of disputes, particularly relating to areas such as of employees, contractors, builders, consumers, businessmen, discrimination against women and weaker sections, etc. with the procurement of help of retired judges and lawyers. Builders Licensing Board may also be set up to enable the purchaser to get the benefit of inspection by the Board's inspectors and get a guarantee for defects in construction and obliging all builders to comply with this system.

#### **16.4. RECOMMENDATIONS FOR REPEAL/AMENDMENTS OF LAWS AND REGULATIONS**

16.4.1 The Commission is required to make recommendations for repeal/amendments of laws, regulations and procedures, legislative process, etc. on the basis of the exercise covered in the first three terms of reference. We have already referred to in the course of this report to proposals for repeal of laws, repeal/amendments of rules, orders, regulations and procedures for important sectors, and specific changes in existing approaches to legal and regulatory reform, as well as rules and procedures so as to make the entire process objective, transparent, simple, predictable and inter-related. The aim of the exercise has been to look at the impact of legal and regulatory framework, as well as the system of administering justice, on the general public and user groups in different sectors, including foreign investors. In the opening sections of this report, the Commission has referred to a number of important factors which should govern the entire process of legal and regulatory reform not only in the Central Government, but also the State Governments, and the need to develop a harmonious approach in the larger interest of efficient and responsive administration, and focus attention on the problems faced by the public and user groups.

16.4.2 On the request of the Commission, the Secretary, Legislative Department has sent an up-to-date list of unrepealed Central Acts. This list includes all the Acts passed by Parliament till the end of the last session. The commission has taken this as the basis for identifying the laws which could be recommended for repeal.

The list contains 1079 Acts. But it does not include the following, namely:-

1. 78 Constitution Amendment Acts.
2. About 70] annual Finance Acts.
3. About 700 Appropriation Acts.
4. ~~24~~ 16 Amending Acts (from 1984).
5. 11 British Statutes which are still in force (**Appendix A-3**)
6. 17 War-time permanent Ordinances. (**Appendix A-4**)
7. Old Bengal Regulations.

The total number of Central Laws in force will be about 2500 Acts. Out of these, Constitution Amendment Acts and annual Finance Acts would not be repealed.

16.4.3 In addition to the above, there are Central Regulations made by the President under article 240 of the Constitution for the peace, progress and good government of certain Union territories. Legislation for the Union territories of the Andaman and Nicobar Islands, Dadar and Nagar Haveli and the Lakshadweep are being enacted under this provision apart from the *proprio vigore* application of all the Acts of Parliament made applicable to the whole of India. These can be examined for the purpose of repeal.

16.4.4 The cluttering of the Statute Book is due to many reasons, the main reason being the Constitutional developments over the last two centuries which had ultimately resulted in the (quasi) federal structure of our Constitution. Prior to 1919, the entire British India (as it then was) was administered by the Governor-General-in-Council. After 1919, the Devolution Act, 1920 was passed and many of the subjects were allotted to the States and the process was continued by the Government of India Act, 1935, which ushered in the Provincial Autonomy. The Act of 1935 contained three lists of legislative heads as in our Constitution and our Constitution re-enacted the three lists with residuary powers being left to the Centre instead of the States in the 1935 Act. This process of reform brought many of the Acts of the Governor-General-in-Council into the State field and the Central Statute Book contains so many Acts which pertain to the State list and the State Governments are administering those Acts. A few of the Acts have been amended very sparingly by the States, but mostly they remain unaffected. A list of such 114 Acts is placed at *Appendix-A-5*. Most of these Acts are not being implemented, but they could be repealed only by the States. Some of the Acts which are of local application only, like the Bengal or the Bombay Acts could be repealed by the respective States.

16.4.5 Another reason for leaving a large number of enactments in the Statute Book is that no systematic and regular attempt had been made to examine these Acts in depth for the purpose of repeal. The Law Commission had made a detailed study of all the British Statutes in force and brought out a report in 1960 recommending the repeal of a large number of British Statutes. Simultaneously, another report suggesting the repeal of a number of Central Acts was also recommended, as a result of which, the British Statutes (Application to India) Repeal Act, 1960 and the Repealing and Amending Act of 1960, respectively were passed by Parliament. The former Act repealed 285 British Statutes in their application to India. Subsequently, two Law Commissions submitted 96<sup>th</sup> and 148<sup>th</sup> reports in 1984 and 1993 and each of them suggested repeal of 5 Acts without any conditions. The administrative Ministries were also not able to recommend repeal of many Acts. Even the Legislative Department which used to periodically "cleanse the Statute Book" by the enactment of Repealing and Amending Acts had also not initiated any such legislation after 1988 which covered legislations upto the end of 1984. This is the reason why such a large number of amendment Acts as 315 is retained in the Statute Book. Another major reason is that none of the authorities is prepared to take any risk in recommending the repeal of any enactment as everyone is apprehensive that the repeal may revive any pending matters which had been put at rest by those enactments. May be, this factor weighed with the Law Commission for not recommending the repeal of the Privy Council Abolition Act on the pretext that it may revive the operation of any British Statute which confer jurisdiction on the Privy Council. The Commission also recommends the repeal of about 700 Appropriation Acts passed by Parliament from time to time since 1950 as they are, in terms, temporary in nature. Last but not the least, nobody is prepared to take the responsibility of repealing Central Acts like Reorganisation Acts, Extension of Laws Acts, Acts dealing with High Courts, Validation Acts, etc.



16.4.6 In view of the above position, we have an unenviable task of scanning the Acts and recommend the repeal of those Acts which are either not in force or anachronistic or not implemented and retained for some reason. We have accordingly gone through the list supplied by the Secretary, Legislative Department and after going through the provisions of some of the Acts, which we thought could no longer be retained in the Statute Book, prepared a list of Central Acts, which we feel, may safely be recommended for repeal. This takes into account recommendations of Expert Groups and Law Commissions. This list is at **Appendix-A-1** and contains about 166 Acts. We have also prepared a list of **Reorganisation Acts (Appendix-B)** and laws relating to **High Courts (Appendix-C)** which may be considered for review and repeal. Reorganisation Acts should be reviewed to consider repeal of some of them which are not relevant. The High Courts Acts should be reviewed to bring in a uniform Act and the repeal of some of the Acts, with rules to provide for local variations. The Pre-Nationalisation Acts and Validation Acts (Appendix-A-1) can be repealed. All the Validation Acts can be repealed after providing savings clauses wherever necessary. In addition, there are a number of personal laws (**Appendix-D**) applicable to some religions and communities. Some of these may not be relevant now and are also indeed very old. The perception of the concerned religion or community would be relevant for their updating/codification/repeal. The Commission recommends that further action be taken accordingly. A list of Acts which are of general public importance has also been prepared and the same is placed at **Appendix-E**. Out of this list, those Acts which have not so far been taken up for review, should be reviewed immediately.

16.4.7 We recommend that the 166 Central Acts (**Appendix-A-1**) be repealed. The Legislative Department should introduce a repealing and amending Bill to repeal the 315 Amendment Acts (**Appendix A-2**) straight away. They should also consider inclusion in the Bill the various Delegation of Powers Acts (seven in number) enacted when the concerned States were under President's rule, the Appropriation Acts, British Statutes still in force and the permanent war-time Ordinances. The Legislative Department should also consider the repeal of the old Bengal Regulations which they consider no longer relevant. Regarding the Acts pertaining to a State subject, Government should circulate a list to all State Governments requesting them to examine whether they are in force in the State or part thereof, and if they are not being implemented, the State Governments may consider their repeal. If the above is done, we would have gone a long way in "excising the dead wood from the Statute Book".

16.4.8 As regards the legislative process, the Secretariat brought to the notice of the Commission an innovative legislation called "Deregulation and Contracting Out Act" passed in U.K. This is in the nature of a general enabling legislation which permits the authorised Minister under the Act to amend the provisions of various legislations through administrative orders, after inviting objections, so long as this is intended to reduce the burden and hardship imposed by the affected legislation, without imposing additional burden or hardships on the rest of the population. The Commission understands that this legislation has been utilised successfully by the Government of

U.K. for the deregulation of economy, and the hardships imposed by a number of existing legislations have been reduced by executive action subject to passing of an affirmative resolution by the Parliament. This has been possible in the case of U.K. because that country does not have a written Constitution like India and the courts do not have the same power of judicial review as in our country. All the same, the Commission considers that it would be advisable for the Law Ministry to examine in consultation with the Law Commission, if necessary, the feasibility of bringing about a similar legislation in our country. It may be mentioned in this connection that the provision of "affirmative resolution by Parliament" was in use in some of the earlier enactments, such as the Indian Tariff Act, 1934 and such other enactments wherein a power was given to indicate the effective rates of duty under a Statute. There have also been provisions in some of the enactments, such as the Mines Act, 1952, wherein even the rules to be made under the Act are made subject to the affirmative resolution by Parliament before they become effective.

16.4.9 The scheme for legislation in India is, inter-alia, based on the dictum that a Statute never dies unless specifically repealed. This has resulted in a situation where Statutes which are even more than 100 years old, as also the Statutes which were enacted for a temporary purpose/period have continued to exist in the Statute Books. More often than not, resort is made to amending the Statutes than enacting a fresh updated legislation. The Commission is, therefore, of the view that a time has come when the Government should seriously consider whether a sunset provision, as in the USA, be followed in our legislative practice also.

16.4.10 Apart from these legal and regulatory aspects, there are important administrative issues related to the fragmented functioning of Central and State agencies, to which the Fifth Central Pay Commission and other expert bodies on administrative reforms have also drawn attention. The restructuring of Government, as undertaken in a number of Commonwealth countries, would be accompanied by the energetic implementation of the elements of the Action Plan endorsed by the Chief Ministers for effective and responsive administration, training and orientation of employees, and the widespread use of information technology. An important administrative step mentioned by a number of Ministries/Departments is the need for equipping Departments requiring constant and up-to-date legal advice for the implementation of domestic and international laws, drafting of agreements and regulations, etc., with their own legal cells. These cells could be staffed by competent persons with legal knowledge and skills essential to the work of the Department, who could be selected by the Law Ministry and placed at the disposal of the Ministries. The Law Ministry should take a proactive stance not only in implementing the recommendations of the Law Commission, but also in responding to suggestions for legal reform received from different expert bodies, Chambers of Commerce, National Law School, etc. The Commission understands that the Asian Development Bank has, in fact, offered the benefits of regional network for improving the capacity of the Law Ministry, divisional administration and the legal education. This would enable specialised training in emerging branches of commerce and trade, cyber laws, consumer legislation, cross border litigation, drafting of treaties and agreements, etc.

16.4.11 In the course of amendments to various laws on the basis of exercises by different Ministries/Departments, it is necessary also to look at simplifying the language used in the legislation, Government rules and orders. A plain English movement has been in operation in the European countries for over 25 years. The idea is that the law, legal documents and Government forms should be in simple English so that the average citizen can understand their implications. This is particularly important in cases where there is regular inter-action between the public and the Government. For example, most of the forms prescribed by the Code of Criminal Procedure in its Second Schedule, which are frequently used by police and the courts are not comprehensible to the public. This can easily be rephrased in plain English without losing any legal meaning. This is true of a large number of Government notifications, circulars, etc. issued by revenue authorities like Excise, Customs and Sales tax.

16.4.12 It is also necessary to take account of the serious observations made by the Parliamentary Committees on Subordinate Legislation from time to time about the deficiencies in the manner in which the rules and regulations are framed and notified by administrative Departments. The Committees have drawn attention to the fact that the prescribed procedure for inviting objections to draft rules and regulations are not often followed, and the final notification is not adequately disseminated for the information of the general public. It is often difficult for the affected parties to get an up-to-date version of the rules, regulations and orders, and sometimes these are not available even with the field offices. We would recommend that the Law Ministry consolidate all the suggestions made by the Parliamentary Committees from time to time about subordinate legislation in general, and provide guidance to Ministries and Departments in adherence to the rule of law and norms of good drafting. They should also ensure that the definitions adopted by different Departments in respect of notifications under some Act, or involving the use of common terms available in different laws, are properly harmonised to avoid disputes in interpretation.

## 17.0 CONCLUSION

17.1 The Commission is conscious that it has not been able to do more than limited justice to the vast area of legal and regulatory reform in India. It did not even have the resources available to the Central Law Commission, nor the luxury of a long period in which to make substantive examination of different laws and regulations, obtain a detailed reply, interact with State Governments and experts, and thus prepare a larger canvas on which it could have made far greater recommendations on different regulatory aspects in the economic and social development. At the same time, the Commission understood the urgency underlying the establishment of the Commission by the Prime Minister and the great concern of the Government in addressing various constraints posed by the structure of administrative law in different critical sectors of the economy, as seen from the perspective of general public and user groups. Looking from this angle, the Commission feels that it has provided the Government a set of recommendations in different sectors, as well as the comprehensive framework within which the immediate constraints facing industry, trade, housing and real estate, tax payers and the general public could be tackled during the rest of this financial year.

17.2 In its report, the Commission has made a series of concrete recommendations in the respective areas of Government functioning for effecting improvements in the legal and regulatory framework of the country. It hopes that appropriate and urgent action will be initiated in the respective Departments and Ministries to consider the recommendations for implementation and to set up mechanisms for monitoring the progress of implementation.

17.3 The Commission places on record its satisfaction for the cooperation and help extended by officials of various Ministries/Departments and Central Agencies in providing valuable material, and its grateful thanks to Chambers of Commerce and Industry as well as the various user groups for their useful suggestions and oral presentation. The assistance provided to the Commission by the Secretariat under the guidance and direction of the Member-Convener, Dr. P.S.A. Sundaram, and the Director, Shri Nikhilesh Jha, has been invaluable.

Sd/=

(P.C. Jain)  
Chairman

Sd/=

(H.D. Shourie)  
Member

Sd/=

(S. Ramaiah)  
Member

Sd/=

(P.S.A. Sundaram)  
Member-Convener

## SUMMARY OF RECOMMENDATIONS

1. The Commission has proceeded on the assumption that the term "administrative laws" needs to be construed, in the light of requirements spelt out in the Terms of Reference, to comprise the laws, as distinct from the constitutional laws, which are administered by different Ministries/Departments but subject to periodical review. The Commission has focussed attention on those laws and regulations and procedures which affect the people most, and where alterations and amendments are required in the interest particularly of economic and social areas, keeping in view the requirements specifically in relation to certain areas including industry, commerce, environment, housing and real estate.

### 2. *General Recommendations:*

#### 2.1. Need for the documentation of complete set of subordinate legislations:

It is desirable that all information about laws, regulations, procedures, circulars and activities of different departments are made available through the electronic media as well as documented compilations to keep the public and various users fully informed of the latest instructions on the various subjects.

[Para 10]

#### 2.2. Need for compilation of rules/regulations issued by State Governments by virtue of the authority vested under Central Laws:

Most of the Ministries did not have any information about the rules and regulations issued by State Governments by virtue of the authority vested under Central laws such as various legislations on labour, Prevention of Food Adulteration Act, Drugs and Cosmetics Act, etc. It is recommended that the Ministries/Departments centrally compile information about all the rules and regulations issued by them and State Governments by virtue of the authority vested under Central laws.

[Para 10]

#### 2.3. Need for a Sectoral Approach:

There has been no effort to converge laws administered by different departments including the legislative Department around sectors of economic and social activity in order to address the problems of industry and users in a focussed manner, but there is a flurry of fragmented individual activities, often at cross purposes. It is recommended that a sector-based approach to laws is taken to address the problems of industry and users in a focussed manner.

[Para 10]

**2.4. Need for addressing the Centre-State interface on administration of Laws:**

The entire question of Centre – State interface on the administration of laws and regulations has so far not been comprehensively addressed either by any of the law commissions , or expert groups on individual sectors. It would be useful for such an exercise to be taken up by the Inter-State Council with the help of an Expert Committee involving Central and State Officials.

[Para 11]

**2.5. Need for study of laws affecting the poor/disadvantaged sections of population:**

There is a need of deeper study by the Government on the entire complex of laws, regulations and procedures which affect the quality of life of poor people and disadvantaged sections of the population, their access to basic services, education, healthcare and nutrition, and their inability to take advantage of the opportunities and benefits provided under various schemes administered by the Central and State Governments and financial institutions, etc.

[Para 13]

**2.6. Simplicity of language:**

In the course of amendment to various laws on the basis of exercises by different Ministries/ Departments, it is necessary also to look at simplifying the language used in the legislation, Government rules and orders.

[Para 16.4.11]

**2.7. Repeal and modernisation of laws:**

The Commission is of the view that each of the statutes which was enacted prior to the Constitution and which is proposed to be retained on the statute book should be reviewed in order to bring its provisions in line with present day requirements. All the dysfunctional and irrelevant laws should be repealed. In this context, the introduction of 'sunset provisions' similar to the U.S.A. statutes may be considered wherever possible.

[Para 16.1.9 & 16.1.11]

**3. *The recommendations of the Commission with reference to the four terms of reference:***

**3.1. Overview of steps taken by different Ministries/Departments.**

3.1.1 The Commission was provided a statement containing an overview of efforts made by 45 Ministries/Departments, views of expert Committees, and this Commission's observations. It is recommended that a definite time frame be indicated by the Ministries/Departments for taking up these amendments or for enacting new laws.

[Para 16.1.3]

3.1.2 In some cases, the Commission had the benefit of only the views of Expert Groups constituted by the Ministries/Departments, but, it was not clear as to whether the Department had taken a decision and if so what on the report of the Expert Groups. The Ministries/Departments need to take follow up action on the recommendations of the Expert Groups in a definite time frame.

[Para 16.1.3]

### 3.2. Unification & harmonisation of statutes & regulations.

3.2.1. The Commission recommends that the laws should be looked at harmoniously from the point of view of groups like domestic and foreign investors, trade, industry, consumer protection, builders, exporters and importers, etc. This is as much an issue of unification and harmonisation of laws, as of assessing the impact of individual provisions of different Acts with reference to the objectives of specific sectoral policies and the need matrix of the stakeholders. The lack of harmonious approach has a number of facets such as not looking at statutes enacted at different points of time in the same subject area or having impact on other sectors; varying definitions in the statutes; proliferation of orders under one Act by different Ministries, and transactions on different States being subject to different treatments.

[Para 16.2.1]

3.2.2. The functioning of the economic and social sector is affected by State Laws like Rent Control Act, Parallel laws for acquisition of land and property, land revenue and land reform laws, legislation governing different utilities in the field of health, industry, housing, transport, etc., laws for town planning, municipality, building bye-laws, and regulations, State and local taxation of land and property, etc. They affect the implementation of national policies and the success of economic reform. It is necessary to take a harmonious view of all these statutes and regulations for improving the functioning of the economic and social sectors, and take up this issue in the Inter-state Council and conferences of State Ministers.

[Para 16.2.3]

### 3.3. Changes in laws, rules, regulations and procedures.

These are indicated sectorwise in Statements appended to the report. Specific recommendations for key areas include :

#### 3.3.1. Administration of Justice:

The Commission feels particularly concerned with the accumulation of vast backlog of cases in courts, inadequate functioning and malfunctioning of subordinate courts, and generally the administration of justice. The backlog of cases is estimated to be about 28 million which gives a poor impression about the functioning of the legal system. To rectify the situation, the Commission recommends as follows :

- (a) Government should take initiative to expand the system of Alternative Disputes Resolution.
- (b) More effective utilisation of the Arbitration and Conciliation Act, and greater use of mediation procedures.
- (c) Entrustment of pending cases of subordinate courts to the "Lok Adalats".
- (d) Expansion of the concept of establishment of Legal Authorities to the remaining states and all the districts.
- (e) Encouragement of initiatives like "Samadhan" (to settle Excise & Income Tax arrears).
- (f) Expansion of the concept of appointment of Dmbudsmen (as done in Banking Sector).

[Para 16.3.19]

### 3.3.2. Housing and Urban Development:

Laws and regulations affecting housing activities are implemented by a number of departments and agencies at the Central, State and local level. This is overlaid by procedures for sanction and approval, utility connections and the levy of fees. All these may not have the same objectives, but the net result has been a freeze on land and housing supply, steady increase in the growth of slums and unauthorised colonies, and placing decent housing beyond the reach of bulk of the population.

[Para 16.3.7(1)]

### 3.3.3 Land Acquisition:

The Commission commends various proposals drafted by the Department of Rural Development for amending the Land Acquisition Act, 1894. These should be revised in the light of suggestions received and then quickly enacted. At the same time, there is a need to fundamentally alter the present cycle of land acquisition in order to delink the process of vesting possession of land in Government free from encumbrance, from the process of determining compensation. In order to prevent the tendency for unnecessary acquisition of land, the Commission recommends that, in case the acquired land is not utilised for public purpose in demonstrable terms in five years of taking possession, the land should be reverted to the original land owner on terms to be prescribed by Government. Alternate forms of land assembly and innovative use of development control rules as in Maharashtra for city utilities and services should be widely adopted.

[Para 16.3.7(3)]

### 3.3.4. Building Regulations and unauthorised construction :

We recommend the wide adoption of innovative efforts in a few cities of single window systems, planning approvals, automatic approval for construction by poor families, delegation to architects, simplified procedures for repairs, lesser documentation, computerisation, updating rules, etc. Regularisation of unauthorised construction should be only on the basis of cost covering payments.

[Para 16.3.7(5)]



3.3.5. Duties on holding and conveyance of property:

Commission recommends revamping the structure of registration of property and land and their conveyance, along with comprehensive amendments to Indian Stamp Act and Registration Act. Power of Attorney transactions should be curbed. Stamp duties and other levies on property should be rationalised and reduced. Department of Urban Development should ensure the adoption of model chapter on property tax based on the set of principles mentioned by the Commission.

[Para 16.3.7(6)]

3.3.6. Sick Industrial Companies:

The Commission has suggested certain modifications in the draft Bill as listed in the statement. It is recommended that Government should take up enactment of the new Bill incorporating these suggestions, since the present legal regime perpetuates industrial sickness and suffers from delays at every stage.

[Para 16.3.9(1) & Para 16.3.9(3)]

3.3.7. Company Law:

The Commission noted the considerable problems faced by the Industry, and even Foreign investors, on account of the Complex provisions of Company Law. The Commission would urge that the Government refer the Draft Companies Bill to a Select Committee for taking note of all suggested improvements from Government Agencies, industry, consumer groups and then enact the Bill in the next six months. This is a much needed legal measure. The present procedures for winding up companies should be comprehensively revised, as suggested by user groups, and fast-track tribunals set up. The Company Law Board needs to be streamlined in terms of procedures and infrastructure to handle the new responsibilities. Along with this, all the rules should be revised and consolidated, and company law administration revamped. The confusion over the roles of RBI, SEBI and Department of Company Affairs should be removed.

[Para 16.3.8(1)]

3.3.8. Investor protection and Non-Banking Finance Companies:

The Commission noted with great concern that the regulatory framework in regard to the NBFCs has come into existence only very recently i.e. in Jan., 1997 through an Ordinance issued by the Government, but the actual implementation of this mechanism by the Reserve Bank of India started after one year. However, judging from representations received by the Commission and seen from frequent reports in the newspapers, even present regulatory machinery devised by the RBI cannot be said to be either adequate or effective.

The Commission urges that the Government clearly vest the responsibility in the RBI for strictly and effectively enforcing the regulatory mechanism, and give wide publicity to various measures which are proposed to be undertaken by the Central and State Governments for registration and regulation of NBFCs, protection of depositors, action against erring companies, and easily accessible and effective avenues for grievance redressal. The mechanism should be to aim at not only on prosecuting offenders but also in arranging for the early payment of deposits. The immediate introduction of the proposed insurance scheme would be helpful in this regard.

[Para 16.3.10(1)]

### 3.3.9 Problems of Foreign Investors:

The Commission noted the low level of actual inflows in relation to the approved foreign investment in different sectors. Foreign direct investment (FDI) is related to perceptions of stability of policy environment and global developments. The sectoral inflow is also governed by sectoral policy issues like fuel linkage, counter guarantees, etc. FDI is equally influenced by State Level delays in approvals, confusion over the role of regulatory authorities in Power, Telecom and other sectors, red tape, inconsistent guidelines, cumbersome documentation, apprehensions over the delays in dispute resolution and contract enforcement, etc. These apprehensions and impressions need to be detailed and reduced to actionable issues at the level of different authorities, and harmoniously resolved by inter-Ministerial groups. A comprehensive study of conception to commencement in successful Asian countries and India will facilitate this exercise.

[Para 16.3.10(7)]

### 3.3.10 Essential Commodities Act:

The Commission noted that a Bill was introduced in the Budget Session 1998 to amend the Essential Commodities Act in order to implement most suggestions of the Expert Committee constituted by the Department of Consumer Affairs. The Commission considers that further improvements in the Bill be made and the Bill then enacted soon, such as provisions to enable Government to review the list of essential commodities periodically and reduce the number gradually, to raise the period of imprisonment for grave offences to more than two years, and to enable the removal of confusion on account of varying specifications in the orders issued by different Ministries under the Essential Commodities Act. It is necessary to balance the interests of trade and consumers..

[Para 16.3.12(2&3)]

### 3.3.11 Health Sector:

The Commission agrees with many observations of Justice Venkatramiah Task Force (set up by the Confederation of Indian Industry) on the rationalisation of food laws, specially, the reorganisation and strengthening of the present administrative set up in the Centre under the Prevention of Food Adulteration Act for laying down standards, and proposing periodic improvements and legal amendments for better administration of the Act. The Prevention of Food Adulteration Act and the Rules at the Centre and in the States are so riddled with technicalities and the staff so insufficient, that they are powerless to prevent or move against adulteration as seen from the recent mustard oil cases in Delhi. The approach has to be one of action to amend the Act and the Rules, restructuring the Central Committee for Food Standards, and streamlining its procedures, strengthening its staff support, and revamping field machinery. It is necessary to control the practice by quacks and unauthorised practitioners. State governments should start accrediting nursing homes with the help of medical practitioners' associations.

[Para 16.3.13(2)]

### 3.3.12 Drug Policy:

The Commission favours a unified administrative set up in the Central Government for implementing the Drug Policy covering manufacture, quality control and pricing, instead of the present division between the Ministry of Health and Family Welfare, and the Ministry of Chemicals and Fertilizers. This is, however, no substitute for strengthening the enforcement staff in the States, rationalising the cadre and career prospects for inspectors, improving inspection procedures without harassment, etc.

[Para 16.3.13(3)]

### 3.3.13. Environment:

The regulations in the environmental sector at central and state level affect both economic and social sectors, and are alleged to cause delays in approvals. The Commission urges the Ministry of Environment and Forests to proceed expeditiously with various important moves for liberalisation and simplification undertaken by them, enforcement of common consent forms, hot spots, etc. and take steps for consolidating different laws and regulations. In respect of forest areas, it is possible to streamline and simplify the existing procedures on the lines indicated in para 16.3.14(2). At the same time, the Commission recommends effective action on the part of Central and State Pollution Control agencies and local authorities for action against those responsible for improper and dangerous disposal of hospital and hazardous wastes, indiscriminate discharge of harmful effluents into water by tanneries and other polluting industries and indiscriminate burning of materials harmful to the population.

[Para 16.3.14(3)]

### 3.3.14 Industry:

The Commission is of the view that the persistence of the *inspector raj* calls for urgent review of the rationale for inspections and documentation under different Central and State Departments, the laws and practices governing inspections, and the need for the adoption of more efficient and transparent surveillance and audit mechanisms. The Commission noted the efforts made by a number of States to rationalise, consolidate, simplify and reduce forms and returns, to introduce single forms with multiple columns for different agencies, and reduce the requirements for the submission of documentation. These need to be sustained and enlarged. The Commission further urges the Central Ministries in charge of Industry, Labour, Environment, Power and other Departments to interact with State Governments for widespread adoption of various good practices.

[Para 16.3.11(4)]

### 3.3.15 Labour Laws:

The Commission noted that the Mitra Committee set up by the Ministry of Labour in October 1997 has made a number of concrete suggestions for amendments to the Industrial Disputes Act, 1947. The Commission broadly endorses legislative action on recommendations made by this Committee. It is of the view that the title of the Act should be amended as the Employment Relations Act in order to shift the focus from disputes to measures for harmonious relations.

The Commission urges the Labour Ministry to introduce amendments to the Contract Labour (Regulation and Abolition) Act 1970 on the lines of the Report of the committee of officials and after study of Supreme Court Judgements. This will enable engagement of contract labour in all peripheral and seasonal activities.

[Para 16.3.15(1)]

3.3.16. Direct Taxation:

The Commission was informed that the CBDT has already implemented a number of suggestions submitted by the Working Group set up by Government for comprehensive revisions for income tax. It is hoped that the remaining recommendations will also be processed for a decision. The steps for simplification of forms and procedures, shortening dispute settlement period, compounding of offences, etc. should be carried forward vigorously.

[Para 16.3.16(2)]

3.3.17 Indirect Tax:

The Commission urges Government to ensure that the revised comprehensive legislation for Excise as well as Customs is finalised for introduction at the time of the next Budget. Meanwhile, the Commission would urge that the Department of Revenue consider the report submitted by a Working Group under the Chairmanship of Shri Chakraborty on amendments to excise rules and regulations, and introduce the amended rules, regulations, procedures and handbooks as soon as possible. Similar exercise should be undertaken for customs also. The improved procedures should be known as much to employees as to the public, and should be predictably and uniformly adopted by citizen friendly staff. The trade and industry should pay its legitimate dues and comply with legal requirements.

[Para 16.3.16(2)]

3.3.18 Consumer Protection:

The operation of Consumer Protection Act over the years has shown certain inadequacies and shortcomings which need to be expeditiously overcome. The Commission understands that certain specific and important recommendations in this regard were made by an Expert Group set up by the Centre, but it is a matter of concern that despite the lapse of 3 years, these recommendations have not yet been incorporated in the Act by effecting requisite amendment. The Commission also recommends that a provision on the lines of Section 86(A) proposed to be included in the Civil Procedure Code by the CPC (Amendment) Bill now pending in Parliament may be included in the Consumer Protection Act. The Consumer Court should be empowered to refer cases before them to arbitration, conciliation or to lok adalats for the purpose of expeditious disposal.

[Para 16.3.17(2)]

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3.3.19 Import and Export Procedure:

Both in the case of imports and exports, Commission feels that the problems arise also from the continuous changes in the Handbook of Procedures, circulars and notifications issued in the period between successive budgets. This makes it difficult for exporters and importers to enter into long term commitments on the basis of predictable costs, and the changes often erode their profit margin. Greater long term predictability and coordinated application of export policy and procedures are necessary for promoting exports. The proposed restructuring of tariff rates into three groups viz., mean rate, merit rate and demerit rate, and reduction in the number of groups for custom duty is a welcome development and should be made fully operable. The Commission feels that since excise and customs are indirect taxes, simplicity, certainty and early finalisation of the taxes are more important than a rule-based attitude. The changes in rules and inter agency coordination and procedures should be directed towards this objective. Equally important are areas of infrastructure, access to low cost credit and the imaginative handling of issues in WTO. Dispute resolution systems should be made expeditious. Advance rulings should be encouraged. Suggestions made in para 16.3.18(4) may be considered.

[Para 16.3.18(2) & (3)]

3.3.17. Alternate Dispute Resolution:

While emphasising the need of expansion of the system of alternate disputes resolution, the Commission recommends more effective utilisation of the arbitration and conciliation Act and the greater use of mediation procedure. The Commission also recommends that the State Governments should give special attention to the strengthening of legal authorities and to promote and encourage the establishment of Lok Adalats in the Districts and Talukas. There is also scope for encouraging and facilitating voluntary arbitration and settlement of disputes particularly relating to areas such as relating with employees, contractors, builders, consumers, businessmen, discrimination against women and weaker sections etc. with the involvement of retired Judges and lawyers. Industry and business should be made to set up at their own cost 'Better Business Forums' similar to the U.S.A. for self regulation by them, and to bring unfair practices and sub-standard products to the notice of consumers. The Commission is of the view that in the course of reforming the existing system of administration of justice in civil courts and the tribunals, Government should not underestimate the potential of the alternate disputes resolution machinery available through the Arbitration and Conciliation Act, Lok Adalats and systems of local justice such as Nyaya Panchayats. Despite its shortcomings, the Lok Adalats have in fact resulted in the resolution of about two lakh cases and have particularly proved useful in cases under the Motor Vehicles Act and Divorce law. The Commission urges government to consider extending the provisions of this legislation to all other legislations involving adjudication by introducing a suitable enabling law.

[Para 16.3.19(6)]

**4. Recommendations for repeal/amendments of laws and regulations**

**4.1. Repeal:**

Of about 2500 Central Laws in force, the Commission recommends repeal of over 1300 Central Laws of different categories as listed below:

- (i) 166 Central Acts (including 11 Pre-Nationalisation Acts and 20 Validation Acts).
- (ii) 315 Amendment Acts.
- (iii) 11 British Statutes still in force.
- (iv) 17 War-time permanent Ordinances.
- (v) 114 Central Acts relating to state subjects.
- (vi) 700 Appropriation Acts (approximately) passed by Parliament.

The Commission recommends their repeal on the ground that these laws have become either irrelevant or dysfunctional.

[Para 16.4.6]

**4.2. Repeal Procedure:**

It is recommended that the Legislative Department should circulate the Acts identified for repeal to the concerned Ministries and the State Governments for their concurrence, and pursue the legislative process for repeal/amendment as recommended.

[Para 16.4.7.]

**5.0 Laws of critical importance:**

The Commission has also prepared a list of 109 Acts which are of critical importance in relation to the terms of reference of this Commission. The list is placed at Appendix-E. Those not so far reviewed may now be taken up for review immediately.

[Para 16.4.6]

**6.0 Implementing Machinery:**

An important administrative step mentioned by a number of Ministries/Departments is the need for equipping Departments requiring constant and up-to-date legal advice for the implementation of domestic and international laws, drafting of agreements and regulations etc., with their own legal cells. These cells could be staffed by competent persons with legal knowledge and skills essential to the work of the Department, who could be selected by the Law Ministry and placed at the disposal of the Ministries. The Law Ministry should take a proactive stance not only in implementing the recommendations of the Law Commission, but also in responding to suggestions for legal reform received from different expert bodies, Chambers of Commerce, National Law Schools, etc.

[Para 16.4.12]

No. K-11022/19/98-P  
Department of Administrative Reforms  
and Public Grievances

Sardar Patel Bhavan, Sansad Marg,  
New Delhi, the May 08, 1998

**OFFICE MEMORANDUM**

Subject : **Constitution of a Commission on Review of Administrative Laws.**

Government have decided to constitute a Commission on Review of Administrative Laws with the following composition :

- |     |  |                 |
|-----|--|-----------------|
| (1) | Shri P.C. Jain, retired Secretary to Government of India                                       | Chairman        |
| (2) | Shri H.D. Shourie, Chairman, Common Cause, A-31, West End, New Delhi-21                        | Member          |
| (3) | Shri S. Ramaiah, retired Legislative Secretary, Government of India                            | Member          |
| (4) | Dr. P.S.A Sundaram, Addl. Secretary Department of Administrative Reforms and Public Grievances | Member-Convenor |

2. The Terms of Reference for the Commission are as follows :-

- (A) To undertake an overview of steps taken by different Ministries Department for the review of administrative laws, regulations and procedures administered by them, and the follow-up steps thereafter, for repeal and amendment.
- (B) To identify, in consultation with Ministries/Departments and client groups, proposals for amendments to existing laws, regulations and procedures, where these are in the nature of law common to more than one Department, or where they have a bearing on the effective working of more than one Ministry/Department and State Governments, or where a collectivity of laws impact on the performance of an economic or social sector, or where they have a bearing on industry and trade.

- (C) To examine, in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable.
- (D) To make, on the basis of this exercise, recommendations for repeal/ amendments of laws, regulations and procedures, legislative process etc.
3. The Commission shall submit its report within three months.
4. The Commission shall be given the fullest possible cooperation and assistance by all Central Government Ministries/Departments/agencies in conducting its work.
5. The members of the Commission (excluding the Member-Convener) will be entitled to a sitting fee of Rs. 1,000/- per sitting and reimbursement of transportation expenses for attending the sittings, as admissible to Secretaries to Government of India. All expenditures relating to the Commission will be borne on the budget of the Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances and Pensions, which will also provide secretarial assistance to the Commission.
6. This order issues with the approval of the Prime Minister.

Sd/= (Nikhilesh Jha)  
Deputy Secretary  
Tele. : 3733030

To

1. Secretaries to all Ministries/Departments.

Copy for information to :

1. Shri P.C. Jain, retired Secretary to the Government of India.
2. Shri H.D. Shourie, Chairman, Common Cause, A-31, West End, New Delhi-21.
3. Shri S. Ramaiah, retired Legislative Secretary, Government of India
4. Shri Brajesh Mishra, Principal Secretary to Prime Minister.
5. Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.
6. Shri Harinder Singh, Joint Secretary (Estt.), DOPT.
7. Shri S. Narendra, PIO.
8. Shri A.N. Sharma, Director Public Relations (Home & Personnel), PIB.
9. PPS to Secretary (P).

Sd/= (Nikhilesh Jha)  
Deputy Secretary  
Tele. : 3733030



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No. K-11022/19/98-P  
Department of Administrative  
Reforms and Public Grievances

Sardar Patel Bhavan, Sansad Marg,  
New Delhi, Dated 19.8.1998

**OFFICE MEMORANDUM**

Subject : ***Commission on Review of Administrative Laws-Extension of the term of the Commission.***

In partial modification of this Department's O.M. of even number dated 8th May, 1998, it has been decided by the Government to extend the term of the Commission on Review of Administrative Laws upto 30th September, 1998.

Sd/-  
(Nikhilesh Jha)  
Deputy Secretary  
Tele. : 3733030

To

Secretaries to all Ministries/Departments.

Copy for information to :

1. All Members of the Commission.
2. Shri Brajesh Mishra, Principal Secretary to P.M.
3. Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.
4. Shri Harinder Singh, Joint Secretary (Estt.), DOPT.
5. Shri S. Narendra, PIO
6. Shri A.N. Sharma, Director Public Relations (Home & Personnel), PIB.
7. PPS to Secretary (P).

Sd/-  
(Nikhilesh Jha)  
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## REGULATORY REFORM FOR RESPONSIVE ADMINISTRATION IN INDIA

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### **The Context**

The Central and State Governments in India have been concerned about the need to ensure a responsive, accountable, transparent, clean, decentralized and people-friendly administration at all levels. This rests on the recognition of the growing frustration and dissatisfaction amongst the people and government's customers about the apathy, lack of responsiveness, and lack of accountability of public agencies. The Conference of Chief Ministers, convened by the Prime Minister in May 1997 endorsed an Action Plan for Effective and Responsive Administration which addressed the issues of **making administration more accountable and citizen-friendly, ensuring transparency and right to information, and taking measures to cleanse and motivate the civil services.** The ongoing initiatives for legal and regulatory reform in Centre and states were sought to be placed within the framework of this Action Plan.

Interactive reviews of the experience with the implementation of various policy changes announced by successive governments to promote economic reform and liberalisation of procedures for the inflow of foreign investment revealed that administrative red tape, requirement of multiple approvals, cumbersome rules and regulations and unresponsive official attitudes are often cited by foreign investors, small and big industrialists as roadblocks. Laws operated by one or more Departments in the central government, or by governments and agencies at different levels, often overlap and conflict with each other, leading to fruitless parallel proceedings and expense for the clients. These lead to delays or non-realisation of investments, cost escalation, denial of the benefits of investment and improved technology to the public, and the economy, and reduced credibility of the reform process itself in domestic and international perception. These are aggravated by long delays in the settlement of cases by the authorities in charge of civil and administrative law. At the same time, the effective delivery of services and benefits to the public under different development and welfare schemes are being seen as often frustrated by archaic laws, rigid regulations and procedures, centralized systems, the insensitive attitude of the officials, and characterized by unwarranted transaction costs. It is important to note here that the problem arises as much from the legal provisions as from the administrative structure for their implementation, the transparency of the system, and the arrangements for dispute resolution.

More insidiously, the complexity and secrecy surrounding rules and regulations account for the instances of rampant corruption in various Departments in granting approvals and permits, or in the process of procurement of goods, or sanction of public works, or in the operation of public utility services. Such corruption could take the form of big scams and payoffs, or speed money and extortion payments at the cutting edge levels for expediting approvals, or for bending rules, or for discretionary decisions. The same regulations, which increase the cost of transactions and lead to deprivation of benefits for the ordinary citizen, allow the unscrupulous middlemen to manipulate the rules for their benefit, or to extract speed money from the clients, often in collusion with officials.

Exercises for legal and regulatory reform had been undertaken from time to time for the purpose of facilitating the process of economic liberalization, speedy approvals, and promoting electoral policies. This was seen as part of the thrust for deregulation and debureaucratization that was sweeping many developing countries. However recent exercises for responsive and open administration, in the mould of the good governance formulations of UNDP, Asian Development Bank etc., look at the legal reform process from the perspective of the citizen and the client groups, the formulation of Citizen's Charters, and the context of administrative and civil service reform and capacity building. Administrative law, in this sense, is not merely subordinate legislation and the context of rules and regulations and procedures administered by a multitude of government agencies and local authorities, but it comprehends all the measures for minimizing unnecessary direct regulatory involvement of public agencies, helping to reduce unnecessary litigation and disputes by government and the public, reducing costs and delays in regulatory administration, procedure audit, interdepartmental coordination, and capacity building of agencies and staff. This would help to identify the scope for essential regulations in the interest of larger public objectives, and the means of better implementation of regulations that need to be continued.

### A Status Card

In addition to the laws passed by Parliament and State Legislatures, a huge body of rules, regulations and other forms of subordinate legislation have grown around and beyond the original laws. Under the same law such as Essential Commodities Act, rules and orders are issued by a number of Central Ministries and Departments. Rules are issued by the State Governments under Central laws relating to Labour, Prevention of Food Adulteration etc. These are further complicated by the circulars issued by revenue authorities such as the Central Board of Direct Taxes and the Central Board of Excise and Customs, further amended by clarifications and internal instructions. While the rules and regulations are at least required to be placed before the Parliament/ Legislature, the circulars and orders are in the nature of executive instructions to departmental officials, and are often not accessible to the general public. Changes in procedures for approvals or for tax assessment are often not given wide publicity and create considerable confusion and problems for the public and business. Different bases for valuation are applied by the authorities administering Central and State taxes, local bodies. The rules governing the exercise of discretionary powers in administrative law are often not laid down with sufficient objectivity, uniformity and openness. (This has to some extent been remedied in some cases by orders of the Supreme Court in the case of allotment of houses, patrol pumps.) The limited accessibility of the poor to lawyers and accountants, and exploitation by middlemen capitalising on proximity to lower officials, increases the profit from discretionary decisions and the lack of transparency surrounding public transactions.

The employees suffer from these deficiencies as much as the general public, since a significant body of administrative law relates to service conditions and determination of emoluments, various forms of entitlements etc., and this leads to needless litigation on service matters, disputes with employee unions, arbitration cases etc. They suffer much more as pensioners for pension calculation, regular payment, health benefits etc. The individual official is not inclined to implement regulations flexibly because of the overarching emphasis on adherence to rules, the fear of audit and vigilance, and examination by legislative committees. Nor is the peer system in civil service very supportive of the maverick reformers. The intricate system of checks and balances to ward off individual malfeasance leads to a behavior pattern of buck-passing and passive acceptance of advice from the Finance or Law Ministry. This is again the reason why the government is the largest litigant, and no one is willing to be accused of refraining from appeal against an order which is patently not appealable. These patterns of administrative behavior must be recognised when reforms are thought of.

It is worth noting that successive Expert Committees and Commissions have been concerned about the complex and unworkable legal provisions, multiple responsibility for their implementation, growing volume of administrative law and circulars issued by different Departments, especially in the economic and fiscal sphere, centralisation of decisions, dilatory procedures for dispute resolution, and the implications of this for incentives to evasion of law, recourse to unauthorized practices, and the consequent potential for corruption. This was discussed in the 1964 report of the Santhanam Committee on Prevention of Corruption, the 1971 Wanchoo Committee on Direct Taxes and the 1983 Economic Reforms Commission. The cynics bless the ineffective enforcement of unworkable laws for whatever development has taken place by default, or the loopholes in laws like Urban Land (Ceiling and Regulation) Act for permissive development.

One of the reasons for the general perception of the unsatisfactory outcome of major policy changes in the industrial sector since 1991 is that the range of legislation and that of ministerial responsibility extends far beyond the Departments in charge of industry and investments in the central and state governments. These agencies implement the legislative and regulatory provisions from their own perspectives, and are not necessarily informed by, nor have incentives to pursue, the common goals of industrial promotion. This is seen even in the limited exercises of even the Expert Committees set up recently. A sample list of various Acts under which locational restrictions or approvals may be required for locating a unit could include :

Legislation	Agency
• Gram Panchayat and District Acts	..... Department of Revenue or Rural Development
• Town and Country Planning Act	..... Municipal Government, Town Planning agencies
• Municipal Laws	..... Municipal bodies, State Government
• Urban Land Ceiling and Regulation Act	..... Competent Authority of State Government
• Notified Areas/Industrial Areas	..... Industrial Development Corporations/Notified Authorities
• Acts regarding utilities	..... Authorities for Water Supply and Sewerage/ ..... Housing/Electricity
• Health and Environment Acts	..... Pollution Control Boards/Health Directorates/ ..... Local Bodies
• Labour and Employment Acts	..... State Labour Authorities
• Other legislations such as Factories Act, Boilers Act, Forest Act, Wild Life protection Act, Ancient Monuments Act, etc.	
• Rules, Regulations and local procedures for approvals.	

Indeed, for the private sector, conventional industrial licensing may not be their main concern they have learned how to cope with it, and the various Central Ministries are responsive to overcoming legal hurdles. The real problems appear to be the lack of infrastructure like ports and transport, non-functioning services and the problems of securing access to it, red tape associated with land use and services, cumbersome procedures and interference from the plethora of inspectorates functioning under environment, labour, health, safety and the local bodies, the procedures of the financial institutions (especially for the small units), notwithstanding the single window set up by industrial agencies for investment and operational approval, about the opaqueness and inconsistency of procedures, and the arbitrary use of discretionary powers. The user organisations and the general public are concerned about the lack of predictable, swift and consistent framework for dispute settlement. The solution lies in redesigning the flow of procedures to ensure that there is a single point of clearance, assistance and supervision, steps to see that associated accountability can be identified and enforced, and the employees develop ownership of responsive systems.

**Past Efforts for Reform**

An exercise was undertaken by different Central Departments at the instance of the Finance Minister in 1995 in order to look into the scope for administrative reform to support the process of economic liberalization. Apart from the various steps taken by various Ministries for delicensing and removal of controls (which is well documented in the Annual Economic Surveys brought out by the Ministry of Finance), the steps taken pursuant to the reports of these task forces in different Departments have been :

- Accent on transparency and the free flow of information to the public, often through home pages on the Internet;

The effort is not confined to the Central agencies alone. Similar initiatives have been reported by state governments also, and the thrust is as much for deregulation as for citizen-friendly administration, as the state and local agencies deal more directly with the public for various services.

### Approach

Following the resolution of Conference of Chief Ministers in 1997 referred to earlier, a number of state governments have set up Law Commissions in order to review the entire framework of laws and regulations and have introduced amendments in the regulatory set up. The Central Government asked different Ministries/Departments to set up Expert Groups whose terms of references were :

- (a) Identification of laws which are no longer needed or relevant or can be immediately repealed.
- (b) Identification of laws which are in harmony with the existing climate of economic liberalisation and which need no change.
- (c) Identification of laws which require changes or amendments and suggestions for amendments.
- (d) Revision of rules, regulations, orders and notifications, especially those affecting interests of weaker sections and business.

The review exercise would consider whether the objectives are properly defined after consultation with the affected groups, whether these objectives could be better achieved in any other manner or made more citizen friendly, whether it is necessary to continue with the existing regulations at all, whether the machinery for their implementation is adequate and cost effective, and whether the presumed social and economic benefits of the regulation warrant their continuance. Simultaneously with the commencement of work of these Expert Groups, the government also set up the Law Commission under the Chairmanship of Justice B.P. Jeevan Reddy with a mandate to look at proposals emanating from different Ministries/Departments on the basis of these terms of reference, and with particular reference to laws and regulations having an impact on more than one department. The Law Commission has submitted an interim report on some Ministri's proposals, and on some specific legislation.

Substantial progress has been made by 43 Ministries/Departments whose reports were reviewed by us. The review exercise has covered mostly amendments to legislation administered by them, and repeal/amendments to rules, regulations and procedures only by few Ministries. The Commission was required to overview the reports prepared by Ministries/Departments with or without the help of Expert Groups. In addition, a number of Ministries set up Inter-Ministerial Groups or Expert Groups to revise existing laws and regulations or to frame new laws, as for example, the drafting of comprehensive changes in Income Tax law, excise regulations, company law, Build-operate-Transfer law, cyber law, SEBI Act, electronic funds transfer in banks, patent laws, Criminal Procedure code, crimes against women, labour laws etc.

While serious efforts are being made to take note of the problems put forward by associations of business, commerce, citizen groups, and to evolve proposals for reform with due regard to the suggestions made by them and the findings of field evaluation, it is important to note that reforms in administrative law represent only one aspect of effective, transparent and accountable administration, as indicated at the beginning of this paper. Emphasis should be on proactive policies for decentralised and participatory administration and the voluntary dissemination to all Central, state and local agencies of all information relating to regulatory and development procedures, activities of government and the functioning of different agencies with progressive use of information technology. Since bulk of the procedures today cause delay on account of manual and paper waste systems, the very process of changing the systems of networking of information within and across Departments, and enabling citizens to deal with public agencies through the electronic media or through counter staff with delegated powers, would help to minimise delays, harassment and the scope for speed money. A number of Departments have started changing their style of function but much more needs to be done, given the culture of secrecy, adherence to rules, insensitivity to problems of the public and other deficiencies that characterise the bureaucracy. As important as recognising and rewarding honesty and people friendliness is the swift punishment of the inefficient, insensitive and dishonest. Along with reform of the systems of working, another fruitful area of reform has been the amendment to procedures to facilitate self-assessment in the case of fiscal laws and self-regulation in the case of approvals and permits. This will of course be facilitated to the extent that professional bodies of real estate operators, architects, engineers, accountants etc. come forward to administer with honesty the system of credible certification and acceptable valuation.

The present legal reform has not specifically addressed anti-poor laws and procedures. As regards the large numbers of people living in rural areas and unable to access the electronic media, the reform has been in the direction of taking the administration to the people such as the Janmabhoomi Experiment in Andhra Pradesh, involving instant redressal of grievances, removing disabilities of poor women and other disadvantaged groups, issue of certificates and approvals on the spot by a team of empowered officials, enabling the applicant to secure copies of records from computerised counters, and providing for administration of welfare schemes by citizen groups and voluntary agencies on the basis of objective and transparent norms. This process will, of course, be facilitated to the extent that elected local bodies down to the level of panchayats and gram sabhas are enabled to implement all local schemes and provide basic services to the population on the basis of widespread participation and consultation. Participatory process will itself remove the type of constraints posed by rules and regulations at the Central and State level and create pressure for amending these rules in ways which will make people centred development possible. This will also help to address the variety of constraints facing the economic and social activity of the poor and disadvantaged sections which has been very well documented by Dr. N.C Saxena.

- Simplification of Registration procedure, streamlining of application receipt, acknowledgment and monitoring system, computerised counters in field offices with easy access to information on the status of applications, delegation of powers to local officials etc. , in respect of Departments like Industrial Policy and Promotion, Company Affairs, Small Scale Industries, Supply and Urban Development;
- Simplification/elimination/consolidation of forms, facility of submitting forms through computers in some cases, computerised counters for receiving and acknowledging applications and forms, specification of the list of documents to be furnished, issue of information booklets, devising standard formats in the office for dealing with repetitive cases as well as for submission to Committee members, use of printed or computerised receipts, recasting forms to enable computerised processing, annual exercise for the review of forms etc., introduction of a composite form for foreign direct investment/foreign technology collaboration and industrial license has been devised for all applicants;
- Simplification of procedures and single-window systems for all clearances and approvals, adoption of a common format for multi-agency approvals, layering and delegation of authority, publicity to procedures through booklets and internet home page, etc.;
- Delegation to state agencies and central agencies of powers under laws administered by different Central Ministries, as well as powers for technical scrutiny for power projects, environmental clearances for small projects, etc.;
- Permitting alternate agencies for the issue of certificates and valuation required for approvals, decentralising payment procedures;
- Actions under Industrial Policy such as the abolition of unnecessary committees such as the MRTP Licensing Committee, and the conversion of erstwhile mandatory forms into inforamory submissions e.g., the step taken by the Industry Ministry for composite form for foreign investment, to abolish the need for Industries Registration, elimination need for registration of foreign investors with Reserve Bank, Delicensed Registration and DGTD Registration for delicensed units, and replacing them by the IEM; simplification of the procedure for granting approvals under Electronic Hardware Technology Park and Software Technology Park schemes, by providing for automatic approval within 15 days of the application conforming to listed criteria; automatic approval for private bonded warehouses in export processing zones; exemption of certain power projects from competitive bidding;
- Various steps taken by Railways for simplifying the procedure for refunds to passengers, for reservation to any station on the computerised network, for processing claims relating to goods traffic, dealing with public complaints at the operational level, enforcing time limits etc.;



- Steps taken by the Ministry of Environment to streamline and decentralise examination of proposals under the Forest Conservation Act, delegate powers to the state governments under different provisions of environmental laws rationalize the consent procedure for small-scale units, consolidating the standards for effluent treatment etc., and delegating powers to the State Pollution Control Boards;
- Steps taken by SEBI to improve the transparent operation of the capital market, paperless trading in securities, regulate unethical practices, and to protect the investors;
- Circulars issued by Reserve Bank of India to promote customer friendly practices of nationalised banks, reduce delays in transactions and simplify procedures;
- Procedures have been simplified by the Central Board of Customs and Excise for a number of transactions such as the fast track procedure, computerisation, processing of import documents in advance and assessing duty 30 days before the consignment, so that the goods can be released immediately on arrival; changing the rules relating to MODVAT; release of goods on sample check etc.;
- Deletion of 696 guidelines relating to the Public Sector Undertakings, as recommended by the Vittal Committee; strategy for progressive transformation of PSU's into autonomous Board-managed companies, with a minimum requirement for approaching the government for approvals;
- Increasing use of information technology for reducing manual systems for file movement, data storage and retrieval, creating intranet backbone for data-sharing and access to the public, instant processing of applications (as in the case of the air cargo processing by Delhi Customs), issue of land record copies and other certificates in rural and urban areas, reducing delays, and minimising the need for person-to-person transactions; EDI Service Centres opened by the Federation of Indian Exporters Organisation at its premises, and by a number of Ministries and their agencies in their main offices;
- Strengthening the public grievance redressal system in different Ministries and Central agencies, in order to secure prompt remedial action in cases of maladministration, neglect, harassment, delays etc., and to address systemic causes for grievances; the installation of Banking Ombudsmen in the nationalised banks (and soon in Insurance) for the resolution of complaints relating to deficiency in banking services, the complaints adalat systems in respect of the Telephone services and the Postal Department, the Social Audit Panels of these Departments for public hearing, the public hearings of the Protector General of Emigrants in different cities to redress grievances of intending or returned emigrants and agents on various aspects of emigration, the establishment of the Public Grievances Commission in Delhi are concrete examples of this endeavour;
- Growing impact of Consumer Grievance Redressal Forum at district, state and national level which award damages to consumers against negligent and insensitive providers of service in public and private sector.

APPENDIX-A

**Central Laws Recommended for Repeal**

- A-1 : 166 Central Acts (including 11 Pre-Nationalisation Acts and 20 Validation Acts) \*
- A-2 : 315 Amendment Acts +
- A-3 : 11 British Statutes Still in force \*
- A-4 : 17 Wartime permanent Ordinances \*
- A-5 : 114 Central Acts relating to State subjects for repeal by State Governments \*
- A-6 : 700 (approximately) Appropriation Acts Passed by Parliament for repeal by Central Government +

\* List of Acts recommended for repeal are enclosed.

+ List not enclosed

166 CENTRAL ACTS (INCLUDING 11 PRE-NATIONALISATION ACTS, AND 20 VALIDATION ACTS)

1. The Livestock Importation Act, 1898.
2. The Glanders and Fancy Act, 1899.
3. The Dourine Act, 1910.
4. The Indian Power Alcohol Act, 1948.
5. The Essential Commodities (Special Provisions) Act, 1981.
6. The Spirituous Preparations (Inter-State Trade & Commerce) Act, 1955.
7. The Tobacco Board Act, 1975.
8. The Finance Commission (Miscellaneous Provisions) Act, 1951.
9. The compulsory Deposit Scheme Act, 1963.
10. The Additional Emoluments (Compulsory Deposit) Act, 1974.
11. The Banking Service Commission Act, 1984.
12. The Shipping Development Fund Committee (Abolition) Act, 1986.
13. The Gift-tax Act, 1958.
14. The Central Excise Laws (Amendment and Validation) Act, 1982.
15. The Sugar (Special Excise Duty) Act, 1959.
16. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958.
17. The Central Duties of Excise (Retrospective Exemption) Act, 1986.
18. The Customs and Excise Revenue Appellate Tribunal Act, 1986.
19. The Young Persons (Harmful Publications) Act, 1956.
20. The Federal Court Act, 1937.
21. The Federal Court (Enlargement of Appellate Jurisdiction) Act, 1947.
22. The Goa, Daman and Diu (Opinion Poll) Act, 1966.
23. The Indian Law Reports Act, 1875.
24. The Indian Rifles Act, 1920.
25. The Abolition of Privy Council Jurisdiction Act, 1949.
26. The Continuance of Legal Proceedings Act, 1948.

27. The Industrial Disputes (Banking Companies) Decision Act, 1955.
28. The Oriental Gas Company (Act 5 of 1857).
29. The Oriental Gas Company Act, 1867.
30. The Payment of Taxes (Transfer of Property) Act, 1949.
31. The Special Tribunals (Supplementary Provisions) Act, 1946.
32. The Special Courts (Repeal) Act, 1982.
33. The Forfeiture Act, 1859.
34. The Ganges Tolls Act, 1857.
35. The Acting Judges Act, 1867.
36. The Companies (Foreign Interests) Act, 1918.
37. The Promissory Notes (Stamp) Act, 1926.
38. The Allianz Und Stuttgarter Life Insurance Bank (Transfer) Act, 1959.
39. Amending Act, 1897.
40. The Amending Act, 1901.
41. The Amending Act, 1903.
42. The Banking Companies (Legal Practitioner's Clients Accounts) Act, 1949.
43. Boundaries, 1847.
44. The Central Sales Tax (Amendment) Act, 1969.
45. The Coasting Vessels Act, 1838.
46. The Companies (Surcharge on Income-tax) Act, 1971.
47. The Companies (Temporary Restrictions on Dividends) Act, 1974.
48. The Cotton Cloth Act, 1918.
49. The Cotton Textiles Cess Act, 1948.
50. The Cotton Ginning and Pressing Factories Act, 1925 (12 of 1925).
51. The Countess of Dufferin's fund Act, 1957.
52. The Delimitation Act, 1972.
53. The Deposit Insurance Corporation (Amendment and Misc. Provisions) Act, 1978.
54. The Estate Duty Act, 1953.
55. The Estate Duty (Distribution) Act, 1962.
56. The Lepers Act, 1894 (3 of 1898).

57. The Excise (Malt Liquors) Act, 1890.
58. The Government Trading Taxation Act, 1926.
59. The Imperial Library (Indentures Validation) Act, 1902.
60. The Income-tax (Amendment) Act, 1965.
61. The Indian Bar Councils Act, 1926.
62. The Indian Short Titles Act, 1897.
63. The Indian Universities Act, 1904.
64. The Industrial Disputes (Amendment and Miscellaneous provisions) Act, 1956.
65. The Influx From Pakistan (Control) Repealing Act, 1952.
66. The Land Acquisition (Amendment) Act, 1962.
67. The Land Acquisition (Amendment and Validation) Act, 1967.
68. The Laws Local Extent Act, 1874.
69. The Legal Practitioner's Act, 1879.
70. The Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976.
71. The Railway Companies (Emergency Provisions) Act, 1951.
72. The Railway Companies (Substitution of Parties in Civil Proceedings) Act, 1946.
73. The Refugee Relief Taxes (Abolition) Act, 1973.
74. The Rent Recovery Act, 1853.
75. The Reserve Bank of India (Amendment and Miscellaneous Provisions) Act, 1953.
76. The Special Bearer Bonds (Immunities and Exemptions) Act, 1981.
77. St. John Ambulance Association (India) Transfer of Funds Act, 1956.
78. The Sugarcane Control (Additional Powers) Act, 1962.
79. The Taxation on Income (Investigation Commission) Act, 1947.
80. The Tea Districts Emigrant Labour (Repeal) Act, 1970.
81. The Tobacco Cess Act, 1975.
82. The Voluntary Disclosure of Income and Wealth Act, 1976.
83. The Voluntary Deposits (Immunities and Exemptions) Act, 1991.
84. The Easements (Extending) Act, 1891. (8 of 1891).
85. The Foreign Recruitment Act, 1874. (4 of 1874).

86. The Government Trading Taxation Act, 1926. (3 of 1926).
87. The Indian Railway Companies Act, 1895. (10 of 1895).
88. The Indian Railway Board Act, 1905. (4 of 1905).
89. The Iron and Steel Companies (Amalgamation) Act, 1952. (79 of 1952).
90. The Promissory Notes (Stamp) Act, 1926. (11 of 1926).
91. The Refugee Relief Taxes (Abolition) Act, 1973. (13 of 1973).
92. The Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947. (16 of 1947).
93. The Pondicherry (Extension of Laws) Act, 1968. (26 of 1968).
94. The Prevention of Food Adulteration (Extension to Kohima and Mokokchung Districts) Act, 1972. (24 of 1972).
95. The Central Laws (Extension to Jammu and Kashmir) Act, 1968.
96. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970.
97. The Central Laws (Extension to Arunachal Pradesh) Act, 1993. (44 of 1993).
98. The Diplomatic and Consular Officers (Daths and Fees) (Extension to Jammu and Kashmir) Act, 1973. (2 of 1973).
99. The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965. (30 of 1965).
100. The Miscellaneous Personal Laws (Extension) Act, 1959. (48 of 1959).
101. The Taxation Laws (Extension to Jammu and Kashmir) Act, 1954. (4 of 1954).
102. The Taxation Laws (Extension to Jammu and Kashmir) Act, 1972. (25 of 1972).
103. The Taxation Laws (Extension to Merged States and Amendment) Act, 1949. (47 of 1949).
104. The Taxation Laws (Continuation and Validation of Pending Proceedings) Act, 1964. (11 of 1964).
105. The Scheduled Areas (Assimilation of Laws) Act, 1951. (37 of 1951).
106. The Scheduled Areas Act, 1953. (16 of 1953).
107. The Shillong (Rifle Range and Umlong) Cantonments Assimilation of Laws Act, 1954. (31 of 1954).
108. The West Godavari District (Assimilation of Laws on Federal Subjects) Acts, 1949. (20 of 1949).
109. The Union Territories (Laws) Act, 1950.

110. The Absorbed Areas (Laws) Act, 1954. (20 of 1945).
111. The Central Provinces (Laws) Act, 1875. (20 of 1875).
112. The Cooch-Behar Assimilation of Laws Act, 1950. (67 of 1950).
113. The Jammu and Kashmir (Extension of Laws) Act, 1956. (62 of 1956).
114. The Manipur and Tripura (Repeal of Laws) Act, 1958. (36 of 1958).
115. The Married Women's Property (Extension) Act, 1959. (61 of 1959).
116. The Opium and Revenue laws (Extension of Application) Act, 1950. (33 of 1950).
117. The Merged States (Laws) Act, 1949. (59 of 1949).
118. The Petroleum (Serar Extension) Act, 1937. (23 of 1937).
119. The Vaccination Act, 1880 (13 of 1880).
120. The Union Duties of Excise (Distribution) Act, 1979. (24 of 1979).
121. The Union Duties of Excise (Electricity Distribution) Act, 1980. (14 of 1989).
122. The Himachal Pradesh State Legislature (Delegation of Powers) Act, 1993. (5 of 1993).
123. The Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992. (21 of 1992).
124. The Mysore State Legislature (Delegation of Powers) Act, 1971. (23 of 1971).
125. The Punjab State Legislature (Delegation of Powers) Act, 1987. (24 of 1987).
126. The Tamil Nadu State Legislature (Delegation of Powers) Act, 1988. (21 of 1988).
127. The Uttar Pradesh State Legislature (Delegation of Powers) Act, 1993. (8 of 1993).
128. The Uttar Pradesh State Legislature (Delegation of Powers) Act, 1996. (2 of 1996).
129. The Business Profits Tax Act, 1947. (21 of 1947).
130. The Company (Profits) Surtax Act, 1964. (7 of 1964).
131. The Business (Surcharge on Income Tax) Act, 1971. (62 of 1971).
132. The Excess Profits Tax Act, 1940. (15 of 1940).
133. The Epidemic Diseases Act, 1897 (3 of 1897).
134. The Hotel Receipts Tax Act, 1980. (54 of 1980).
135. The Delhi and Ajmer Rent Control (Nasirabad Cantonment Repeal) Act, 1968. (49 of 1968).

**PRE-NATIONALISATION ACTS**

136. The Coking Coal Mines (Taking Over of Management) Act, 1973. (15 of 1973).
137. The Coal Mines (Emergency Provisions) Act, 1971. (64 of 1971).
138. The General Insurance (Emergency Provisions) Act, 1971. (17 of 1971).
139. The Auroville (Emergency Provisions) Act, 1980. (59 of 1980).
140. The Iron and Steel Company (Taking over of Management) Act, 1972. (51 of 1972).
141. The Laxmi Rattan and Atherton West Cotton Mills (Taking over of Management) Act, 1976. (98 of 1976).
142. The Life Insurance (Emergency Provisions) Act, 1956. (9 of 1956).
143. The Parel Investment and Trading Pvt. Ltd. and Domestic works Pvt.-Ltd. (Taking over of Management) Act, 1979. (29 of 1979).
144. The Sick Textile Undertakings (Taking over of Management) Act, 1972. (72 of 1972).
145. The Sugar Undertakings (Taking over of management) Act, 1978. (49 of 1978).
146. The Textile Undertakings (Taking over of Management) Act, 1983. (40 of 1983).

**VALIDATION ACTS**

147. The Bangalore Marriage Validation Act, 1936. (36 of 1936).
148. The Bar Councils (Validation of State Laws) Act, 1956. (4 of 1956).
149. The Bengal Finance (Sales Tax) Delhi Validation of Appointments and Proceedings) Act, 1971. (20 of 1971).
150. The Central Board of Direct Taxes (Validation of Proceedings) Act, 1971.
151. The Decrees and orders Validating Act, 1936. (5 of 1936).
152. The Delhi Municipal Corporation (Validation of Electricity Tax) Act, 1966 (35 of 1966).
153. The Destructive Insects and Pests (Amendment and Validation) Act, 1992. (12 of 1992).
154. The Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958. (56 of 1958).
155. The Hindu Marriage (Validation of Proceedings) Act, 1960. (19 of 1960).



156. The Hyderabad Export Duties (Validation) Act, 1955. (20 of 1955).
157. The Jubbulpore and Chhattisgarh Divisions (Divorce Proceedings Validation) Act, 1935. (13 of 1935).
158. The Madhya Bharat Taxes on Income (Validation) Act, 1954. (38 of 1954).
159. The Marriages Validation Act, 1892. (2 of 1892).
160. The Mussalman Wakf Validating Act, 1913. (6 of 1913).
161. The Mussalman Wakf Validating Act, 1930. (32 of 1930).
162. The Part B State Marriages Validating Act, 1952. (1 of 1952).
163. The Professions Tax Limitation (Amendment and Validation) Act, 1949. (61 of 1949).
164. The Sugar-cane Cess (Validation) Act, 1961. (38 of 1961).
165. The Travancore-Cochin Vehicles Taxation (Amendment and Validation) Act, 1959. (42 of 1959).
166. The Uttar Pradesh Sugar Cane Cess (Validation) Act, 1961. (4 of 1961).

11 BRITISH STATUTES STILL IN FORCE

1. Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. C. 88)
2. Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. C. 96)
3. British Law Ascertainment Act, 1859 (22 & 23 Vict. C. 63)
4. Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. C. 27)
5. Colonial Prisoners Removal Act, 1884 (47 & 48 Vict. C. 31)
6. Colonial Probates Act, 1892 (55 & 56 Vict. C. 6)
7. Foreign Law Ascertainment Act, 1861 (24 & 25 Vict. C. 11)
8. India (Consequential Provisions) Act, 1949 (12, 13 & 14 Geor. VI C. 92)
9. Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17. Geor V.C. 40)
10. India and Colonial Divorce Jurisdiction Act, 1940 (3 & 4. Geo. IV C. 35)
11. Indian Divorce Act, 1945 (9. Geo. VI. C. 51)

17 WAR-TIME PERMANENT ORDINANCES

Name of Ordinance

1. Armed Forces (Special Powers) Ordinance, 1942 (41 of 1942)
2. Bank Notes (Declaration of Holdings) Ordinance, 1946 (2 of 1946)
3. Collective Fines Ordinance, 1942 (20 of 1942)
4. Criminal Law Amendment Ordinance, 1944 (388 of 1944)
5. Criminal Law Amendment Ordinance, 1946 (6 of 1946)
6. Currency Ordinance, 1940 (4 of 1940)
7. Essential Service (Maintenance) Ordinance, 1941 (11 of 1941)
8. Excess Profits Tax Ordinance, 1943 (16 of 1943)
9. Income-Tax and Excess Profits Tax (Emergency) Ordinance, 1942 (60 of 1942)
10. Income-Tax Proceedings Validity Ordinance, 1943 (4 of 1943)
11. Military Nursing Service Ordinance, 1943 (30 of 1943)
12. Public Health (Emergency Provisions) Ordinance, 1944 (21 of 1944)
13. Rajasthan High Court Ordinance, 1949 (15 of 1949)
14. Secunderabad Marriage Validating Ordinance, 1945 (30 of 1945)
15. Termination of War (Definition) Ordinance, 1946 (10 of 1946)
16. War Gratuities (Income-Tax Exemption) Ordinance, 1945 (24 of 1945)
17. War Injuries Ordinance, 1941 (7 of 1941)

114 CENTRAL ACTS RELATING TO STATE SUBJECTS FOR REPEAL  
BY STATE GOVERNMENTS

1. The Agriculturist Loans Act, 1884 (12 of 1884)
2. The Ajmer Tenancy and Land Records Act, 1950 (42 of 1950).
3. The Assam Municipal (Manipur Amendment) Act, 1961 (64 of 1961).
4. The Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887).
5. The Bengal Alluvion and diluvion Act, 1847 (9 of 1847).
6. The Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912).
7. The Bengal Warehouse Association Act, 1838 (5 of 1838).
8. The Bengal Bonded Warehouse Association Act, 1854 (5 of 1854).
9. The Bengal Choukidari Act, 1856 (20 of 1856).
10. The Bengal Oistricts Act, 1836 (21 of 1836).
11. The Bengal Embankment Act, 1855 (32 of 1855).
12. The Bengal Ghatwali Laws Act, 1859 (5 of 1859).
13. The Bengal Indigo Contract Act, 1836 (16 of 1836).
14. The Bengal Land Holder's Attendance Act, 1848 (20 of 1848).
15. The Bengal Land Revenue Sales Act, 1841 (12 of 1841).
16. The Bengal Land Revenue Sales Act, 1859 (11 of 1859).
17. The Bengal Military Police Act, 1892 (5 of 1892)
18. The Bengal Rent Act, 1859 (10 of 1859).
19. The Bengal Suppression of Terrorist Outrages (Supplementary) Act, 193 (24 of 1932).
20. The Bengal Tenancy Act, 1885 (8 of 1885).
21. The Bhopal and Vindhya Pradesh (Courts) Act, 1950 (40 of 1950).
22. The Bihar Land Reforms Laws (Regulating Mines and Minerals) Validation Act, 1969 (42 of 1969).
23. The Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).
24. The Bombay Civil Courts Act, 1869 (14 of 1869).
25. The Bombay Municipal Debentures Act, 1876 (15 of 1876).

26. The Bombay Rent-free Estates Act, 1852 (11 of 1852).
27. The Bombay Revenue Jurisdiction Act, 1876 (10 of 1876).
28. The Boundary-marks, Bombay (3 of 1846).
29. The Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).
30. The Calcutta Land Revenue Act, 1850 (23 of 1850).
31. The Calcutta Land Revenue Act, 1856 (18 of 1856).
32. The Central Provinces (Courts of Wards) Act, 1899 (24 of 1899).
33. The Central Provinces Financial Commissioner's Act, 1908 (13 of 1908).
34. The Central Provinces Land Revenue Act, 1881 (18 of 1881).
35. The Central Provinces Tenancy Act, 1898 (11 of 1898).
36. The Chota Nagpur Encumbered Estates Act, 1876 (6 of 1876).
37. The City of Bombay Municipal (Supplementary) Act, 1888 (12 of 1888).
38. The Civil Courts Amins Act, 1856 (12 of 1856).
39. The Coroners Act, 1871 (4 of 1871).
40. The Dekkhan Agriculturists Relief Act, 1879 (17 of 1879).
41. The Disturbed Areas (Special Courts) Act, 1976 (77 of 1976).
42. The Essential Services Maintenance (Assam) Act, 1980 (41 of 1980).
43. The Fort William Act, 1881 (13 of 1881).
44. The Goa, Daman and Diu (Absorbed Employees) Act, 1956 (50 of 1956).
45. The Government Grants Act, 1895 (15 of 1895).
46. The Government Management of Private Estates Act, 1892 (10 of 1892).
47. The Hackney Carriage Act, 1879 (14 of 1879).
48. The Howrah offences Act, 1857 (21 of 1857).
49. The Improvement in Towns (26 of 1850).
50. The Indian Tramways Act, 1886 (11 of 1886).
51. The Indian Tramways Act, 1902 (4 of 1902).
52. The Junagarh Administration (Property) Act, 1948 (26 of 1948).
53. The Local Authorities (Loans) Act, 1948 (26 of 1948).
54. The Local Authorities Pensions and Gratuities Act, 1919 (1 of 1919).
55. The Madras, Bengal and Bombay Children (Supplementary) Act, 1925 (35 of 1925).

56. The Madras City Civil Court Act, 1892 (7 of 1892).
57. The Madras City Land Revenue Act, 1851 (12 of 1851).
58. The Madras Civil Courts Act, 1872 (3 of 1872).
59. The Madras Compulsory Labour Act, 1858 (1 of 1858).
60. The Madras District Police Act, 1859 (24 of 1859).
61. The Madras Forest (Validation) Act, 1882 (21 of 1882).
62. The Madras Public Property (Malversation) Act, 1837 (36 of 1837).
63. The Madras Rent and Revenue Sales Act, 1839 (7 of 1839).
64. The Madras Revenue Commission Act, 1849 (10 of 1849).
65. The Madras Uncovenanted Officers Act, 1857 (7 of 1857).
66. The Mangrol and Manavadar (Administration of Property) Act, 1949 (2 of 1949).
67. The Manipur and Tripura (Repeal of Laws) Act, 1958 (75 of 1958).
68. The Manipur Court-fees (Amendment and Validation) Act, 1953 (44 of 1953).
69. The Municipal Taxation Act, 1881 (11 of 1881).
70. The Murshidabad Act, 1891 (15 of 1891).
71. The Murshidabad Estates Administration Act, 1933 (13 of 1933).
72. The North-Eastern Provinces Village and Road Police Act, 1873 (16 of 1873).
73. The Orissa Weights and Measures (Delhi Repeal) Act, 1958 (57 of 1958).
74. The Partition Act, 1893 (4 of 1893).
75. The Partition of Revenue-paying Estates Act, 1863 (19 of 1863).
76. The Police Act, 1861 (5 of 1861).
77. The Police Act, 1888 (3 of 1888).
78. The Police Act, 1949 (64 of 1949).
79. The Police Agra Act, 1854 (16 of 1854).
80. The Presidency Magistrate (Court Fees) Act, 1877 (4 of 1877).
81. The Public Gambling Act, 1867 (3 of 1867).
82. The Public Suits Validation Act, 1932 (11 of 1932).
83. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).
84. The Punjab Courts (Supplementing) Act, 1919 (9 of 1919).

85. The Punjab District Boards Act, 1883 (20 of 1883)
86. The Revenue Commissioners Bombay Act, 1842 (17 of 1842).
87. The Sales of Land for Revenue Arrears, 1845 (1 of 1845).
88. The Sarais Act, 1867 (22 of 1867).
89. The Scheduled Securities (Hyderabad) Act, 1949 (7 of 1949).
90. The Sheriff of Calcutta (Power of Custody) Act, 1931 (20 of 1931).
91. The Shore Nuisances (Bombay and Kolaba) Act, 1853 (11 of 1853).
92. Sir Dinshaw Maneekjee Petit Act, 1893 (6 of 1893).
93. Sir Jamsetjee Jejeebhoy Baronetcy Act, 1915 (10 of 1915).
94. The Sonthal Paraganas Act, 1855 (37 of 1855).
95. The Sonthal Paraganas Act, 1857 (10 of 1857).
96. The Stage Carriages Act, 1861 (16 of 1861).
97. The Tamil Nadu Agricultural Service Cooperatives Societies (Appointment of Special officers) Amendment Act, 1988 (22 of 1988).
98. The Tobacco Duty (Town of Bombay) Act, 1857 (4 of 1857).
99. The usurious Loans Act, 1918 (10 of 1918).
100. The Usury Laws Repeal Act, 1855 (20 of 1855).
101. The Waste Lands (Claims) Act, 1863 (23 of 1863).
102. The Eikrama Singh's Estates Act, 1883.
103. The King of Oudh's Estate Act, 1887.
104. The King of Oudh's Estate Act, 1888.
105. The King of Oudh's Estate Validation Act, 1917.
106. The Mahendra Pradep Singh (Repeal) Act, 1960.
107. The Mirzapur Stone Mahal Act, 1886 (5 of 1886).
108. The Punjab Disturbed Areas Act, 1983 (32 of 1983).
109. The Punjab Gram Panchayat Samthi and Zilla Parishad (Chandigarh) Repeal Act, 1994 (27 of 1994).
110. The Punjab Land Revenue Act, 1887 (17 of 1887).
111. The Punjab Laws Act, 1872 (4 of 1872).
112. Punjab pre-emption (Chandigarh and Delhi) Repeal Act, 1989 (22 of 1989).
113. The Punjab Tenancy Act, 1887 (16 of 1887).
114. The Government Buildings Act, 1899 (4 of 1899)

REORGANISATION ACTS

1. The Acquired Territories (Merger) Act, 1954 (20 of 1954).
2. The Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959).
3. The Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968).
4. The Andhra Pradesh Legislative Council (Abolition) Act, 1985 (34 of 1985).
5. The Andhra State Act, 1953 (30 of 1953).
6. The Assam (Alteration of Boundaries) Act, 1951 (47 of 1951).
7. The Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969).
8. The Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 (24 of 1968).
9. The Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956).
10. The Bombay Reorganisation Act, 1960 (11 of 1960)
11. The Chandernagore (Merger) Act, 1954 (36 of 1954).
12. The Dadra and Nagar Haveli Act, 1961 (35 of 1961).
13. The Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962).
14. The Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987).
15. The Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978 (31 of 1978).
16. The Himachal Pradesh and Bilaspur (New State) Act, 1954 (32 of 1954).
17. The Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973 (34 of 1973).
18. The Legislative Assembly of Nagaland (Change in Representation) Act, 1968 (61 of 1968).
19. The Lushai Hills District (Change of Name) Act, 1954 (18 of 1954).
20. The Madras State (Alteration of Name) Act, 1968 (53 of 1968).
21. The Mysore State (Alteration of Name) Act, 1973 (31 of 1973).
22. The Naga Hills-Tuensang Areas Act, 1957 (42 of 1957).
23. The North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971).



24. The Part B States (Laws) Act, 1951 (3 of 1951).
25. The Pondicherry (Extension) Act, 1962 (49 of 1962).
26. The Punjab Reorganisation Act, 1966 (31 of 1966).
27. The Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959).
28. The State of Arunachal Pradesh Act, 1986 (69 of 1986).
29. The State of Himachal Pradesh Act, 1970 (53 of 1970).
30. The State of Mizoram Act, 1986 (34 of 1986).
31. The State of Nagaland Act, 1962 (27 of 1962)
32. The States Reorganisation Act, 1956 (37 of 1956).
33. The Tamil Nadu Legislative Council (Abolition) Act, 1986 (40 of 1986).
34. The Two-Member Constituencies (Abolition) Act, 1961 (1 of 1961).
35. The West Bengal Legislative Council (Abolition) Act, 1969 (20 of 1969).

APPENDIX-C

LAWS APPLICABLE TO HIGH COURTS

1. The Bombay High Court (Letter Patent) Act, 1866 (23 of 1866).
2. The Calcutta High Court (Extension of Jurisdiction) Act, 1953 (41 of 1953).
3. The Calcutta High Court (Jurisdiction Limits) Act, 1919 (15 of 1919).
4. The Goa, Daman and Diu Judicial Commissioner's Court (Declaration as High Court) Act, 1964 (16 of 1964).
5. The High Court of Bombay (Extension to Goa, Daman and Diu) Act, 1981 (26 of 1981).
6. The High Court at Patna (Establishment of a Permanent Bench at Ranchi) Act, 1976 (57 of 1976).
7. The High Courts (Seals) Act, 1950 (7 of 1950).
8. The Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950 (15 of 1950).
9. The Mysore High Court (Extension of Jurisdiction to Coorg) Act, 1952 (72 of 1952).
10. The Procedure of High Court, Uttar Pradesh (13 of 1869).
11. The Unclaimed Deposits Act, 1866 (25 of 1866).
12. The Unclaimed Deposits Act, 1870 (5 of 1870).

PERSONAL LAWS

1. The Arya Marriages Validation Act, 1937 (19 of 1937).
2. The Caste Disabilities Removal Act, 1850 (21 of 1850).
3. The Cutchi Memons Act, 1938 (10 of 1938).
4. The Dissolution of Muslim Mariages Act, 1939 (8 of 1939).
5. The Hindu Disposition of Property Act, 1956 (15 of 1956).
6. The India Christian Marriage Act, 1872 (15 of 1872).
7. The Indian Divorce Act, 1869 (4 of 1869).
8. The Indian Matrimonial Causes (War Marriages) Act, 1948 (40 of 1948).
9. The Kazis Act, 1880 (12 of 1880)
10. The Married Women's Rights to Property Act, 1874 (3 of 1874).
11. The Muslim Law (Shariat) Application Act, 1937 (26 of 1937).
12. The Converts' Marriage Dissolution Act, 1866 (21 of 1866).

APPENDIX - E

LIST OF CENTRAL ACTS CONSIDERED OF PARTICULAR RELEVANCE TO  
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1. The Agricultural Produce Cess Act, 1940 (27 of 1940)
2. The Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937)
3. The Air (Prevention and Pollution) Act, 1981 (14 of 1981)
4. The Arms Act, 1959 (54 of 1959)
5. The Arbitration and Conciliation Act, 1996 (26 of 1996)
6. The Atomic Energy Act, 1962 (33 of 1962)
7. The Banking Regulation Act, 1949 (10 of 1949)
8. The Bankers' Books Evidence Act, 1891 (19 of 1891)
9. The Benami Transactions (Prohibition) Act, 1988 (45 of 1988)
10. The Bonded Labour System (Abolition) Act, 1976 (19 of 1976)
11. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996)
12. The Carriage By Air Act, 1972 (69 of 1972)
13. The Carriers Act, 1865 (3 of 1865)
14. The Central Excise Act, 1944 (1 of 1944)
15. The Central Excise Tariff Act, 1985 (5 of 1985)
16. The Central Sales Act, 1956 (74 of 1956)
17. The Charitable Endowments Act, 1890 (6 of 1890)
18. The Charitable and Religious Trusts Act, 1920 (14 of 1920)
19. The Chit Funds Act, 1982 (40 of 1982)

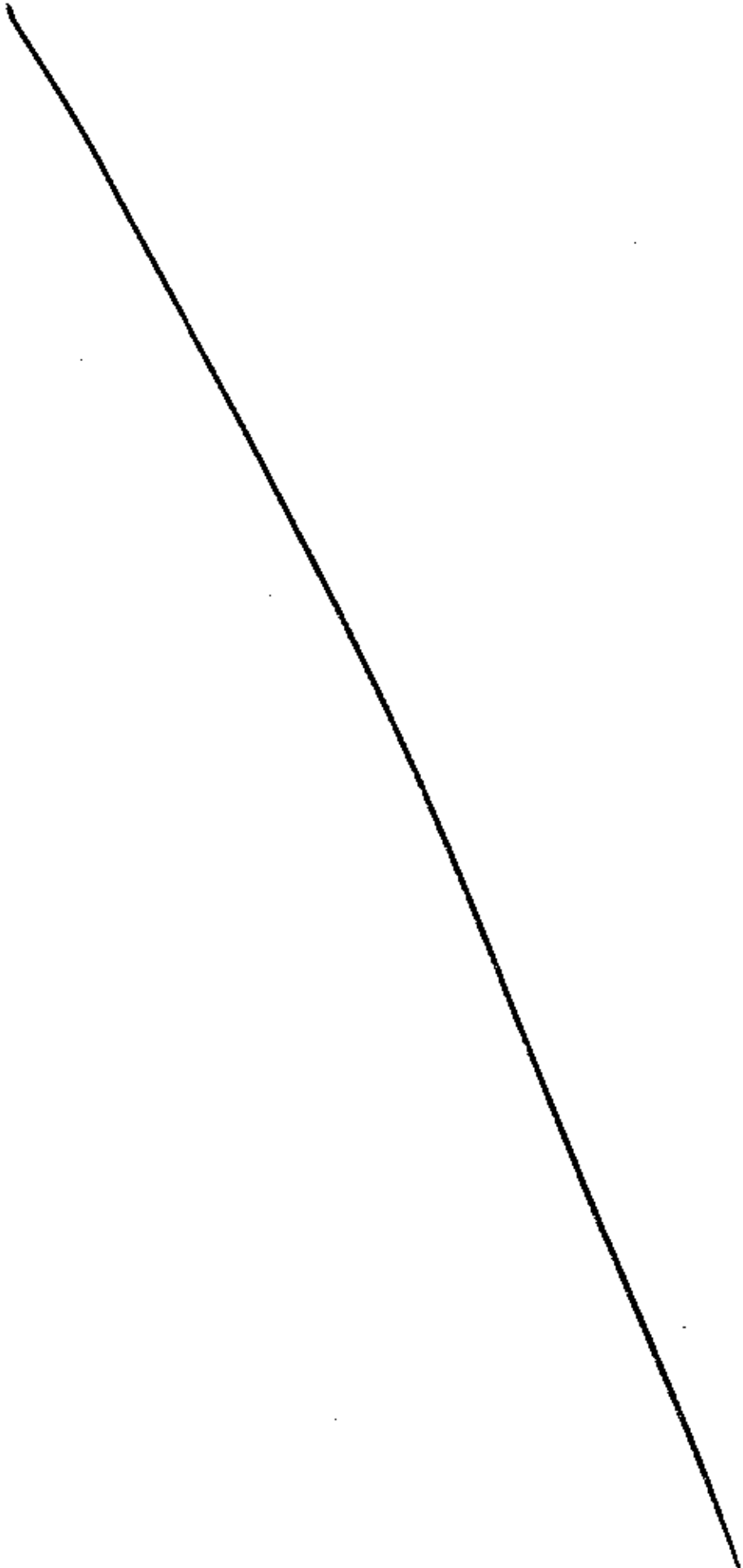
20. The Citizenship Act, 1955 (57 of 1955)
21. The Code of Civil Procedure, 1908 (5 of 1908)
22. The Code of Criminal Procedure, 1973 (2 of 1973)
23. The Collection of Statistics Act, 1953 (32 of 1953)
24. The Companies Act, 1956 (1 of 1953)
25. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)
26. The Contempt of Courts Act, 1971 (70 of 1971)
27. The Contract Act, 1872 (1 of 1872)
28. The Copyright Act, 1957 (14 of 1957)
29. The Court-fees Act, 1870 (7 of 1870)
30. The Customs Act, 1962 (53 of 1962)
31. The Customs Tariff Act, 1975 (51 of 1975)
32. The Delhi Apartment Ownership Act, 1986 (58 of 1986)
33. The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961)
34. The Depositories Act, 1966 (22 of 1966)
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36. The Drugs and Cosmetics Act, 1940 (23 of 1940)
37. The Drugs (Control) Act, 1950 (26 of 1950)
38. The Emigration Act, 1983 (31 of 1983)
39. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952)

- 40. The Employees' State Insurance Act, 1948 (34 of 1948)
- 41. The Environment (Protection) Act, 1986 (29 of 1986)
- 42. The Equal Remuneration Act, 1976 (25 of 1976)
- 43. The Essential Commodities Act, 1955 (10 of 1955)
- 44. The Export (Quality Control and Inspection) Act, 1963 (22 of 1963)
- 45. The Factories Act, 1948 (63 of 1948)
- 46. The Foreign Exchange Regulation Act, 1973 (46 of 1973)
- 47. The Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992)
- 48. The Forward Contracts (Regulation) Act, 1952 (74 of 1952)
- 49. The General Clauses Act, 1897 (10 of 1897)
- 50. The Hire-Purchase Act, 1972 (26 of 1972)
- 51. The Income-Tax Act, 1961 (43 of 1961)
- 52. The Indian Evidence Act, 1872 (1 of 1872)
- 53. The Indian Forest Act, 1927 (16 of 1927)
- 54. The Indian Stamp Act, 1899, (2 of 1899)
- 55. The Indian Telegraph Act, 1885 (13 of 1885)
- 56. The Indian Trusts Act, 1882 (2 of 1882)
- 57. The Industrial Disputes Act, 1947 (14 of 1947)
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63. The Mines Act, 1952 (35 of 1952)
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77. The Petroleum Act, 1934 (30 of 1934)
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81. The Protection of Human Rights Act, 1944 (10 of 1944)
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83. The Public Financial Institutions (Obligation as to Fidelity and Secrecy) Act, 1983 (48 of 1983)
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85. The Public Records Act, 1993, (69 of 1993)
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88. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993  
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89. The Registration Act, 1908 (16 of 1908)
90. The Religious Endowments Act, 1863 (20 of 1863)
91. The Religious Institutions (Prevention of Misuse) Act, 1991 (41 of 1991)
92. The Research and Development Act, 1986 (32 of 1986)
93. The Reserve Bank of India Act, 1934 (2 of 1934)
94. The Sale of Goods Act, 1930 (3 of 1930)
95. The Sales Promotion Employees (Conditions of Service) Act, 1976  
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96. The Securities and Exchange Board of India Act, 1992 (15 of 1992)
97. The Securities Contracts (Regulation) Act, 1956 (42 of 1956)
98. The Societies Registration Act, 1860 (21 of 1860)
99. The Special Court (Trial of Offences Relating to Transactions in Securities)  
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100. The Specific Relief Act, 1963 (47 of 1963)
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102. The State Agricultural Credit Corporation Act, 1968 (60 of 1968)
103. The State Bank of India Act, 1955 (23 of 1955)
104. The Trade and Merchandise Marks Act, 1958 (43 of 1958)
105. The Transfer of Property Act, 1882 (4 of 1882)
106. The Unit Trust of India Act, 1963 (53 of 1963)
107. The Water (prevention and Control of Pollution) Act, 1974 (6 of 1974)
108. The Wild Life (Protection) Act, 1972 (53 of 1972)
109. The Workmen's Compensation Act, 1923 (8 of 1923)





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# The 100 Laws Project

Compendium of Laws to be Repealed

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A COLLABORATIVE CIVIL SOCIETY INITIATIVE



CENTRE FOR CIVIL SOCIETY  
*Social Change Through Public Policy*



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BETTER LAWS. BETTER GOVERNANCE

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## Introduction

Rule of law is the defining principle of a well-functioning modern democratic polity. Laws are the DNA of government—they define the foundations of public administration and they shape the incentives and behaviour of private agents. The essence of good governance is good laws; for rule of law to operate, laws must be well-written and well-coded. Laws must be precise, principles-based, and should stand the test of time.

The Indian approach has often run counter to the fundamentals of good law-making: we attempt to legislate our problems away, and we write laws to react to specific situations than to preempt them. We write new laws, often with insufficient consideration for old ones. We amend old laws to fit in new language, but we don't do this meticulously and patiently enough.

Our enthusiasm for legislation has left us with over an estimated 3000 central statutes, several of which are obsolete, redundant or repetitive. Even the government's attempt to publish a list of all central statutes in India Code has proven to be incomprehensive—the code misses laws, sometimes repeats listings, and often further research on whether the laws have indeed been taken off the books is inconclusive. Not just this, the final language of laws is often inconsistent—several versions of Acts are available, and for an ordinary citizen without significant legal wherewithal it is almost impossible to know for sure what language of what law he may have violated.

The results are an environment fraught with substantial legal risk and uncertainty, an overburdened judicial system, and pernicious rent seeking. Individuals and firms find themselves in a maze of laws, and find that many ordinary activities infringe on some law or another. Citizens and private agents then are left with two methods of navigating this minefield: the corrupt methods of buying off enforcement agencies, or the approach of engaging less with society and the economy. Big firms are more likely to be able to pay the fixed cost of compliance and of corrupt methods. Competitive dynamics is adversely affected when fewer persons choose to start firms, and when the firms that spring up are likely to have a weak compliance culture. Alongside, social fabric is weakened when bad laws incentivise illegality and discourage law abidance in everyday life; fairness, honesty and values then become secondary to envy, corruption and cheating.

The most important aspect of the Indian development project today is writing sound laws, and then constructing state capacity to enforce those laws. This requires large-scale changes in the laws. In some areas, there is a need for ground-up rewriting of laws and repealing all existing laws. In many other areas, patient and thorough cleaning can yield substantial impact.

The last serious concerted effort in cleaning up the statute books was in 2001, during the administration of the BJP-led NDA. The then government acted swiftly on some of the recommendations of previous Law Commissions and the Report of the Commission on Review of Administrative Laws,



1998 (PC Jain Commission)<sup>4</sup>, two sources that have argued vociferously for statutory legal reform. Since then however, there has been no systematic effort at weeding out dated and principally flawed laws.

During the campaigns for the 2014 General Elections, BJP candidate Shri Narendra Modi promised the electorate that his administration, should they be elected, would make a sincere attempt at statutory legal clean up. He made a commitment to the electorate that for every new law passed, the government would repeal 10 redundant ones, and that in his first 100 days in office he would undertake to repeal 100 old, burdensome laws. In keeping with that promise, the Bhartiya Janata Party led National Democratic Alliance Government tabled The Repealing and Amending Bill (2014) in the Lok Sabha, recommending revisions of 36 obsolete laws. In explaining the exercise, the present Minister for Law & Justice, Shri Ravi Shankar Prasad, committed that the exercise of weeding out antiquated laws would be a continuous process—one that would help de-clog India's legal system. Alongside, the Prime Minister has set up a special committee under his office to oversee this exercise.

To help the administration in their goal, we have drafted this compendium, identifying 100 laws for wholesale repeal. The laws in this compendium need to be repealed on account of any one of three reasons—they are either redundant (having outlived their purpose), they have been superseded or subsumed by newer, more current laws, or they pose a material impediment to growth, development, good governance and individual freedom. Most of the laws in this compendium would not invite substantial debate since they do not serve any meaningful purpose. In the case of other more controversial laws, few as they are in this compendium, our arguments for repeal have taken cognisance of the political realities surrounding legislation in India, particularly in the areas of business regulations and labour relations. Yet, we have included these to invite a discussion on the appropriate manner, scope and method of achieving the goals and intents of the laws in question.

We hope this compendium will help the administration deliver on a key election promise, and in the process, kick-start a serious and meaningful conversation on statutory legal reform. While statutory reform is only the beginning of a wider process of legal overhaul, it is perhaps the most important—without sound laws, India will not provide an enabling environment, neither for citizens, nor for entrepreneurs. Repealing pointless legislation is the first step in this direction.

<sup>4</sup>Commission on Review of Administrative Laws, Report of the Commission on Review of Administrative Laws, Government of India, 1998-99.

[http://darpg.gov.in/darpgwebsite/cms/Document/file/Review Administrative laws](http://darpg.gov.in/darpgwebsite/cms/Document/file/Review%20Administrative%20laws)

## Archaic British Era Laws

There are over 300 colonial-era enactments in force in India. Many of these laws are redundant and not implemented. For instance, The Bangalore Marriages Validation Act (1934) was enacted to validate marriages solemnised by a certain priest, Sir Walter James McDonald Redwood; several Acts related to the erstwhile princely state of Oudh are still in force even though Oudh is no longer in existence. These are merely clogging up the statute books and are sometimes even misused. For instance, under The Sarais Act (1867), a 'sara' has to offer passersby free drinks of water and a Delhi five-star hotel was harassed under the clause, though not prosecuted, for not doing so.

The need for reviewing these old laws has been reiterated time and again. Civil law jurisdictions provide for the principle of *desuetude*, allowing for the repeal of non-enforceable or non-enforced legislation, even if not specifically repealed. This principle is not recognised under Common Law jurisdictions, and India is no exception.<sup>b</sup> Several efforts have been made in the past for cleaning up the statute books. The Law Commission of India made recommendations for the repeal of archaic laws in 1957, 1984, 1993 and 1998. The PC Jain Commission on the Review of Administrative Laws also recommended repeal of 1,300 such central enactments. These led to sporadic legislative repeal efforts, such as The British Statutes (Application to India) Repeal Act (1960) and some minor efforts in the 1960s, 1970s and 2000s.

The Acts that follow were enacted specifically in response to situations that existed during British rule, or to cater to British administrative needs, or in relation to territorial areas or official positions of that period. The subject matter of these Acts is now governed by laws enacted post-Independence, which are much more in tune with contemporary realities. In fact, most of the parent statutes or regulations under which these laws were enacted have already been repealed.

It is with this background that we are recommending the repeal of twenty colonial era laws.

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<sup>b</sup>Bibek Debroy, *Usher in a New Order*, India Today, 2009-35-06



Name: Forfeited Deposits Act, 1850

Subject: Archaic British Law

Reason: Redundant law

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### What is the law?

This Act was enacted in response to a specific policy need arising out of the British Regulation VIII, 1819, of the Bengal Code. This Regulation was called the Bengal Patni Taluks Regulation, 1819. The Regulation declared the validity of certain tenures of land and defined the relative rights of Zamindars and Patni Talukdars. It also established a process for the sale of such taluks in satisfaction of the Zamindars demand of rent. Section 9 of this Regulation mandated that all sales of saleable tenures be done by a process of bidding and that 15% of the purchase money be paid immediately after a successful bid was made. If this amount of purchase money was not paid immediately, then the lot was to be re-sold on the same day. As a consequence, tenure-holders (or patnidars) fraudulently availed themselves to the provision under Section 9 that forfeited deposits at sales of land for arrears of rent and applied the same, as if it was the purchase money.

To counter this, the Act provided specific provision with regard to the application of forfeited deposits. Such deposits were to be applied to defray the expense of the sale and the surplus was to be forfeited to the Government.

### Reasons for repeal

- The Act was enacted in response to the British Regulation VIII, 1819. As this Regulation is not in force any more, this Act is not required.
- This Act is redundant post-Independence, as it was enacted specifically in response to British administrative needs that no longer exist.

### Issues

There are no legal issues that would impede repeal.



Name: The Sheriffs' Fees Act, 1852

Subject: Archaic British Era Laws

Reason: The Act has outlived its purpose

### What is the law?

The Sheriffs Fees Act, 1852 was enacted for remunerating the Sheriffs of the three erstwhile Presidency towns of Calcutta, Madras and Bombay. The Act made provisions for remunerating Sheriffs for the execution of legal processes issued by the Courts. Sheriffs performed the function of serving on the concerned people orders, writs and warrants issued by the High Court.

### Reasons for repeal

- All provisions of the 1852 Act were repealed by means of an Amending Order in 1937. Only Section 8 now remains, which deals with the liability of the Sheriffs in case persons taken for execution were to escape. Since Sheriffs now enjoy only a titular position in the administrative hierarchy and do not perform any judicial functions, this liability of the Sheriff is no longer relevant.
- The Act was enacted by the Governor General in Council, per the administrative structure of the British government. Sheriffs are now remunerated by the concerned Municipal Corporations in all the three cities and thus, remuneration of sheriffs is the prerogative of the State Governments.
- There is no documented use of this Act.

### Issues

There are no legal issues that would impede repeal.



**Name:** The Sonthal Parganas Act, 1855

**Subject:** Archaic British Era Laws

**Reason:** Redundant British-era law that is derogatory to a particular group

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## What is the law?

This Act, introduced to serve the needs of the British colonial administration, exempted districts inhabited by the Sonthal tribe from the operation of general laws and regulations. The purpose was to curb tribal uprisings by isolating tribal populations. The areas inhabited by the Sonthal tribe were instead put under the superintendence of an officer specially appointed for the purpose, who would oversee civil and criminal justice as well as administer revenue collection.

## Reasons for repeal

- The Act has been rendered redundant with the enactment of the Constitution of India, since the administration of the Sonthal areas is now dealt with by the Fifth Schedule to the Constitution. The last reported case under this Act was decided in 1936, and the Act has not been in use since Independence.
- The Act employs highly derogatory terms to describe the Sonthal tribe by calling them an uncivilised race of people. Such laws violate the principles of equality under law adopted by our Constitution and give legitimacy to discrimination and ill-treatment of tribal populations in India.

## Issues

There are no legal issues that would impede repeal.



Name: The Howrah Offences Act, 1857

Subject: Archaic British Era Laws

Reason: Colonial legislation superseded by modern laws

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## What is the law?

The Howrah Offences Act, 1857 was enacted to make better provision for order and good government in the suburbs of Calcutta and the Howrah station. The need for this Act was felt following the advent of the East India Railway in 1854. The law prescribes penalties for various offences including incidents of public nuisance. By an amendment in 1874, the application of the Act was limited to the Howrah station.<sup>6</sup>

## Reasons for repeal

- The offences mentioned in this Act are punishable under the Indian Penal Code, 1860 and other criminal laws. In fact, the punishments for these offences under this Act are paltry, while the IPC has relatively stricter penalties. For instance, possession of stolen property is punishable with imprisonment for three months under this Act, while the IPC stipulates imprisonment for three years along with a fine. Hence, the Act hardly serves as a deterrent.
- There is no indication of any recent use of this Act. However, the Act could be used as a legal loophole to escape the harsher penalties of the IPC (or some other law).
- The maintenance and safety of the Howrah station is now the function of the Indian Railways and falls under the Eastern Railway zone.
- The Report of the Commission on Review of Administrative Laws, 1998 (the PC Jain Commission Report) has also recommended repeal of this Act.

## Issues

The Act is listed in the Adaptation of Laws Order, 1950 and will have to be deleted from this Order.

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<sup>6</sup>Anupam Mukherjee, The Dirtiest Since 1889, The Telegraph, 2013-11-23, [http://www.telegraphindia.com/1131122/jsp/howrah/story\\_17596813.jsp#:U-hPkUOSzDY](http://www.telegraphindia.com/1131122/jsp/howrah/story_17596813.jsp#:U-hPkUOSzDY), 2014-08-04



Name: Oriental Gas Company Act, 1857

Subject: Archaic British Era Laws

Reason: Oriental Gas Company has ceased to exist

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## What is the law?

The Oriental Gas Company was a joint stock company constituted and registered in the United Kingdom for the manufacture, supply, distribution and sale of fuel gas in Calcutta. This legislation empowered the Company to lay pipes in Calcutta and to dig up streets for this purpose. An amendment in 1867 extended the powers of the Company to other towns and places.

## Reasons for repeal

- The Oriental Gas Company has ceased to exist, making this legislation obsolete and irrelevant. After Independence, the West Bengal Government enacted the Oriental Gas Company Act, 1960, with the objective of taking over the Company on the grounds that the Company, which enjoyed a monopoly in the supply of gas in Calcutta, was not serving consumers properly. Under this Act, the state government took over the management of the Company for a period of five years. However, two years later, it was permanently acquired and renamed Oriental Gas Company Undertaking (OGCU). In 1990, OGCU was taken over by a public incorporated company called Greater Calcutta Gas Supply Corporation Limited (GCGSCL), which is fully owned by the West Bengal Government.
- The Law Commission in its 96th Report (1984) (Chapter 3, Page 12) recommended repeal of this Act on the grounds that it is redundant since the Company itself has ceased to exist.

## Issues

There are no legal implications due to the repeal of the Act.



Name: The Waste-Lands (Claims) Act, 1863

Subject: Archaic British Era Laws

Reason: The Governments approach to waste-lands has changed

### What is this law?

The Act makes special provisions for the speedy adjudication of claims made with regard to waste-lands. Any claims made to waste-lands which were proposed to be sold, or otherwise dealt with, by the Provincial Government, were to be made under this Act. The Act envisages setting up of Special Courts by the state government for trial of claims relating to waste-lands.

### Reason for repeal

- This Act is a remnant of the colonial discourse surrounding waste-lands. Prior to Independence, all lands that were not under cultivation were classified as waste-lands and the State asserted proprietary rights over them. The colonial government wanted to assert control over waste-lands to claim revenue from it. Such title was sold to the public by the government.
- Under the Seventh Schedule of the Constitution, all matters relating to land are within the exclusive legislative and administrative jurisdiction of state governments. Land classified as waste-land according to current government norms, whether under revenue land or forests, would fall within the jurisdiction of the state governments. Any claims relating to such land will follow the Revenue Code/ Acts administered by the State governments.
- Government's discourse regarding waste-lands has significantly changed post-Independence and the need to use such lands for agriculture has now assumed prominence.<sup>a</sup> Waste-land management programmes now accord significance to the fact that waste-lands are the common property of village communities and the economic and ecological contributions of these lands are taken note of.<sup>b</sup> The proprietary rights of the State have been replaced with a close relationship between the environment and the community living within that area as the community derives sustenance from it.<sup>c</sup> The continuation of this Act under the changed legal and policy circumstances serves no purpose.
- The PC Jain Commission has recommended repeal of this Act (Appendix A-5, Entry 101).

### Issues

There are no legal issues that would impede repeal.  
the

<sup>a</sup>Saigal, Sushil, Greening the Wastelands: Evolving Discourse on Wastelands and its Impact on Community Rights in India, Digital Library of the Commons, 2010, 1-30. <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7234/520.pdf?sequence=1>

<sup>b</sup>Jodha, NS, Waste Lands Management in India: Myths, Motives and Mechanisms, Economic and Political Weekly, 2010, 35, 5, 466-473, <http://www.jstor.org/stable/4408809>

<sup>c</sup>Department of Land Resources, Integrated Wasteland Development Programme. <http://dolr.dic.in/iwdp1.htm>





Name: The Converts' Marriage Dissolution Act, 1866

Subject: Archaic British Era Laws

Reason: The Act is redundant in view of the Hindu Marriage Act, 1955

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## What is the law?

The Act seeks to legalise the dissolution of marriages of converts to Christianity, who are deserted or repudiated on religious grounds by their wives or husbands.

## Reasons for repeal

- The Act has very limited scope since it is not applicable to the personal laws of Christians, Mohammedans and Jews.<sup>4</sup> In effect, it is only applicable to persons professing Hindu religion, who convert to Christianity.
- The Act is redundant. The procedure created under this law is repetitive and unnecessary, as the Hindu Marriage Act, 1955 provides for divorce or a judicial separation on the ground of change of religion of spouse.<sup>5</sup>
- Repeal of this Act has been recommended by the Law Commission in its 18th Report (1961). The PC Jain Commission has also recommended due consideration on the law by all stakeholders (Vol.1, Appendix D, Entry 12).

## Issues

The repeal of the Act will impact pending litigation, if any. These issues can be addressed by enacting a saving clause.

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<sup>4</sup>Section 3

<sup>5</sup>Section 13(1)(ii), Hindu Marriage Act, 1955



**Name:** The Oudh Sub-Settlement Act, 1867

**Subject:** Archaic British Era Laws

**Reason:** Redundant law that has now served its purpose

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### What is the law?

The Act was enacted to legalise the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of persons having subordinate rights of property in that province. The rules were meant to determine the conditions under which persons who possessed subordinate rights of property in Taluqas in the territories under the administrative jurisdiction of the Chief Commissioner would be entitled to obtain a sub-settlement of lands. The Act gave these rules the force of law. The rules were called the Rules regarding sub-settlement and other subordinate rights of property in Oudh. The Rules were made by the Chief Commissioner and sanctioned by the Governor General of India in Council in 1866. The Rules find mention in the Schedule of the Act.

### Reasons for repeal

- The princely state of Oudh does not exist anymore. Also, the Rules regarding sub-settlement and other subordinate rights of property in Oudh are not in force now. Hence, the Act does not serve any discernible purpose anymore.
- Under the Seventh Schedule of the Constitution, all matters relating to land are within the exclusive legislative and administrative jurisdiction of State governments. Any claims to title/ property rights are adjudicated in terms of respective the Land Revenue Code/ Acts administered by the State governments and the Civil Procedure Code.

### Issues

There are no legal issues that would impede repeal.



Name: The Oudh Estates Act, 1869

Subject: Archaic British Era Laws

Reason: Redundant law that has outlived its purpose

### What is the law?

The Oudh Estates Act, 1869 was enacted to define the rights of Taluqdars and other landholders in certain estates in Oudh, and to regulate succession rights. Taluqdar was a term used in Mughal and British times for landholders who were responsible for collecting taxes from a district. The main purpose of the Act was to prevent doubts that may arise as to the nature of the rights of the Taluqdars and others in such estates.

### Reasons for repeal

- Princely states, including Oudh, have ceased to exist in India. The Taluqdari system has also been abolished. Therefore this Act is completely obsolete.
- The Minister of Law and Justice, Shri Ravi Saankar Prasad cited the Oudh Taluqdars' Relief Act, 1869, as being redundant but which remains alive even though the province of Oudh and Taluqdars do not exist anymore.<sup>2</sup>
- Under the Seventh Schedule of the Constitution, all matters relating to land are within the exclusive legislative and administrative jurisdiction of state governments. Any claims to title and property rights are adjudicated in terms of respective the Land Revenue Code/Acts administered by the state governments and the Civil Procedure Code.

### Issues

There are no legal issues that would impede repeal.

<sup>2</sup>Govt to repeal 36 archaic laws following Modi's directive, Rediff.com, August 8, 2014.  
<http://www.rediff.com/news/report/govt-to-repeal-36-archaic-laws-following-modis-directive/20140808.htm>



Name: The Oudh Taluqdars' Relief Act, 1870

Subject: Archaic British Era Laws

Reason: Redundant law that has outlived its purpose

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## What is the law?

The Oudh Taluqdars' Relief Act, 1869 was enacted to relieve the estates of the Taluqdars in Oudh from encumbrances. Since many of the Taluqdars in Oudh were in debt, their immovable property was subject to mortgages, charges and liens and the Act provided relief to the Taluqdars by providing for a mechanism to settle these debts.

## Reasons for repeal

- Princely states, including Oudh, have ceased to exist in India. The Taluqdari system has also been abolished. Therefore, this Act is completely obsolete.
- The Minister of Law and Justice, Sri Ravi Shankar Prasad cited the Oudh Taluqdars' Relief Act, 1869, as being redundant but which remains alive even though the province of Oudh and Taluqdars do not exist anymore.<sup>6</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Govt to Repeal 36 Archaic Laws Following ModI's Directive. <http://www.rediff.com/news/report/govt-to-repeal-36-archaic-laws-following-modis-directive/20140808.htm>



Name: The Foreign Recruiting Act, 1874  
 Subject: Archaic British Era Laws  
 Reason: Out of date British era statute

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### What is the law?

This British-era statute provides Government of India with the power to prohibit any Foreign State from recruiting Indians. Under this Act, the government can issue an order preventing a Foreign State from hiring Indians in either a military or a non-military capacity. It also allows the government to impose conditions on foreign recruitment of Indians, and imposes penalties for violating any such conditions.

### Reasons for repeal

- This greying law<sup>4</sup> was enacted with the interests of the British Raj in mind, to prevent colonial subjects from serving any rival European power.
- Under this Act the central government is given unlimited power to prohibit recruiting to both military and non-military foreign service. It does not specify the conditions which must be satisfied before the government issues such an order, making the discretionary power extremely wide.<sup>5</sup> The Law Commission in its 43rd Report (1971) has observed that such wide powers may run contrary to Constitutional guarantees under Article 19.
- The Second Administrative Reforms Commission Report of 2006 has also relied on the aforementioned report of the Law Commission to state that the Foreign Recruiting Act is out of date.<sup>6</sup>
- Its provisions are not in sync with a modern globalised economy, and as a result it is not in use today.

### Issues

There are no legal issues that would impede repeal. Additionally, to address possible national security concerns, the Territorial Army Act, 1968 could be amended to include a provision that prohibits the recruitment of Indians into foreign armies or grants powers to the government to oversee such recruitment, imposing conditions upon it where necessary.

<sup>4</sup>Sulzani, The Greying Laws on India, The Financial Express, 1997-07-22  
<sup>5</sup>Law Commission of India, Forty-Third Report on Offences against the National Security, Government of India, 1971-05, <http://lawcommissionofindia.nic.in/1-50/Report43.pdf>, 23  
<sup>6</sup>Second Administrative Reforms Commission, Right to Information: Master Key to Good Governance, Government of India, 6 2006-06, <http://arc.gov.in/rcifinalreport.pdf>



Name: The Laws Local Extent Act, 1874

Subject: Archaic British Era Laws

Reason: The Act does not serve any meaningful purpose now

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## What is the law?

The Laws Local Extent Act, 1874 was enacted to declare the local extent of certain enactments passed by the Governor General of India in Council, the Legislative Council of India and the Council of the Governor General of India. Five Schedules are appended to the Act and each contains a list of laws. The provisions of this Act then lay down which of the Acts mentioned in the Schedules would be in force in which of the territories. For instance, Section 4 of the Act lays down that the Acts mentioned in the Second Schedule are in force in the territories subject to the Governor of St. Fort George in Council.

By the Adaptation of Laws Order, 1950, the statute was made applicable to the newly added territories in the Union of India.

## Reasons for repeal

- The extent of local laws as mentioned under this Act envisages territorial divisions, as they existed prior to 1947. Provinces as they existed during the British era do not exist anymore. Also, the authorities that enacted the laws mentioned in this Act (the Governor General of India in Council, the Legislative Council of India and the Council of the Governor General of India) do not exist now.
- The territorial extents of various laws in force in India now find mention in the Act itself. Section 1 of every Act is called Short title, extent and commencement which indicates what the territorial extent of the law would be.
- The PC Jain Commission Report has also recommended repeal of this Act (Appendix A-1, Entry 68).

## Issues

The territorial extent of existing pre-1950 laws provided under this Act will require to have territorial extent specified within the respective Acts.



**Name:** The Oudh Laws Act, 1876

**Subject:** Archaic British Era Laws

**Reason:** Redundant law that does not serve any purpose

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## What is the law?

The Act declared and amended the laws to be administered in Oudh. The Act provided for the statutory laws that were to be administered by the courts in Oudh with regard to, inter alia, assessment and collection of land revenue, questions regarding succession, adoption, guardianship, and partition. This Act also recognised that the local customs and mercantile usages prevailing in Oudh would be valid unless they were contrary to justice, equity or good conscience.

## Reasons for repeal

- Princely states have ceased to exist in India. The former princely state of Oudh now exists as Awadh in the state of Uttar Pradesh.
- The relevant laws and customs that are covered for administration by the courts of Oudh are now governed under respective statutes under the Constitution.

## Issues

There are no legal issues that would impede repeal.



Name: The Hackney-Carriage Act, 1879

Subject: Archaic British Era Laws

Reason: Subject matter should be regulated at the local level

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### What is the law?

The Act provides for the licensing of hackney carriages, defined as wheeled vehicles drawn by animals for the conveyance of passengers. It would only pertain to municipalities in which the State Government applied the Act by notification, and such states were limited to 'Uttar Pradesh, Punjab as it existed immediately before 1 November 1956, the Central Provinces, Assam, Ajmer or Coorg'.

### Reasons for repeal

- Animal-drawn carriages are licensed by the police under local laws, rather than under Central laws such as this one. For example, in Mumbai licensing of horse-drawn carriages is done under The Bombay Public Conveyance Act, 1920. This is a subject matter for local government, and in keeping with this principle, the government should repeal this Act.
- There is no record of the Act being in use in any of the mentioned states since Independence.

### Issues

There are no legal issues that would impede repeal.





**Name:** The Elephants Preservation Act, 1879  
**Subject:** Archaic British Era Laws  
**Reason:** Colonial era legislation superseded by modern laws

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## What is the law?

The Act provides for the preservation of wild elephants. Section 3 prohibits the killing, injuring or capturing of wild elephants unless it is done in self-defence, or to prevent the elephant from injuring any house or cultivation, or under the terms of a licence granted under this Act.

## Reasons for repeal

- The Wildlife (Protection) Act, 1972 deals with the same subject and has wider and more updated provisions dealing with the protection of wild animals, including elephants. Protection under the 1972 Act extends to elephants as well as various other mammals and therefore encompasses the purpose for which the 1879 Act was enacted.
- There is no documented example of any recent use of this Act. Neither is there any instance of a case in court under this law.
- When compared with the 1972 Act, the 1879 Act imposes a paltry fine of Rs 500 for violations. The 1972 Act imposes a relatively harsher penalty of a fine of Rs 25,000 or imprisonment for up to three years. Hence, the provisions of the 1972 Act are a greater deterrent for poachers and other potential offenders. In light of the 1972 Act, there is no need to have a separate Act for the protection of only elephants.
- While the older Act is redundant, it could be used as a legal loophole to escape the harsher penalties of the new law. For example, in cases involving caste atrocities, the accused have sometimes been charged solely under the older and less severe Protection of Civil Rights Act, 1955, instead of the stricter SC and ST (Prevention of Atrocities) Act, 1989.\* This is made possible where the same offence is punished under two laws, and one law imposes a lower penalty.

## Issues

The Indian Forest Act, 1927 contains a reference to the Elephants Preservation Act, which will have to be removed. The repeal will not be material as the Wildlife (Protection) Act will still continue to apply.

\*Centre for the Study of Casteism, Communalism and the Law, Evaluation of the Protection of Civil Rights Act, 1955 and its Impact on the Eradication of Untouchability, National Law School of India University, 288, 2009, [https://www.nls.ac.in/csclp/Files/Material%20for%20uploading/PCRA\\_report\\_II\\_from\\_intro%5B1%5D.pdf](https://www.nls.ac.in/csclp/Files/Material%20for%20uploading/PCRA_report_II_from_intro%5B1%5D.pdf)



Name: Fort William Act, 1881

Subject: Archaic British Era Laws

Reason: Army is now governed by the Army Act, 1950

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### What is the law?

The Act empowered the British Chief of Army staff to make rules within Fort William in Bengal on the subjects mentioned in the Schedule of the Act and prescribe penalties for the infringement of such rules.

### Reasons for repeal

- The Act can be repealed as the Army is now governed by the Army Act, 1950, and the Armed Forces Tribunal Act, 2007. Fort William is the official Headquarter of the Eastern Command of the Indian Army.<sup>6</sup>
- The Fort William Act is among the list of 114 Central Acts relating to State subjects that the PC Jain Commission recommended for repeal by state governments (Volume 1, Appendix A-5, Entry 43).
- Certain provisions of the Act are unconstitutional. The Law Commission in its 148th Report (1993) held that the delegation to a Commissioned Officer in the Indian Army of the power to try and punish persons charged with the violation of the rules framed under the Act is contrary to the general scheme of the Constitution and is opposed to the directive principle of separation of the judiciary from the executive. In addition, under Section 6 of the Act, a police officer can detain any arrested person for an unlimited period of time until the detainee signs a bond of a specific amount.

### Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Indian Army, Eastern Command Home.  
<http://indianarmy.nic.in/Site/FormTemplate/fmTempSimple.&ParentID=h7PStga2mWKAiumsPqvDw==&flag=WefW86EXiYPapi/6ZdgOiQuspX?MnId=gmHOFXTSdBUP?Iy8Wmbu3w>



Name: The Oudh Wasikas Act, 1886

Subject: Archaic British Era Laws

Reason: Redundant law that does not serve any purpose

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## What is the law?

The Act declared certain allowances, collectively known as Oudh Wasikas, to be pensions within the meaning of the Pensions Act, 1871. These allowances were the Amanat Wasikas, the Zamanat Wasikas and the Loan Wasikas. Wasikas were a legal inheritance that could be willed from generation to generation and were paid only to the heirs of the royal family of Oudh.<sup>6</sup> This was a monthly allowance, the payment of which was monitored by the British Government.

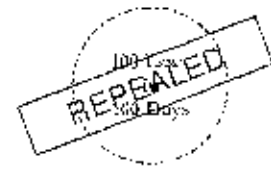
## Reasons for repeal

The princely state of Oudh does not exist and hence, the allowance payable to the royal family of Oudh has also ceased to exist. The Act is completely obsolete now.

## Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Shonali Ganguli, Bearing Fruits from the Family Tree, The Hindustan Times, 2008-03-09. <http://www.hindustantimes.com/world-news/bearing-fruits-from-the-family-tree/article1-280775.aspx>



**Name:** Reformatory Schools Act, 1897

**Subject:** Archaic British Era Laws

**Reason:** Redundant in light of the Juvenile Justice (Care and Protection) Act, 2000

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## What is the law?

One of the earliest outcomes of the Reformatory Theory of Punishment is the Reformatory School Act, 1897. The Act sought to prevent first-time juvenile offenders, whose antecedents were not questionable, from being sent to ordinary jails, which may have the effect of turning them into hardened criminals. Under the law, first-time offenders were sent to Reformatory Schools run by the Government, where they were provided with basic facilities like food, clothing, education and the opportunity to understand what they wanted to do with their lives. All these measures were under government control and scrutiny of the head of the Reformatory School. Offenders were restricted within a particular boundary; this acted as punishment on them.

## Reasons for Repeal

- The Juvenile Justice Act, 1986, has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. It targets two groups—children in need of care and protection, and juveniles in conflict with law. It provides for setting up of observation homes and special homes for juveniles in conflict with law and children homes for children needing care and protection during the pendency of inquiry and subsequent rehabilitation. These are under scrutiny of the Juvenile Justice Board.
- Section 63 of the Juvenile Justice Act, 1986, repealed any law in force in any State that corresponded to the Act, on the date on which the Act came into force in the concerned State. The Reformatory Schools Act, 1897 was one of the legislations, which was still in force at that time, but has not been formally repealed.
- Under the Constitution of India, the subject matter of any such legislation falls in the State List, but a Central law was enacted to fulfil India's international obligations.

## Issues

There are no legal issues that would impede repeal.



Name: The Wild Birds and Animals (Protection) Act, 1912

Subject: Archaic British Era Laws

Reason: Colonial legislation superseded by modern laws

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## What is the law?

The Act provides for the protection and preservation of certain wild birds and animals. Section 3 of the Act penalises the capturing, killing or trade of any such bird or animal mentioned in the Schedule annexed to the Act. Contravention of Section 3 attracts a penalty of Rs. 50, while a subsequent conviction warrants imprisonment for a period of one month along with a fine of Rs. 100.

## Reasons for repeal

- The Act can be repealed since the objects and reasons of this legislation are being sufficiently met with by the Wild Life (Protection) Act, 1972 and the Rules framed thereunder. In fact, the Act of 1972 notes in its Statement of Objects and Reasons that the Act of 1912 has become completely outmoded.
- The Schedules to the 1972 Act includes comprehensive lists of protected birds, animals and endangered plants reflecting the current requirements for their protection. The 1972 Act is wider in scope and provides for extended protection by declaring certain areas as national parks or 'sanctuaries' and for their management.
- The 1912 Act imposes a paltry fine of Rs. 50 for violations. The Act of 1972 imposes a relatively harsher penalty of a fine of Rs. 25,000 or imprisonment for up to three years. The older Act is redundant and could be used as a legal loophole to escape the harsher penalties of the new law. The Act of 1912 should therefore be repealed.

## Issues

The wild birds and animals under the Schedule annexed to the Act of 1912 which do not find mention in Schedule I of the Act of 1972 can be accommodated in the latter through a suitable amendment.



Name: Emergency Legislatinn Continuance Act, 1915

Subject: Archaic British Era Laws

Reason: The Act is redundant

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## What is the law?

This Act mandated the continuance of nine ordinances for the entire duration of World War I beyond six months allowed by the Indian Councils Act, 1861. These ordinances are:

1. The Indian Naval and Military News (Emergency) Ordinance, 1914
2. The Impressment of Vessels Ordinance, 1914
3. The Foreigners Ordinance, 1914
4. The Indian Volunteers Ordinance, 1914
5. The Ingress into India Ordinance, 1914
6. The Commercial Intercourse with Enemies Ordinance, 1914
7. The Foreigners (Amendment) Ordinance, 1914
8. The Foreigners (Further Amendment) Ordinance, 1914
9. The Articles of Commerce Ordinance, 1914

## Reasons for Repeal

The Act is redundant. The ordinances covered under this Act have lapsed. The limitation on the tenure of ordinances stipulated in the Indian Councils Act, 1861 is also not relevant because the 1861 Act was repealed by the Government of India Act, 1935. The Constitution now provides for a specific procedure for ordinance making.

## Issues

There are no legal issues that would impede repeal.



Name: The Sheriff of Calcutta (Power of Custody) Act, 1931

Subject: Archaic British Era Laws

Reason: The Act has outlived its purpose

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## What is the law?

The Sheriff of Calcutta (Power of Custody) Act, 1931 extended the powers of the Sheriff to hold persons in lawful custody in Calcutta. The Act made provision for certain circumstances when the Sheriff of the High Court of Judicature of Bengal, while discharging his duties, had to take any person in his lawful custody to or from the Presidency Jail. Where circumstances made it unduly inconvenient to proceed by a route lying wholly within the local limits of the jurisdiction of the said High Court, the Act allowed the Sheriff to proceed by any other convenient route lying partly outside these local limits. In doing so, the custody of the person by the Sheriff would remain lawful.

## Reasons for repeal

- Since, Sheriffs in Kolkata now hold an apolitical titular position, the powers granted under this Act are no longer relevant.
- There is no documented use of this Act.
- The PC Jain Commission has recommended repeal of this Act (Appendix A-5, Entry 90).

## Issues

There are no legal issues that would impede repeal.



Name: Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932

Subject: Archaic British Era Laws

Reason: Redundant law

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### What is the law?

The Bengal Suppression of Terrorist Outrage (Supplementary) Act, 1932 is a supplement to the main legislation, the Bengal Suppression of Terrorist Outrage Act, 1932. The main legislation was enacted to suppress the terrorist movement in Bengal before Independence, and for the speedy trial of related offences. It provided for special procedures for the trial of related offences and declared that ordinary criminal procedure would not apply in such cases.

### Reasons for repeal

- The law was enacted to suppress the Indian freedom movement. The last reported cases under the Act date back to the 1930s and the law is no longer in use. Clearly, there is no need for such an Act now.
- The chief Act that this law supplemented, namely the Bengal Suppression of Terrorist Outrages Act, 1932, has been repealed.

### Issues

There are no legal issues that would impede repeal.





Name: The Assam Criminal Law Amendment (Supplementary) Act, 1934

Subject: Archaic British Era Laws

Reason: The Act that it intends to supplement has been repealed

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### What is the law?

The Act was enacted to supplement the Assam Criminal Law (Amendment) Act, 1934. This Act provided that a person convicted on a trial held by Commissioner could appeal to the High Court of Judicature at Fort William in Bengal, according to the procedure provided for by the Code of Criminal Procedure, 1898.

### Reasons for repeal

The Act makes references to the Assam Criminal Law Amendment Act, 1934 and the Code of Criminal Procedure, 1898. Both these Acts are non-existent now. The Assam Criminal Law Amendment Act, 1934 does not find mention in the Chronological List of Central Acts published by the Ministry of Law and Justice, while the Code of Criminal Procedure, 1898, has been repealed by the Code of Criminal Procedure, 1973.

### Issues

There are no legal issues that would impede repeal.



**Name:** The Bangalore Marriages Validating Act, 1934

**Subject:** Archaic British Era Laws

**Reason:** The Act has outlived the purpose for which it was enacted

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### What is the law?

This Act was enacted to validate certain marriages in the civil and military station of Bangalore. The marriages to be validated by this Act were those solemnised by a certain priest, Mr. Walter James McDonald Redwood.

### Reasons for repeal

- Mr. Walter James McDonald Redwood solemnised certain marriages in Bangalore mistakenly believing that he was duly authorised to do the same. The Act was enacted to validate these marriages. The Act has now served its purpose and hence, should be repealed.
- The PC Jain Commission has recommended repeal of this Act (Volume 2, Appendix A-1, Entry 147).

### Issues

There are no legal issues that would impede repeal.



Name: The Arya Marriages Validation Act, 1937

Subject: Archaic British Era Laws

Reason: The Acts purpose can be achieved through the Hindu Marriage Act, 1955

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### What is the law?

The Arya Marriage Validation Act, 1937 was passed to recognise and place beyond doubt the validity of inter-marriages of a sect of Hindus known as Arya Samajis.

### Reasons for repeal

- The validity of marriages between Arya Samajis is recognised through the Hindu Marriage Act, 1955. Arya Samajis are specifically described under Section 2(1)(a) of the Hindu Marriage Act, 1955 as 'forms' or 'developments' of the Hindu religion and therefore their marriages fall within the scope of the Hindu Marriage Act. The present Act is merely repetitive and not required.
- The PC Jain Commission has also recommended due consideration on the law by all stakeholders (Vol.1, Appendix D, Entry 11).

### Issues

There are no legal issues that would impede repeal.

## Obsolete Partition and Post-Independence Reorganisation

The following set of 5 Laws comprises of two kinds of laws—laws that were enacted to manage the issues that arose subsequent to Partition of the nation, and laws for reorganising affairs in newly Independent India, including the redrawing of boundaries of territories in India to form states as they exist now or merger of certain territories with the newly formed states. We propose that the laws in this set be repealed since they no longer serve any discernible purpose.

The problems arising out of Partition have been largely resolved, and special laws to deal with the same are no longer needed. The Law Commission of India in its 96th Report (1984) recommended the repeal of the Exchange of Prisoners Act (1948) on the grounds that the Act was not enacted with the intention of operating beyond the period of Partition.<sup>a</sup> The Indian Independence Pakistan Courts (Pending Proceedings) Act (1952) also came up for discussion and the LCI observed that after 30 years of independence (the Report dates back to 1984), the need for the Act under discussion should no longer exist. Recently, Minister for Law and Justice Shri. Ravi Shankar Prasad similarly reiterated that laws such as the Exchange of Prisoners Act (1948) and the Indian Independence Pakistan Courts (Pending Proceedings) Act (1952) are clearly of no use today.<sup>b</sup>

In the Two Member Constituencies (Abolition) and Other Laws Repeal Act (2001), similar laws relating to alteration of state names were repealed. The Statement of Objects and Reasons of this Act argued that the seven Acts mentioned in the Repeal Act of 2001 had served their purpose and were no longer required to be retained on the statute book.<sup>c</sup> Shri. JD Swami, member of the Bharatiya Janata Party (BJP) and former Union Minister of State in the NDA Government, introduced the Repeal Act of 2001 in the Lok Sabha, saying that the laws proposed for repeal were redundant, non-functional and ineffective, and have fulfilled their purpose.<sup>d</sup> The same can be said about other reorganisation and territories' merger Acts. In the same vein, the PC Jain Commission similarly recommended repeal of 35 State Reorganisation Acts because they have served their intended purpose. Of these, the Repeal Act of 2001 repealed only 7.

Repeal of these laws will not affect pending proceedings if a saving clause is added. While introducing a bill for repealing these Acts, Parliament can insert a savings clause to restrict the effect of the said repeal on any litigation (or any process of any kind) that exists/continues under these Acts. Repeal of these Acts will have the effect of clearing the statute books of redundant laws. This will contribute greatly to streamlining our laws and making them easier to use.

<sup>a</sup>Law Commission of India, Report on Repeal of Certain Obsolete Central Acts, Government of India, 1984-03

<sup>b</sup>Rediff.com, Govt to Repeal 36 archaic Laws Following Modi's Directive, 2014-08-08

<sup>c</sup>Statement of Objects and Reasons of the Two Member Constituencies (Abolition) and Other Laws Repeal Act, 2001, 2001-09-14

<sup>d</sup>Lok Sabha, Consideration and Passing of the Two-Member Constituencies (Abolition) and Other Laws Repeal Bill, 2001, 2001-08-28



**Name:** Trading with the Enemy (Continuance of Emergency Powers) Act, 1947

**Subject:** Obsolete Partition & Post-Independence Reorganisation

**Reason:** The Act is redundant in light of Enemy Property Act, 1968

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### What is the law?

This law was enacted for the continuance of certain provisions of the Defence of India Rules relating to control of trading with countries at war with India as well as persons and firms belonging to those countries, and custody of the property belonging to them. It is a relic of similar legislations passed in the United Kingdom and the United States during the Second World War. In India, the Act was enacted to empower the government to appropriate the property of Pakistani nationals.

### Reasons for repeal

The 1947 Act is no longer in practical application. The objective of this legislation is now being fulfilled by the Enemy Property Act, 1968. The 1968 Act, provides a mechanism for divesting of enemy property, i.e., property belonging to nationals and firms of hostile countries, in the Custodian of Enemy Property for India. The Act contains provisions related to the appointment of the Custodian and divesting and management of 'enemy property'.

### Issues

There are likely no legal implications since this legislation has not been in practical application and the 1968 Act has put in place a mechanism to deal with the provisions of the 1947 Act.



Name: Exchange of Prisoners Act, 1948

Subject: Obsolete Partition & Post-Independence Reorganisation

Reason: The Act has outlived its utility

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## What is the law?

This Act was passed to facilitate exchange of prisoners between India and Pakistan, in pursuance of an agreement between the two countries. Section 2(h) defines 'prisoner' as any person committed to custody in a prison on or before the 1st day of August 1948 under the writ, warrant or order of any Court or authority other than a civil Court or Court-martial.

## Reasons for repeal

- The Act was passed to facilitate exchange of prisoners between India and Pakistan post partition. This is evident from the definition of 'prisoner', which refers to persons committed to custody on or before 1 August 1948. The situation of partition arose sixty seven years ago, and those circumstances have ceased to exist.
- The Act is not implemented. The exchange of prisoners between India and Pakistan is now governed by the terms of the Consular Access Agreement signed in May 2008.
- The Law Commission in its 96th Report (1984) recommended repeal of this Act, having regard to the fact that the Act was passed only to deal with the situation that arose immediately on partition.

## Issues

A saving clause will have to be enacted along with the repeal. Besides this, there are no legal issues that would impede repeal.

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**Name:** Imperial Library (Change of Name) Act, 1948

**Subject:** Obsolete Partition & Post-Independence Reorganisation

**Reason:** The Act has served its purpose

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### What is the law?

This Act was passed to change the name of the Imperial Library to National Library.

### Reasons for Repeal

The purpose of the Act has been achieved.

### Issues

There are no legal issues that would impede repeal.



**Name:** The Resettlement of Displaced Persons (Land Acquisition) Act, 1948

**Subject:** Dbsolctc Partition & Post-Independence Reorganisation

**Reason:** The beneficiaries of the Act no longer exist

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## What is the law?

An Act was passed to provide for the speedy acquisition of land for the resettlement of displaced persons. It extends to the territories, which, immediately before 1 November 1956, were part of the states of Delhi and Ajmer.

## Reasons for repeal

- The Act was enacted to provide relief to persons displaced from their place of residence (in areas now comprising of Pakistan) on account of the Partition, and subsequently residing in India. The beneficiaries of this law no longer exist<sup>2</sup> as the law was specifically enacted to deal with the situation immediately post partition; hence the Act has outlived its utility.
- The repeal will not have any administrative repercussions. Unlike other resettlement/displacement legislations, the Act does not mention any intermediary holding company through which properties are allocated. It simply mentions a 'competent authority' as defined under section 2(a) as the Collector or any other person appointed by the state on this behalf.
- Other laws relating to persons displaced from Pakistan during the Partition have been repealed. The Displaced Persons Claims and Other Laws Repeal Act, 2005, repealed:
  - Administration of Evacuee Property Act, 1950.
  - Displaced Persons (Claims) Act, 1950.
  - Evacuee Interest (Separation) Act, 1951.
  - Displaced Persons (Claims) Supplementary Act 1954.
  - Displaced Persons (Compensation and Rehabilitation) Act, 1954.

## Issues

There are no legal issues that would impede repeal.

<sup>2</sup>The latest case on the subject was a second appeal in 2002 from the impugned judgement in 1979. Smt Brij Rani vs Union of India. 99(2002) DLT 819.





Name: Indian Independence Pakistan Courts (Pending Proceedings) Act, 1952

Subject: Obsolete Partition & Post-Independence Reorganisation

Reason: The Act has achieved its purpose and is now redundant

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## What is the law?

This law was passed immediately after Independence to deal with the post partition situation. It sought to nullify the effect of certain decrees<sup>a</sup> passed by the then British Indian Courts, falling under the jurisdiction of Pakistan after partition. It further provides the right to issue fresh legal proceeding to persons who had secured such decrees in pre-Independence India.

## Reasons for repeal

- The Act was passed to address a situation peculiar to the post-partition period, in regard to obligations created on the government by decrees passed by British-Indian Courts now in Pakistan, and allowing institution of fresh proceedings to aggrieved persons. Sixty two years hence, these circumstances no longer exist.
- The issue expressed by the Law Commission in its 96th Report (1984), while recommending against repeal of the Act, can now be addressed, since an additional 30 years have passed. The Law Commission considered the Act and recommended against its repeal, on the sole ground that it might affect any pending litigation. Although there is no conclusive way of establishing whether there is any pending litigation, the problem can be resolved by enacting a saving clause, alongside repeal, protecting all action taken under the Act.

## Issues

There is no conclusive way of finding the status of pending proceedings, if any, under the Act. Hence, a saving clause will have to be enacted along with the repeal. Aside from this, there are no legal issues that would impede repeal.

<sup>a</sup>Section 2 defines the expression 'decree' as any judgement, order or decree referred to under: Clause (3)(i) of Article 4 of the Indian Independence (Legal Proceedings) Order, 1947, or Paragraph (5)(ii) or paragraph (6) of article 13 of the High Courts (Bengal) Order, 1947, or Paragraph (4)(iii) or paragraph (6) of article 13 of the High Courts (Punjab) Order, 1947.



**Name:** The Chandernagore (Merger) Act, 1954

**Subject:** Obsolete Partition & Post-Independence Reorganisation

**Reason:** Purpose of the Act has been achieved

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## What is the law?

The Act provides for the merger of Chandernagore into the State of West Bengal and all other matters connected with it.

## Reasons for repeal

- The objective of the Act has been achieved as the merger of territories has taken place.<sup>4</sup>
- The PC Jain Commission has recommended repeal of this Act (Vol.1, Appendix B, Entry 11).

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Sachindra Mohan Nandy Vs. State of West Bengal, 1971 SCC (2) 688

## Unnecessary Levies and Taxes

The following set of 8 laws impose levies that are either completely redundant, or that bring little benefit despite adding significant administrative and collection costs. Five of these laws, enacted between 1913 and 1986, impose earmarked cesses, one imposes a travel toll, and the last is an indirect tax.

Cesses have been characterised by the Supreme Court as taxes imposed for 'special administrative expenses'.<sup>a</sup> These cesses are typically imposed on the manufacturers of a particular commodity, or on the import of technology. The proceeds, after deducting the costs of administration, are channelled to a board set up for the development of production of that particular commodity. These Acts deal only with the collection of cess, while the Boards are created and managed under different Acts.

Small cesses and taxes are economically inefficient; they introduce budgetary distortions and have high administration and costs.<sup>b</sup> They are all but forgotten, as they bring in negligible amounts of money, while adding significant collection costs on the government and imposing a regulatory burden on manufacturers. Economists have argued that doing away with these levies will have 'little revenue consequence'.<sup>c</sup> Experts, including those within government, have recommended doing away with small cesses. Sri. NK Singh, who was the former Revenue Secretary and is currently member of the Bharatiya Janata Party (BJP), noted in one of his articles that the Acts in question have been characterised as laws that have outlived their utility, as they lead to 'persistent ambiguity'.<sup>d</sup>

Product cesses such as The Agricultural and Processed Food Products Export Cess Act (1985) and The Spices Cess Act (1986) were done away with in 2006 by the Cess Laws (Repealing and Amending) Act. Discussions in the Lok Sabha on the consideration of Cess Laws (Repealing and Amending) Bill (2006) noted that the amount collected through these cesses was negligible, while the procedure for collection was a 'major irritant' to manufacturers, since it involved additional documentation and procedural formalities.<sup>e</sup> Similarly, the Produce Cess Laws (Abolition) Act (2006) repealed the Agricultural Produce Act (1940) and the Produce Cess Act (1966) on the grounds they amounted to a tax on exports, adversely affecting the competitiveness of Indian goods in the global market.<sup>f</sup>

In addition, other levies listed in this section, such as the Ganges Tolls Act (1867), have been replaced with newer laws imposing similar taxes, running the risk of double taxation. Besides raising negligible revenue, earmarked levies, such as those in segment, result in budgetary rigidity. From public finance standpoint, India must do away with inefficient and unsound revenue modalities

<sup>a</sup>Shinde Bros. v. Commissioner, Raichur, AIR 1971 SC 1312

<sup>b</sup>Deccan Herald, Interview with Arvind Virmani: Cess, Surcharge, Transaction Tax are Distortionary, 2009-07-03

<sup>c</sup>NK Singh, Time to Repeal Small Cess Acts, The Indian Express, 2007-09-18

<sup>d</sup>id

<sup>e</sup>Lok Sabha, Discussion on the Motion for Consideration of the Cess Laws (Repealing and Amending) Bill, 2006, 2006-06-15

<sup>f</sup>Produce Cess Laws (Abolition) Act, 2006, 2006-09-28



Name: The Ganges Tolls Act, 1867

Subject: Unnecessary Levies & Taxes

Reason: Archaic and redundant Act

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## What is the law?

The Act authorises the levy of tolls on boats plying on the river Ganga for the purpose of improving navigation and shipping facilities on the river. The funds so collected are to be used to meet the expenses of improving and facilitating the navigation of the Ganges between Allahabad and Dinapore.

## Reasons for repeal

- The National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi Hooghly River) Act, 1982 was enacted, to authorise the levy of toll in the same region and for the same purpose.
- The Law Commission in its 148th Report (1993) recommended repealing this Act on the ground that even though there may not be any direct contradictions or inconsistencies between the two Acts (1867 and 1982), but there is a possibility of some double taxation.<sup>a</sup>
- The language used in the Act is archaic as it stipulates that a toll not exceeding 12 annas per hundred maunds shall be payable. While this is not in itself sufficient ground for repeal, it makes the Act yet another example of a law behind the times.
- There is no evidence of any recent use of this Act.

## Issues

There are no legal implications due to repeal of the Act.

<sup>a</sup>Law Commission of India, Report on Repeal of Certain Pre-1947 Acts, Government of India, 1993-11, <http://lawcommissionofindia.nic.in/101-169/Report148.pdf>



Name: Salt Cess Act, 1953

Subject: Unnecessary Levies & Taxes

Reason: Amount of cess collected is negligible compared to administrative costs

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## What is the law?

The Act levies a cess on salt manufacturers at the rate of 14 paise per 40 kilograms on all salt manufactured in India in any salt factory, public or private. The proceeds of the cess, after deducting the cost of collection, are used to meet the expenses of salt administration by the government. This includes the costs of regulating salt manufacture, labour welfare, research etc.

## Reasons for repeal

- The High Level Salt Enquiry Committee (1978) recommended that the cess be removed, since the annual collection was very small while the total annual cost of administering and controlling the release of salt was 55% of the total cess collected, at that time.<sup>4</sup> Currently, the costs of administration far exceed the collected cess. In 2012-13, cess receipts amounted to Rs. 348.99 lakhs, or 14% of the Salt Department's expenditure on administration and labour welfare, which amounted to Rs. 2,611.80 lakhs. Given that collections are so low, abolition of the cess will not affect fund flow for Govt significantly.
- The Customs, Excise and Gold Tribunal in 1990 observed that "for all practical purposes, as an excisable commodity, [salt] is a non-existent item."<sup>5</sup>, as the amounts collected are negligible. Earmarked taxes such as this cess are inefficient since they introduce distortions, lead to budgetary indiscipline, and typically have excessive administration and compliance costs.<sup>6</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>High Level Salt Inquiry Committee, Report of the High Level Salt Enquiry Committee, Delhi Controller of Publications, 1978-11, <http://bit.ly/1qRH2WB>, 45

<sup>5</sup>S. Kumar v. Collector of Central Excise, 1990 ECR 725 Trl Delhi

<sup>6</sup>Deccan Herald, Interview with Anand Virmani: Cess, Surcharge, Transaction Tax are Distortionary, 2009-07-03. <http://www.deccanherald.com/content/11922/cess-surcharge-transaction-tax-distortionary.html>



**Name:** Wealth Tax Act, 1957

**Subject:** Unnecessary Levies & Taxes

**Reason:** Amount of tax collected is 1% of the total tax collected in a year

## What is the law?

The Act imposes a tax in respect of the net wealth of every individual, Hindu undivided family (HUF) and company, at the rate of 1% of the amount by which the net wealth exceeds Rs. 30 lakhs.

## Reasons for repeal

- The number of declared wealth taxpayers is too small to bring in massive revenue under this head. India has nearly 350 lakhs taxpayers, but only 17 lakhs have a declared income of more than Rs. 10 lakhs<sup>a</sup>. As a result, the amount of wealth tax collected remains at abysmally low levels. In 2012, wealth tax collections were a mere Rs. 787 crores, as against the gross direct tax collection at Rs. 5,90,077 crores. In 2011, the amount of wealth tax collected was Rs. 687 crores, as against the total gross tax collection of Rs. 5,22,104 crores.<sup>b</sup>
- The cost of collection of wealth tax is very high as compared to the actual collection. In 2009, India's total wealth tax receipts were Rs. 425 crores, while the Government spent Rs. 216.3 crores in collecting the tax. It is estimated that for every rupee spent, the Government collects only Rs. 1.97 in wealth tax, as compared to Rs. 60 in income tax.<sup>c</sup> This was also one of the reasons for the abolition of the estate duty tax in 1985, as the cost of collection and administration of estate duty was too high.<sup>d</sup>
- Per Section 2(ea) of the Act, the tax is only levied on assets like a house used for residential or commercial purposes, farm houses, motor cars, urban land (as defined under Explanation 1(b) to Section 2(ea) of the Act), jewellery, yachts, cash in hand in excess of Rs 50,000, etc. Imposition of tax on these assets pushes their ownership underground and gives rise to black money.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Pooj Shriveta, Skewed Priorities, The Business Standard, 2013-02-03, <http://businesstoday.intoday.in/story/more-taxes-on-the-super-rich-help-india-flourish/1/191598.html>

<sup>b</sup>Business Today, Direct Tax Collection Up 13% in FY12, 2012-06-08, <http://businesstoday.intoday.in/story/direct-corporate-income-tax/1/135192.html>

<sup>c</sup>Shrawan: Deepshikha, Taxing Trapping: Wealth Tax Collection Costs Half As Much, Economic Times, 2009-04-08, [http://articles.economictimes.indiatimes.com/2009-04-08/news/28489370\\_1\\_wealth-tax-collection-receipts](http://articles.economictimes.indiatimes.com/2009-04-08/news/28489370_1_wealth-tax-collection-receipts)

<sup>d</sup>Economic Times, What if Inheritance is Taxed?, 2011-08-18, [http://articles.economictimes.indiatimes.com/2011-07-18/news/29787300\\_1\\_inheritance-tax-gifts-property-estate-tax](http://articles.economictimes.indiatimes.com/2011-07-18/news/29787300_1_inheritance-tax-gifts-property-estate-tax)



Name: The Tobacco Cess Act, 1975

Subject: Unnecessary Levies & Taxes

Reason: Cess collected is negligible

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### What is the law?

This Act provides for the levy and collection of an excise duty at the rate of 1 paise per kilogram on all Virginia tobacco produced in India and sold at a registered auction platform. The funds collected are transferred to the Tobacco Board, after deducting the costs of collection, for use in the development of the tobacco industry.

### Reasons for repeal

- In 2006, the Cess Laws (Repealing and Amending) Act removed a number of cesses on agricultural products (like the Agricultural Produce Cess Act and the Spices Cess Act) to increase the competitiveness of our agricultural exports. The Tobacco Cess Act was also considered in this process and Section 4 of this Act, which dealt with the levy of customs duty on tobacco exports, was repealed.
- The excise duty on tobacco under Section 3 of this Act, however, still operates. The cess collected is negligible.

### Issues

There are no legal implications due to repeal of the Act.



**Name:** The Sugar Cess Act, 1982

**Subject:** Unnecessary Levies & Taxes

**Reason:** Amount of cess collected is negligible compared to administrative costs

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## What is the law?

This Act levies a cess on sugar produced and sold by any sugar factory in India, at the rate of Rs. 24 per quintal. The proceeds of the cess, after deducting the cost of collection, are credited to the Sugar Development Fund (SDF). The SDF renders financial assistance through loans at concessional rates for the rehabilitation and modernisation of sugar factories.

## Reasons for repeal

- Between 1982-83 and 2008-09 the average cess collected per year was Rs. 207 crores, of which an average of Rs. 163 crores was transferred to the SDF.<sup>a</sup> In 2008, the government estimated that the SDF would not have sufficient funds after March 2009 to meet the expected expenditure on financial assistance.<sup>b</sup> The cess collected is therefore inadequate to meet the costs of the SDF.
- In the past, where cesses have been abolished, the costs of the relevant Board have been met through government grants. The Spices Board, for example, which used to receive the realisations from the spices cess<sup>c</sup>, is now operating on government budget outlays. A similar solution can be introduced for the SDF.
- Earmarked taxes such as this cess are inefficient since they introduce distortions, lead to budgetary indiscipline, and typically have excessive administration and compliance costs.<sup>d</sup>

## Issues

The Rangarajan Committee report which laid down the road map for deregulation does not mention doing away with the cess; instead it recommends redeploying the cess money to offset the removal of levy sugar. There are however, no legal issues that would impede repeal.

<sup>a</sup>Department of Food and Public Distribution, Status of Sugar Development Fund

<sup>b</sup>Business Line, Bill for hiking cess on sugar introduced in Lok Sabha, 2008-08-12

<sup>c</sup>Jayatilak, Give Pepper Status of Focus Products, The New Indian Express, 2013-07-03.

<sup>d</sup><http://www.newindianexpress.com/business/news/Give-Pepper-Status-of-Focus-Products/2014/07/03/article2511326.ece>

<sup>e</sup>Deccan Herald, Interview with Arvind Virmani: Cess, Surcharge, Transaction Tax are Distortionary, 2009-07-05





Name: The Jute Manufactures Cess Act, 1983

Subject: Unnecessary Levies & Taxes

Reason: Cess collected is negligible

## What is the law?

This Act levies a cess on jute manufacturers at the rate of 1% ad valorem. The proceeds of the cess are used by the National Jute Board to take steps for the development of jute production. Cess proceeds are first credited to the Consolidated Fund of India from which a portion is given to the National Jute Board, after deducting the costs of collection.

## Reasons for repeal

- The amounts collected under the cess are negligible, and only about half are transferred to the National Jute Board. In 2011-12, cess collected was Rs. 85 crores while the transfer to the Board only amounted to Rs. 34 crores.<sup>3</sup>
- The Special Economic Zones Act, 2005 exempts goods in an SEZ from this cess. While this is not in itself a ground for repeal, perhaps it is an indication that this cess is a hindrance to economic activity and should not operate anywhere else in the country.
- In the past, where cesses have been abolished, the costs of the relevant Board have been met through government grants. The Spices Board, for example, which used to receive the realisations from the spices cess, is now operating on government budget outlays. A similar solution can be introduced for the National Jute Board.
- Earmarked taxes such as this cess are inefficient since they introduce distortions, lead to budgetary indiscipline, and typically have excessive administration and compliance costs.<sup>4</sup>

## Issues

There are no legal implications due to repeal of the Act.

<sup>3</sup>Lok Sabha, Need to Utilise the Amount of Cess Collected from Jute Manufacturing Companies for Development of Jute and Jute Products, 2013-03-19, <http://184.103.47.132/LokNew/psearch/Result15.aspx?abst=9772>

<sup>4</sup>Deccan Herald, Interview with Arvind Virmani: Cess, Surcharge, Transaction Tax are Distortionary, 2009-07-05, <http://www.deccanherald.com/content/11922/cess-surcharge-transaction-tax-distortionary.html>



Name: The Research and Development Cess Act, 1986

Subject: Unnecessary Levies & Taxes

Reason: Impediment to technology companies in the import of technology

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## What is the law?

The Act levies a 5% cess on all technology imported from overseas and sets up a Fund under the Industrial Development Bank of India into which the money is directed. The Fund is used to encourage domestic technology development. The central government has the power to exempt any company from paying the cess.

## Reasons for repeal

- This cess hinders the flow of technology into the nation and poses a barrier to trade. The Japanese Ministry of Economy, Trade and Industry complained about the tax in 2002 and characterised the Act as a hindrance.<sup>a</sup>
- There are reports of industry complaints that the applications of this Act are discretionary and often ad hoc, leading to harassment. There is also lack of clarity on whether this cess and service tax amount to double taxation.<sup>b</sup>
- The cess collected is too small to justify the restrictions caused by its imposition. In the 13-year period between 1997 and 2010, only Rs. 2,261 crores were collected under the Act. Of this, only 22% or Rs. 501 crores (or Rs. 36 crores annually) were channelled to the Technology Development Board during this period. This is a small amount that can easily be compensated, while achieving savings in administrative costs of the cess collection. Earmarked taxes such as this cess are inefficient since they introduce distortions, lead to budgetary indiscipline, and typically have excessive administration and compliance costs.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Ministry of Economy, Trade and Industry, Barriers to Business in India, 2002-01-13, [http://www.meci.ge.jp/policy/trade\\_policy/asia/sw\\_asia/data/Barriers%20to%20Business%20in%20India.pdf](http://www.meci.ge.jp/policy/trade_policy/asia/sw_asia/data/Barriers%20to%20Business%20in%20India.pdf)

<sup>b</sup>R. Srivatsan, Some fuss about a cess, Business Line, 2004-04-17, <http://www.thehindubusinessline.com/2004/04/17/stories/200404170103900.htm>

## Redundant Nationalisation

The following laws were passed between 1972-76, just before or during the proclamation of National Emergency in the country. This era saw the government take over 14 private banks, followed by the nationalisation of companies in the insurance, coal, iron and steel, and oil and gas sectors through Acts like the ones listed in this section.

These Acts followed a similar pattern—they provided for the transfer of all assets, rights and interests of a company to the central government, and fixed the compensation to be paid to the owners. By virtue of this transfer, the Acts declared the company property to be free of all mortgages, charges and other encumbrances. The Acts also provided for the transfer of services of employees, and usually barred the courts' jurisdiction in trying industrial disputes connected to such transfers. Finally, the Acts penalised actions such as withholding property that should have been transferred to the central government as part of the acquisition.

These Acts provided only for the transfer of assets of the company to the government. They are silent on the management and operations of the acquired company, which are largely conducted under the Companies Act and through directives issued by the government from time to time. Therefore, the objective of these Acts was fulfilled once the acquisition was completed, and they may now be repealed as they serve no further purpose.

Such repeal will not have any effect on the completed acquisitions. Section 6 of the General Clauses Act (1897), which deals with the Effect of Repeal, provides that repeal does not affect any action properly taken under an Act, or affect any rights, liabilities or legal proceedings under the Act. This is an accepted principle of statutory interpretation that will apply to the repeal of the following enactments.

No instances of pending litigation or other proceedings have been discovered under these Acts. Even if there is pending litigation, it will remain unaffected by the repeal if a standard "saving clause" is added to the repealing provisions, which provides that pending proceedings are to remain unaffected by the repeal.

The repeal of nationalisation acts will clear the path towards eventual disinvestment. Repeal will also address any apprehensions of litigation arising against closure of the undertakings nationalised by these Acts.

These laws are a representation of the Emergency era with widespread suppression of rights, and barring of recourse to courts. The abundant nationalisation Acts were an exercise in expanding the powers of the state by controlling greater portions of the national economy.<sup>8</sup> They have no place in the statute books of a liberalised 21st century India.

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<sup>8</sup>Sibal, D. Rajeev, *The Untold Story of India's Economy*, ISE IDEAS Reports, 2012-13, 1-22



Name: Railway Companies (Emergency Provisions) Act, 1951

Subject: Redundant Nationalisation

Reason: The Act has outlived its utility

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### What is the law?

This Act was passed to make provisions for the proper management and administration of private railway companies. It paved the way for the nationalisation of railways in India.

### Reasons for repeal

Since the entire railway system is now government owned, the purpose of the Act is spent. Presently, the Railways Act, 1989 comprehensively deals with the laws relating to railways.

### Issues

There are no legal issues that would impede repeal.



**Name:** The Coking Coal Mines (Emergency Provisions) Act, 1971

**Subject:** Redundant Nationalisation

**Reason:** The Act has outlived its utility

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### What is the law?

The Act provides for the takeover of the management of coking coal mines and coke oven plants by the Government, pending nationalisation. This was followed by the Coking Coal Mines (Nationalisation) Act, 1972 under which all coking coal mines and coke oven plants, other than those with the Tata Iron & Steel Company Limited and Indian Iron & Steel Company Limited, were nationalised and brought under Bharat Coking Coal Limited (BCCL), a new central government undertaking.

### Reasons for repeal

The Act was enacted to provide for the temporary management of the mines and plants, pending nationalisation. Since the Coal Mines (Nationalisation) Act, 1972 came a year later, there remains no use for the previous legislation.

### Issues

There are no legal issues that would impede repeal.



**Name:** The Indian Copper Corporation (Acquisition of Undertaking) Act, 1972

**Subject:** Redundant Nationalisation

**Reason:** Nationalised company subsumed into a new entity, making the acquisition act redundant

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## What is the law?

The Act enabled the acquisition of the Indian Copper Corporation Limited for the purpose of conserving and exploiting coal deposits in a manner that was of maximum advantage to the nation. It transferred all assets, rights, powers and properties of the company to the central government, and declared those assets to be free of all encumbrances or obligations. It also provided for compensation of Rs. 7.5 crores to be paid to the company in return of the transfer of assets.

Indian Copper was nationalised through this Act and merged with Hindustan Copper under the provisions of this Act.<sup>2</sup>

## Reasons for repeal

- The Act only provides for the acquisition of the undertaking of the Indian Copper Corporation, and has no provisions with respect to its management or operations. The Companies Act now governs the management of the company. The Act is no longer relevant to the present-day functioning of Hindustan Copper and may be repealed.
- No pending cases exist under the Act and therefore there is no obstacle to repeal.

## Issues

The Act is listed in the 9th Schedule to the Constitution. While this does not affect the repeal process, an amendment to the Constitution will have to remove this Act from the list at a later date after its repeal.

<sup>2</sup>Hindustan Copper Limited, About HCL. <http://www.hindustancopper.com/ICCP/ant.asp?ink=1>



Name: Richardson and Cruddas Limited (Acquisition and Transfer of Undertakings) Act, 1972

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into a new entity, making the acquisition act redundant

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## What is the law?

Richardson and Cruddas Limited was engaged in the production of goods needed by defence establishments, railways, steel plants and power projects. This Act enabled the acquisition of the company on the ground of mismanagement by its erstwhile management. This Act transferred all assets, rights, powers and properties of the company to the central government, and declared those assets to be free of all encumbrances or obligations. It also provided for compensation of Rs. 30 lakhs to be paid to the company in return of the transfer of assets.

The Company started incurring losses in 1990s, was declared sick in 1992 and has remained in a financial crisis ever since. The Ministry of Heavy Industries has identified Richardson and Cruddas as a terminally sick industry, which could be disinvested.\*

## Reasons for repeal

The acquisition act has no role to play in the management and recovery attempts of the Richardson and Cruddas Company. Its repeal will not affect the process of recovery.

## Issues

There are no legal issues that would impede repeal.

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\*Dheeraj Tiwari, Government plans to sell sick state-run companies, The Economic Times, 2014-06-11. [http://articles.economictimes.indiatimes.com/2014-06-11/news/50508375\\_1\\_bpsu-nclt-lmt-bearings](http://articles.economictimes.indiatimes.com/2014-06-11/news/50508375_1_bpsu-nclt-lmt-bearings)



**Name:** The Esso (Acquisition Of Undertakings In India) Act, 1974

**Subject:** Redundant Nationalisation

**Reason:** Nationalised company subsumed into new entity, making the acquisition Act redundant

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## What is this law?

The Act provided for the acquisition of all rights, titles and interests of the Indian undertakings of Esso Eastern Inc. by the central government. The purpose of this acquisition was to ensure coordinated distribution and utilisation of petroleum products. The Act further gave the central government power to transfer these holdings to a government company. Rs. 2.50 crores was paid to Esso, the US parent company, as compensation.

The Indian undertakings of Esso, and another company called Lube India were merged to form the Hindustan Petroleum Corporation Limited (HPCL) under the Companies Act in 1974.

## Reason for repeal

- This Act deals only with acquisition, and not management of the company, which now exists as HPCL and is governed by the Companies Act. Repealing this Act will therefore not have any effect on the functioning of the company.
- In 2003, in the case of *Centre for Public Interest Litigation v. Union of India*,<sup>2</sup> the Supreme Court held that the sale of shares of HPCL could not take place through executive order, since the formation of HPCL had taken place through acquisition statutes, including the Esso (Acquisition of Undertakings in India) Act, 1974. For sale of its shares, therefore, either Parliamentary approval would have to be obtained or the acquisition statutes (including this one) would have to be repealed.

## Issues

The repeal of this Act might send out signals in the market of impending disinvestment in the oil and gas sector, which has remained a contentious issue.

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<sup>2</sup>(2003) 7 SOC 532.





**Name:** The Indian Iron and Steel Company (Acquisition of Shares) Act, 1976

**Subject:** Redundant Nationalization

**Reason:** Nationalised company subsumed into a new entity, making the acquisition act redundant

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### What is the law?

This Act provided for the acquisition of shares of the Indian Iron and Steel Company Limited (IISCO), for the purpose of ensuring proper management of the affairs of the Company. It specified that on an appointed date, all shares of this company would be transferred to the central government. Compensation of more than Rs. 7.2 crores was to be paid to the shareholders, and a Commissioner of Payments was set up for this purpose under the Act to decide on claims for payment.

Later, under the Steel Companies (Restructuring) and Miscellaneous Provisions Act, 1978, IISCO was made a wholly owned subsidiary of the Steel Authority of India (SAIL). IISCO's shares were transferred to SAIL under the 1978 Act. In 2006, it was merged with SAIL to try and affect a revival of the company.<sup>4</sup>

### Reasons for repeal

The operation of IISCO takes place under the Companies Act. This Act is therefore not relevant to the functioning of the IISCO and may be repealed.

### Issues

There are no legal issues that would impede repeal.

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<sup>4</sup>Business Line, IISCO-SAIL merger gets Cabinet nod, <http://www.thehindubusinessline.in/business/2005/08/17/stories/2005081702780300.html>, 2005-08-17



Name: Burn Company and Indian Standard Wagon Company (Nationalisation) Act, 1976

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into new entity, making the acquisition Act redundant

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## What is the law?

The Burn Company and the Indian Standard Wagon Company produced railway wagons and other goods necessary to the iron and steel industry. In 1967, the production of the companies declined and they were on the verge of closure. Government of India took over the management of the company in 1973 on grounds that closure would adversely affect the production of vital commodities. The Statement of Objects and Reasons of the Act notes that the companies were subsequently nationalised due to the huge debts they had accumulated.

The Act provided that the titles, rights and interests of both these undertakings would vest in the Government on the appointed date, free of all encumbrances. The owners of the two companies would continue to remain liable for all existing liabilities, other than wages and government loans.

After acquisition, the two companies were amalgamated under the Companies Act and renamed Burn Standard Company Ltd. On account of consistent losses, the company was officially declared sick in 1995. The company has remained in financial crisis ever since.

## Reasons for repeal

The acquisition act has no role to play in the management and recovery attempts of the Burn Standard Company, which is now managed by the Ministry of Railways.

## Issues

There are no legal issues that would impede repeal.

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Name: The Burmah Shell (Acquisition of Undertakings in India) Act, 1976

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into a new entity, making the acquisition act redundant

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## What is the law?

The Act provided for the acquisition of the Burmah Shell Oil Storage and Distributing Company of India Limited (BSD) to ensure coordinated distribution and utilisation of petroleum products. It provided that on the appointed date, the right, title and interest of Burmah Shell undertakings in India would be transferred to the central government. It further gave the power to the central government to transfer these holdings to a government company. The government paid Rs. 27.71 crores to the parent company, Burmah Shell for this acquisition under the Act.

The government acquired at the same time the Burmah Shell Refineries Limited, and vested all assets of the BSD in this company, which was later renamed Bharat Petroleum Corporation Limited (BPCL) in 1977.

## Reasons for repeal

- This Act deals with only the acquisition and not the management of the company, which has merged with BPCL. BPCL is managed by its Board of Directors constituted under the Companies Act, 1956, consisting of Government of India nominees and independent Directors. Repealing this Act will therefore not have an effect on the existence or functioning of the company.
- The plan for disinvestment in HPCL and BPCL was proposed by the Department of Disinvestment in 2002.<sup>8</sup> In 2003, the Supreme Court (in the same judgment mentioned in the previous entry) stalled the sale of shares of BPCL saying that since the company had been acquired under the Burmah Shell (Acquisition of Undertakings in India) Act, privatisation could not proceed through executive order. According to the Court, the Act would either have to be repealed, or Parliamentary approval would have to be obtained for the privatisation to go ahead.<sup>9</sup>

## Issues

The repeal of this Act might send out signals in the market of impending disinvestment in the oil and gas sector, which has remained a contentious issue.

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<sup>8</sup>Business Standard, Disinvestment hopes for BPCL, HPCL, 2002-08-29, <http://www.business-standard.com/article/markets/divestment-hopes-for-bpcl-hpcl-1020929010631.html>

<sup>9</sup>Centre for Public Interest Litigation v. Union of India, (2003) 7 SCC 532.



Name: Braithwaite and Company (India) Limited (Acquisition and Transfer of Undertakings) Act, 1976

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into new entity, making the acquisition Act redundant

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## What is the law?

The Act enabled the acquisition of Braithwaite and Company (India) Limited to undo the mismanagement by its erstwhile managing agents and Board of Directors, which had seriously affected the production and supply of goods. Braithwaite is engaged in the manufacture and production of railway wagons and intricate components required by the railway industry. The Act transferred all assets, rights, powers and properties of the company to the central government. It also provided for compensation of Rs. 16 crores to be paid to the company in return for the transfer of assets.

Currently, Braithwaite is a subsidiary to the Bharat Bhari Udyog Nigam Limited (BBUNL) and under the administrative control of the Department of Heavy Industries. Braithwaite was declared sick and referred to the BIFR in 1992.<sup>6</sup>

The Government has been seeking to dis-invest Braithwaite since 2002-2003. In 2010, the Cabinet approved the financial restructuring of Braithwaite and transferred it to the Steel Authority of India Limited (SAIL). The Cabinet also plans to provide loans to Braithwaite for its revival.<sup>7</sup>

## Reasons for repeal

The acquisition act has no role to play in the management and recovery attempts of Braithwaite. Its repeal will not affect the process of recovery.

## Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Department of Disinvestment, Preliminary Information Memorandum (PIM): Braithwaite & Co. Ltd., 2014-07-17. <http://www.divest.nic.in/braithwaite.asp>

<sup>7</sup>The Hindustan Times, Cabinet approves financial restructuring of BBUNL, 2010-06-10, 2014-07-17. <http://www.hindustantimes.com/business-news/cabinet-approves-financial-restructuring-of-bbunl/article1-555807.aspx>



Name: Smith, Stanistreet and Company Limited (Acquisition and Transfer of Undertakings) Act, 1977

Subject: Redundant Nationalisation

Reason: Nationalised company closed, making the acquisition act redundant

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## What is the law?

The Act enabled the acquisition of Smith, Stanistreet and Company Limited, engaged in the manufacture and distribution of pharmaceuticals and chemicals. The stated reason was that the company was being managed in a manner highly detrimental to public interest, and suffering from heavy losses. The Act transferred all assets, rights, powers and properties of the company to the central government, and declared those assets to be free of all encumbrances or obligations. It also provided for compensation of almost Rs. 4 crores to be paid to the company in return of the transfer of assets.

## Reasons for repeal

- The Company had been incurring financial losses and was formally declared sick by the Board of Industrial and Financial Reconstruction (BIFR) in 1992. In 2001, the BIFR confirmed its opinion that it was just and equitable in public interest that the company should be wound up.<sup>4</sup> The central government decided to close the Company and separated the employees by offering Voluntary Separation Scheme (VSS) to them. Consequently, this Company has been closed.
- Since the company has now been closed and is not operating currently, the acquisition act does not serve any purpose.

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Department of Chemicals and Petrochemicals, Smith Stanistreet Pharmaceuticals Limited (SSPL), 2014-07-17. <http://chemicals.nic.in/pharma/sspl.htm>



Name: Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into a new entity, making the acquisition act redundant

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## What is the law?

The Act provided for the acquisition of all rights, titles and interests of the Indian undertakings of Caltex Oil Refining (India) Limited (CORIL) by the central government. The purpose of the acquisition was the implementation of the policy of progressively securing State ownership and control of the nation's petroleum resources. The Act gave the power to the central government to transfer these holdings to a Government Company. Rs. 13 crores was paid to Caltex Petroleum, the US parent company, as compensation.

By means of this acquisition act, CORIL was merged with the Hindustan Petroleum Corporation Limited (HPCL) in 1977.

## Reasons for repeal

- CORIL now exists as only HPCL, which is governed by the Companies Act. Repealing this Act will therefore not have any effect on the functioning of the company.
- In 2003, in the case of Centre for Public Interest Litigation v. Union of India,<sup>4</sup> the Supreme Court said that the sale of shares of HPCL could not take place through executive order, since the formation of HPCL had taken place through acquisition statutes, including the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977. For the sale of its shares, either Parliamentary approval would have to be obtained, or the acquisition statutes, including this one, would have to be repealed.

## Issues

There are no legal issues that would impede repeal.

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<sup>4</sup>(2003) 7 SCC 532.

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Name: Britannia Engineering Company Limited (Mokameh Unit) and the Arthur Butler and Company (MuzaTarpore) Limited (Acquisition and Transfer of Undertakings) Act, 1978

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into new entity, making the acquisition Act redundant

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## What is the law?

The Act enabled the nationalisation and subsequent amalgamation of two erstwhile companies, Arthur Butler & Co. located at MuzaFarapur, and Britannia Engineering Works located at Mokama (both in Bihar). The decision of the Government was driven by the industrial sickness in both the companies. The Act transferred all assets, rights, powers and properties of both companies to the central government. It also provided for compensation of Rs. 152.81 lakhs to Britannia Engineering and Rs. 137.70 lakhs to Arthur Butler and Company in return for the transfer of assets.

Both the companies were amalgamated to form Bihar Wagon and Engineering Company Limited (BWEL) which is a 100% subsidiary of Bharat Bharat Udyog Nigam Limited (BBUNL). BWEL was declared sick and referred to the BIFR in 2000. In 2008, the Cabinet Committee on Economic Affairs (CCEA) approved the financial restructuring of BWEL and it was taken over by the Ministry of Railways.<sup>2</sup>

## Reasons for repeal

The acquisition Act has no role to play in the management and recovery attempts of BWEL. Its repeal will not affect the process of recovery.

## Issues

There are no legal issues that would impede repeal.

<sup>2</sup>Department of Divestment, Preliminary Information Memorandum (PIM): Braithwaite & Co. Ltd., 2014-07-17. <http://www.divest.nic.in/braithwaite.asp>

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**Name:** Hindustan Tractors Limited (Acquisition and Transfer of Undertakings) Act, 1978

**Subject:** Redundant Nationalisation

**Reason:** Nationalised company subsumed into new entity, making the acquisition act redundant

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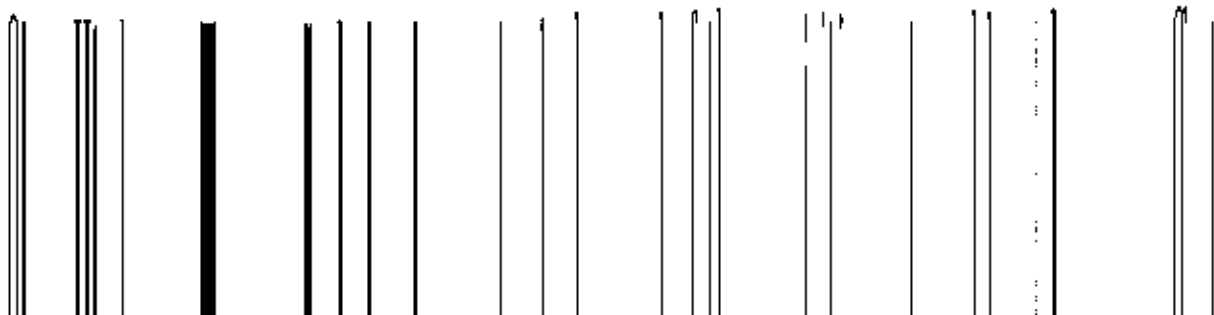
## What is the law?

The Act provided for the acquisition and transfer of the undertakings of Hindustan Tractors Limited. The stated reason was to ensure the continuity of production of goods, which were vital to meet the needs of the general public. It also provided for compensation of Rs. 150 lakhs to be paid by the central government to the company in return of the transfer of assets.

Under Section 6 of this Act, the central government transferred the undertakings of the Company to the Government of the state of Gujarat. Consequently, all assets, rights, powers and properties of the company were transferred to the Government of Gujarat.

In 1999, the Mahindra and Mahindra Group acquired 60% of Hindustan Tractors Limited, and by 2001 the rest of the company was also purchased. It was then renamed to Mahindra Gujarat Tractors Ltd., and is now a Mahindra and Mahindra enterprise."

## Reasons for repeal







**Name:** Hindustan Tractors Limited (Acquisition and Transfer of Undertakings) Act, 1978

**Subject:** Redundant Nationalisation

**Reason:** Nationalised company subsumed into new entity, making the acquisition act redundant

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## What is the law?

The Act provided for the acquisition and transfer of the undertakings of Hindustan Tractors Limited. The stated reason was to ensure the continuity of production of goods, which were vital to meet the needs of the general public. It also provided for compensation of Rs. 150 lakhs to be paid by the central government to the company in return of the transfer of assets.

Under Section 6 of this Act, the central government transferred the undertakings of the Company to the Government of the state of Gujarat. Consequently, all assets, rights, powers and properties of the company were transferred to the Government of Gujarat.

In 1999, the Mahindra and Mahindra Group acquired 60% of Hindustan Tractors Limited, and by 2001 the rest of the company was also purchased. It was then renamed to Mahindra Gujarat Tractors Ltd., and is now a Mahindra and Mahindra enterprise.<sup>4</sup>

## Reasons for repeal

Since Hindustan Tractors Ltd. has been privatised, repeal of the acquisition act would not have any effect on its management.

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Department of Disinvestment, Preliminary Information Memorandum (PIM): Braithwaite & Co. Ltd., 2014-07-17. <http://www.divest.nic.in/braithwaite.asp>

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Name: Kosan Gas Company (Acquisition of Undertaking) Act, 1979

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into new entity, making the acquisition act redundant

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## What is the law?

The Act enabled the acquisition of the undertakings of the Kosan Gas Company so as to secure the ownership and control of the means and resources for bottling, transport, marketing and distribution of liquefied petroleum gas (LPG). This was done to ensure that distribution of LPG would sub-serve the common good. In 1979, Kosan Gas Company was merged with Hindustan Petroleum Corporation Limited (HPCL).<sup>6</sup> Plans to privatise HPCL have been in the pipeline for a considerable period of time now.

## Reasons for repeal

- The judgement in Centre for Public Interest Litigation v. Union of India<sup>6</sup> dealing with the privatisation of HPCL holds relevance for Kosan Gas Company as well. The sale of shares of HPCL could not take place through executive order, since the formation of HPCL had taken place through acquisition statutes, including the Kosan Gas Company (Acquisition of Undertaking) Act, 1979. For sale of its shares, therefore, either Parliamentary approval would have to be obtained or the acquisition statutes, including this one, would have to be repealed.
- Even though this Act, does not find a mention in the Centre for Public Interest Litigation judgement, the privatisation of HPCL will likely entail repeal of this Act as well.

## Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Hindustan Petroleum Corporation Limited, Our Roots, 2014-08-17, <http://www.hindustanpetroleum.com/ourroot>  
<sup>7</sup>(2003) 7 SCC 532.



Name: Jute Companies (Nationalisation) Act, 1980

Subject: Redundant Nationalisation

Reason: The Act has served its purpose

### What is the law?

This Act was passed to acquire and transfer the undertaking of six jute companies, namely, National Company Limited, Alexandra Jute Mills Limited, Union Jute Company Limited, Khardah Company Limited, Kinnison Jute Mills Company Limited and RBHM Jute Mills Private Limited by the central government. The undertakings were vested in the National Jute Manufacturers Corporation Limited, a company incorporated under the Companies Act, 1956.

### Reasons for Repeal

The process of acquisition is complete and assets of the aforesaid companies are now vested in the National Jute Manufacturers Corporation Limited (NJMC), with effect from June 1980. The NJMC is governed under the Companies Act, making this Act redundant.

### Issues

There are no legal issues that would impede repeal.



Name: Amritsar Oil Works (Acquisition and Transfer of Undertakings) Act, 1982

Subject: Redundant Nationalisation

Reason: Act has served its purpose

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## What is the law?

The Act enabled the complete nationalisation of Amritsar Oil Works. The management of this company was taken over by the central government under the Industries (Development and Regulation) Act, 1951. This was done to ensure supply of refined edible oils to the public at reasonable prices. The Act transferred all assets, rights, powers and properties of the Amritsar Oil Works to the central government. It also provided for compensation of about Rs. 65 lakhs to be paid to the company in return of the transfer of assets.

By virtue of this Act, the Hindustan Vegetable Oils Corporation Limited (HVOC) was formed which is a fully owned government company. Upon nationalisation, Amritsar Oil Works was taken over by HVOC. HVOC had been suffering severe financial losses and was declared sick by the BIFR in 1999. Pursuant to BIFR's order, the Government of India did not attempt revival and rehabilitation of the company and approved the introduction of VSS for their employees.<sup>4</sup>

## Reasons for repeal

- Currently, none of the units of the HVOC are operational except the Breakfast Foods manufacturing unit in Delhi (also loss-making). The government has advised the Central Warehousing Corporation and Food Corporation of India to carry out a due diligence exercise to ascertain if they can take over HVOC along with its assets, liabilities and remaining manpower.<sup>5</sup>
- The acquisition act has served its purpose. It now has no role to play in the management and recovery attempts of the HVOC (of which the Amritsar Oil Works is a part).

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Department of Food and Public Distribution, Background and History of Operations, 2014-07-18.  
<http://dfpd.nic.in/?q=node/974>  
<sup>5</sup>id



Name: Hooghly Docking and Engineering Company Limited (Acquisition and Transfer of Undertakings) Act, 1984

Subject: Redundant Nationalisation

Reason: Nationalised company subsumed into new entity, making the acquisition Act redundant

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### What is the law?

The Act provides for the acquisition and transfer of the undertakings of the Hooghly Docking and Engineering Company Limited to the central government. The acquisition was brought about to better utilise and increase the capacity for shipbuilding and ship repairing.

In 2011, the Union Cabinet gave in-principle approval for the formation of a Joint Venture of Hooghly Dock and Port Engineers Limited (HDPEL) with a private sector player. HDPEL, India's oldest ship-builder, is reeling under severe financial losses. The Rehabilitation-cum-Restructuring Plan for HDPEL includes assistance of Rs. 21 crores for implementing a Voluntary Retirement Scheme for the employees.<sup>1</sup>

### Reasons for repeal

- Upon its privatisation, the management of the undertaking of HDPEL would not lie with the central government.
- The Act has served its purpose and is no longer necessary. The repeal of this Act would not have any effect on the management of the firm or in the formation of the Joint Venture with a private company.

### Issues

There are no legal issues that would impede repeal.

<sup>1</sup>Cabinet Committee on Economic Affairs, CCEA, Rehabilitation-cum-Restructuring of Hooghly Dock & Port Engineers Limited (HDPEL), Kolkata, 2011-10-13, 2014-07-17. <http://pib.nic.in/newsite/erelease.aspx?mid=76624>



Name: Inchek Tyres Limited and National Rubber Manufacturers Limited (Nationalisation) Act, 1984

Subject: Redundant Nationalisation

Reason: The Act has served its purpose

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## What is the law?

This Act was passed to acquire and transfer the undertaking of Inchek Tyres Limited and National Rubbers Manufacturers Limited.

## Reasons for Repeal

The purpose of the Act has been achieved. The process of acquisition was completed in 1984, and the assets of the Company were vested in the Tyre Corporation of India Limited (TCIL), a Government of India enterprise. Subsequently, the Government has decided to dis-invest 100% equity shareholding in TCIL, pursuant to the TCIL (Disinvestment of Ownership) Act, 2007.<sup>a</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Department of Disinvestment, Preliminary Information Memorandum (PIM); Braithwaite & Co. Ltd. <http://www.divest.nic.in/braithwaite.asp>, 2014-07-17.



Name: Futwah Islampur Light Railway Line (Nationalisation) Act, 1985

Subject: Redundant Nationalisation

Reason: The Act has served its purpose

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### What is the law?

This Act provided for the acquisition of the Futwah Islampur Light Railway Line, a narrow gauge railway line in Bihar, owned by the Futwah Islampur Light Railway Company, as it was considered to be hazardous and uneconomical for the company to manage.

### Reasons for Repeal

The railway line was acquired by Indian Railways and then was closed in 1987. Assets, stocks and employees, etc. stood transferred to the government consequent to the nationalisation. The purpose of this Act is therefore spent.

### Issues

There are no legal issues that would impede repeal.



**Name:** Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986

**Subject:** Redundant Nationalisation

**Reason:** Nationalised company subsumed into a new entity, making the acquisition act redundant

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## What is the law?

The Act enabled the acquisition and transfer of certain textiles undertakings of the Swadeshi Cotton Mills Company Limited so as to ensure the continued manufacture, production and distribution of different varieties of cloth and yarn. The management of Swadeshi Cotton Mills was taken over by the central government and the National Textile Corporation (NTC) was appointed to manage the affairs of the Mill.

The Mill was working under the administrative control of the NTC and had been continuously incurring losses. Severe financial losses led to the Government of Puducherry extending assistance to the Mill. In 2005, the Government of Puducherry took over from the NTC and formed a company under the name of Swadeshee-Bharathee Textile Mills Ltd.. The Swadeshi Cotton Mill is now working with the active support of the Government of Puducherry and is not under the control of the NTC.<sup>2</sup> Swadeshee-Bharathee Textile Mills Ltd is an amalgamation of the erstwhile Swadeshi Cotton Mills and Sri Bharathi Mills, which was also a NTC undertaking.

## Reasons for repeal

- The nationalisation act vested the undertakings of the Mills in the NTC. Consequent to its takeover by the Government of Puducherry, the NTC does not exercise control the Mill. This Act thus, no longer serves any purpose.
- The repeal of this Act would not affect the management of the Swadeshee-Bharathee Textile Mills Ltd.

## Issues

There are no legal issues that would impede repeal.

<sup>2</sup>Swadeshee-Bharathee Textile Mills Limited, About Us, 2014-07-18. <http://sbtml.com/AboutUs.htm>



## Outmoded Labour Relations

Economists, policy-makers and lawyers agree that prevalent labour market rigidities in India constrain growth in employment,<sup>1</sup> particularly through onerous laws.<sup>2</sup> Currently, there are 44 labour related statutes enacted by the central government dealing with wages, social security, welfare, occupational safety and health, and industrial relations.<sup>3</sup> The obvious cost of India's labour laws is corruption, since, 'it is impossible to comply with 100% of the laws without violating 10% of them.'<sup>4</sup>

The following set comprises of such outdated labour laws, which constrain employment, burden employers, and produce sub-optimal welfare outcomes for workers. Several of these laws create a network of overlapping regulations, such as the Weekly Holidays Act (1942) vis--vis Shops and Establishments statutes in various states. Laws such as the Children (Pledging of Labour) Act (1933) are fraught with inconsistencies, have language that vitiates the purpose of the Act, and have been superseded by newer laws such as the Child Labour (Prohibition and Regulation) Act (1986). While labour regulations protect the interest of workers, they may also be too burdensome for employers.

In addition, laws pertaining to labour welfare cesses and funds create a low-level equilibrium, where their costs far outweigh their benefits. The concept of Labour Welfare Funds was evolved to extend a measure of social assistance to workers in the unorganized sector. Five separate legislations (related to Mica Mines, Limestone and Dolomite Mine, Iron Ore, Manganese Ore & Chrome Ore Mines, Beedi industry, and Cine industry) exist for the collection of five separate cesses, towards supporting five separate funds. These laws provide a separate, but identical, mechanism for raising funds to promote welfare of unorganized sector workers in each industry. This has resulted in administrative inefficiency, particularly very high transaction costs, and yet the amount ultimately available for worker welfare is negligible. A similar law, Coal Mines Labour Welfare Fund Act (1947) was repealed in 1986. The Report of the Second National Labor Commission (2002) recommended an umbrella legislation for all workers in the unorganized sector, ensuring minimum level of economic and social security, a finding echoed by other experts.<sup>5</sup> Thereafter, additional Welfare Funds could be constituted by States based on the need of a particular sector (or be administered through sector specific cells within existing labour welfare funds in 15 states).<sup>6</sup> The beneficiaries of the Welfare Funds could also be covered under the Unorganized Workers Social Security Act (2008).

Rationalisation, simplification, unification and harmonisation of labour laws are a necessity. Policy makers have long contemplated unified labour regulations for all provisions relating to specific aspects of labour relations. Repealing these laws would be the first step in this process.

<sup>1</sup>Debray, Bibek, Why we need law reform, Seminar, 2001, <http://www.india-seminar.com/2001/497/497%20bibek%20debray.htm>.

<sup>2</sup>Debray, Bibek, India's Segmented Labour Markets, Inter-State Differences, and the Scope for Labour Reforms, Economic Freedom of the States of India, 2012, 75-82, <http://www.cato.org/economic-freedom-india/Economic-Freedom-States-of-India-2012-Chapter-4.pdf>.

<sup>3</sup>Ministry of Labour and Employment, Uniform Labour Laws, <http://pib.nic.in/pressrel/PrintRelease.aspx?relid=137953>.

<sup>4</sup>Manish Sabharwal, Lets photocopy Rajasthan, The Indian Express, 2014-06-19

<sup>5</sup>Datta, RC and Sil, Milly, Contemporary Issues on Labour Law Reform in India: An Overview, Tata Institute of Social Sciences, 2007

<sup>6</sup>Second National Commission on Labor, Report of the National Commission on Labor, Government of India, 2002.



Name: Children (Pledging of Labour) Act, 1933

Subject: Outmoded Labour Relations

Reason: The Act is obsolete

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## What is the law?

This Act renders void any agreement made by parents or guardians pledging the labour of a child. It penalises parents or guardians and other persons who enter into such an agreement as well as the employment of children in pursuance of the agreement.

## Reasons for Repeal

- The Committee on Child Labour set up in 1979, headed by M S Gurupadaswamy found child labour legislations existing at the time to be inconsistent and recommended that a comprehensive legislation on prohibition and regulation of child labour be enacted instead.<sup>4</sup> Following this, the Child Labour (Prohibition and Regulation) Act, 1986 was brought into force, outlining where and how children could work and where they could not. This renders the 1933 law obsolete.
- The Act, while declaring any such agreement to be void (Section 3), excludes those which were made without detriment to the child, or where reasonable wages were paid for the child's services and where the services of the child were terminable within a week's notice. In doing so, the law does not define what activity would be detrimental to the child and what would be considered to be a reasonable wage.
- The Report of the National Commission on Labour (2002) observes that this exception vitiates the purpose of the law and provides an easy way to wiggle out of the provisions of the Act.<sup>5</sup> Based on a thorough analysis of the discrepancies in the Act, the Commission recommended the repeal of the Act, as it was inconsistent with the Convention on the Rights of Child.

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Committee on Child Labour, Committee on Child Labor 1979: Report, Government of India, Volumes 26 Nos. 2 and 3, 04-2004, 347-350. [http://www.ispepune.org.in/PDF%20ISSUE/2004/J15PE2304/2004\\_10DDCCUM-2.PDF](http://www.ispepune.org.in/PDF%20ISSUE/2004/J15PE2304/2004_10DDCCUM-2.PDF)

<sup>5</sup>Second National Commission on Labour, Report of the National Commission on Labour, Government of India, 2002. <http://www.prsindia.org/uploads/media/1237548159/NLCIL-reparc.pdf>



**Name:** Weekly Holidays Act, 1942

**Subject:** Outmoded Labour Relations

**Reason:** The Act is repetitive with the Shops and Establishment Acts

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### What is the law?

The Central Act known as the Weekly Holidays Act, 1942, provides for the grant of weekly holidays to persons employed in Shops and Commercial Establishments, etc., and is operative only in those States which notify its application to specified areas within their jurisdiction.

### Reasons for Repeal

- The Act is repetitive with the Shop and Establishment Acts (of all States), which mandatorily prescribe a close day for all shops and establishments.
- It also only applies to specific areas notified by state governments. For example in 2008, the coverage of the Act was particular to 7 areas in Karnataka (Munrood, Bhagamandala, Napokla, Ammañhi, Ponnampet and Hudikeri in Kudagu District and Munirabad and Kinnal in Raichur District) in the Port Blair Municipal Areas of Andaman and Nicobar Islands.<sup>6</sup>
- In principle, India should aim to move towards a system of employment solely governed by mutual contracts signed by employers and employees.

### Issues

Notifications, if any, issued under the Weekly Holidays Act will have to be suitably modified to be made applicable under the Shops and Establishment Acts. In the alternative, fresh notification specifying close days may have to be issued under the Shops and Establishment Act, wherever applicable.

<sup>6</sup>Report on the working of the legislation governing conditions of employment in shops, commercial establishments, theatres, hotels and restaurants during the year 2008. <http://labourburan.nic.in/Rep-Working-Shops-2008.pdf>



Name: Mica Mines Labour Welfare Fund Act, 1946

Subject: Outmoded Labour Relations

Reason: Amount of cess collected is negligible compared to administrative costs

## What is the law?

This Act provides for financing of activities to promote welfare measures, such as health, recreational, and educational assistance, of persons employed in the Mica Mines. The corpus of the fund is created out of a cess levied on the production, sale and export of these mines.

## Reasons for repeal

- As per the receipt budget of 2013-14, in 2011-12, Rs. 2 crores were collected as cess under the Act.<sup>a</sup> The estimates for collection in 2013-14 are Rs. 2.34 crores. The Welfare fund itself has very low balances as shown below:

Cumulative balance in Mica Labour Welfare Fund as on 31.12.2012<sup>b</sup> (Rs. In Crores)

Fund	Opening Balance as on 01.04.2012	Receipts April-Dec 2012	Expenditure April-Dec 2012	Prov. Closing Balance as on 31.12.2012
Mica	6.83	2.15	1.67	7.31

- It is likely that as the fund amount travelled towards the beneficiaries, further delivery costs are incurred. Even with the Funds previous closing balance, the amount left for worker welfare is likely very low (approximately Rs. 1,000 per worker per year, assuming that there are about 10,000 registered mica mine workers).
- In fact, the National Commission on Labour itself notes, there is practically no demand for mica now because of the substitutes that are available. As of the early 2000s, mica mining has almost ended.<sup>c</sup>
- While the intent of the Act is noteworthy, a requisite allocation should be made as part of the budget of Ministry of Labour, instead of the administrative processes of running a fund. As 9th Five Year Plan noted, given the large share of those employed in the primary industries, outside the organised sector, in very small establishments and at casual status of employment, the strategy for benefiting the workforce in general has to be based on an increase in productivity rather than on attempting labour welfare through a framework of multiple regulations.<sup>d</sup>
- Finally, the mining industry is regulated by the Mines Act, 1952. Suitable amendments could be made to this act to include the broad contours of the mining welfare provisions under the welfare funds as they stand currently.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup><http://indiabudget.nic.in/13-14/rec/13.pdf>

<sup>b</sup>Ministry of Labour and Employment, Labour Welfare. <http://labour.nic.in/content/dglw/rti/RTIHeadquarter.pdf>, 2014-08-23.

<sup>c</sup>Second National Commission on Labor, Report of the National Commission on Labor, Government of India, 2002.

<sup>d</sup>9th Five Year Plan (Vol-2). Human and Social Development. <http://planningcommission.nic.in/plans/planrel/fiveyr/9th/vol2/v2c3-11.htm>



Name: Limestone and Dolomite Mines Labour Welfare Fund Act, 1972

Subject: Outmoded Labour Relations

Reason: Amount of cess collected is negligible compared to administrative costs

## What is the law?

This Act provides for financing of activities to promote welfare measures, such as health, recreational, and educational assistance, of persons employed in the Limestone and Dolomite Mines. The corpus of the Fund is created out of a cess levied on the production, sale and export of these mines.

## Reasons for repeal

- As per the Receipt Budget of 2013-14, in 2011-12, only Rs. 5 crores were collected as cess under the Act. The estimates for collection in 2013-14 are Rs. 14.25 crores. The Welfare fund itself has very low balances as shown below:

Cumulative balance in LSDM Welfare Fund as on 31.12.2012 (Rs. In Crores)

Fund	Opening Balance as on 01.04.2012	Receipts April-Dec 2012	Expenditure April-Dec 2012	Prev. Closing Balance as on 31.12.2012
LSDM	58.22	13.06	3.51	62.77

- Welfare schemes under the Act are largely limited to health schemes and a few educational and recreational schemes. The amount that is eventually allocated for the implementation of these schemes is very low. For instance, the budget allocation for this fund in Maharashtra in 2011-2012 was only Rs. 26.66 lakhs.
- While the intent of the Act is noteworthy, a requisite allocation should be made as part of the budget of Ministry of Labour, instead of the administrative processes of running a fund.
- Finally, the mining industry is regulated by the Mines Act, 1952. Suitable amendments could be made to this act to include the broad contours of the mining welfare provisions under the welfare funds as they stand currently. Alternatively, welfare of all mineworkers outside of coal mines could be managed under one Welfare fund, to which an annual allocation is made on a per worker basis from the Consolidated fund. The Coal Mines Welfare Fund was abolished in 1986 (through a repeal Act) on similar grounds.

## Issues

There are no legal issues that would impede repeal.



**Name: Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976**

**Subject: Outmoded Labour Relations**

**Reason: Amount of cess collected is negligible compared to administrative costs**

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## What is the law?

The Act provides for the levy and collection of a cess on all iron ore, all chrome ore and all manganese ore produced in any mine. A duty of custom is levied where such iron ore, manganese ore and chrome ore is to be exported and a duty of excise is levied otherwise. The duty is to be levied at a rate not exceeding Re. 1 per metric tonne of iron ore; Rs. 6 per metric tonne of manganese ore, and Rs. 6 per metric tonne of chrome ore. The proceeds of the cess are credited to the Consolidated Fund of India. The central government, after deducting the cost of collection, credits the proceeds to the Labour Welfare Fund. The amount credited in the said Fund provides for welfare amenities for the workers and their dependents.

## Reasons for repeal

- As per the Receipt Budget of 2013-14, in 2011-12, only Rs. 12 crores were collected as cess under the Act. The estimates for collection in 2013-14 are Rs. 14.78 crores.
- As has been observed, laws pertaining to labour welfare cesses create a low-level equilibrium, where their costs far outweigh their benefits. This mechanism has resulted in administrative inefficiency, particularly very high transaction costs and costs of maintaining records. Cesses collected are inadequate, and the amount ultimately available for worker welfare is negligible. The needs for which the cess is collected can instead be met by funds from the Consolidated Fund of India. This would also reduce administrative costs for the government, and help direct administrative resources towards other purposes.
- We have argued before that earmarked cesses are inefficient and ineffective public finance. In keeping with the principles of sound public finance and administration, such welfare cesses must be done away with.

## Issues

There are no legal issues that would impede repeal.



Name: Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Labour Fund Act, 1976

Subject: Outmoded Labour Relations

Reason: Disproportionate administrative costs compared to welfare benefits

### What is the law?

This Act provides for financing of activities to promote welfare measures, such as health, medical care, and educational assistance, of persons employed in Iron Ore, Manganese Ore or Chrome Ore Mines. The corpus of the Fund is created out of a cess levied on the production, sale and export of these mines, which is credited to the Consolidated Fund of India under Section 5 of the Iron Ore, Manganese Ore and Chrome Ore Mines Welfare Cess Act, 1976.

### Reasons for repeal

- The Welfare fund itself has very low balances as shown below:

Cumulative balance in the different funds as on 31.12.2012 (Rs. In Crores)

Fund	Opening Balance as on 01.04.2012	Receipts April-Dec 2012	Expenditure April-Dec 2012	Prev. Closing Balance as on 31.12.2012
IOMC	165.79	13.57	9.37	169.99

- Welfare schemes under the Act are largely limited to health schemes and a few educational and recreational schemes. The amount that is eventually allocated for the implementation of these schemes is very low. For instance, the budget allocation for this fund in Maharashtra in 2011-2012 was only Rs. 86.68 lakhs.

### Issues

There are no legal issues that would impede repeal.



Name: The Beedi Workers Labour Welfare Cess Act, 1976

Subject: Outmoded Labour Relations

Reason: Amount of cess collected is negligible compared to administrative costs

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### What is the law?

This Act provides for the levy, by way of cess, of a duty of excise on manufactured beedis. The duty of excise levied should not be less than 10 paise or more than 50 paise per thousand manufactured beedis. The proceeds of the cess are credited to the Consolidated Fund of India. The central government, after deducting the cost of collection, credits the proceeds of the cess to the Beedi Workers Welfare Fund.

### Reasons for repeal

- As per the Receipt Budget of 2013-14, in 2011-12, only Rs. 150 crores were collected as cess under the Act. The estimates for collection in 2013-14 are Rs. 160 crores. India has over 4 million beedi workers, most of whom are home based, and therefore in the unorganised sector. The amount collected as cess is inadequate to meaningfully provide welfare measures for such vast numbers.
- The cess collection merely adds to administrative costs. The needs for which the cess is collected can instead be met by funds from the Consolidated Fund of India. This would also reduce administrative costs for the government, and help direct administrative resources towards other purposes.
- We have argued before that camouflaged cesses are inefficient and ineffective public finance. In keeping with the principles of sound public finance and administration, such welfare cesses must be done away with.

### Issues

The Beedi Workers Welfare Cess is one of the small cesses that brings in negligible amounts of money even as it adds to the administrative costs for the Government. The repeal of this Act would not entail severe consequences for the revenue collected. Aside from this, there are no legal issues that would impede repeal.





Name: Beedi Workers Labour Welfare Fund Act, 1976

Subject: Outmoded Labour Relations

Reason: Disproportionate administrative costs compared to welfare benefits

## What is the law?

Welfare funds were introduced to extend social assistance to workers in the unorganised sector, who did not enjoy the benefits available to the organised sector. While some of these funds are set up under State laws, Parliament has enacted laws setting up funds for five categories of workers, including beedi workers. This Act provides for financing of activities to promote welfare measures, such as health, recreational, and educational assistance, of persons engaged in beedi establishments. The corpus of the fund is primarily formed by the amount the Central Government may provide out of the proceeds of cess credited under Section 4 of the Beedi Workers Welfare Cess Act, 1976.

## Reasons for repeal

- The Welfare Fund has very low balances as shown below:

Cumulative balance in the Beedi Welfare Fund funds as on 31.12.2012 (Rs. In Crores)

Fund	Opening Balance as on 01.04.2012	Receipts April-Dec 2012	Expenditure April-Dec 2012	Prev. Closing Balance as on 31.12.2012
Beedi	-202.75	116.49	116.58	-203.11

- Even though there was a surplus in the fund up to 2006-07, it started showing a deficit from 2007-08.\* The expenditure from the Fund is huge and the amount credited by means of cess is insufficient to meet the expenditure. There has been a continuous adverse balance in the Fund during the period 2007-08 to 2011-12, which steadily increased from (-) Rs. 24.56 crores in 2007-08 to (-) Rs. 203.75 crores in 2011-12.
- A majority of beedi industry workers are home based, and typically fall in the unorganised sector. In a study conducted by the Sri Ram Centre for Industrial Relations and Research, it was found that those vested with the authority to issue identity cards had no mechanisms to verify the credentials of applicants either as those actively engaged in rolling beedis or as genuine workers in need of welfare. Moreover, identity cards issued decades back have never been reviewed, leading to redundancies, and likely duplicates.
- This is not an efficient or effective method to ensuring worker welfare. Social Security measures for these workers should be provided under the Unorganised Workers Act, and welfare should be promoted at the state level through local welfare funds.
- Welfare schemes under the Act are largely limited to health and educational schemes. The amount that is eventually allocated for the implementation of these schemes is very low. For instance, the budget allocation for this fund in Maharashtra in 2011-2012 was only Rs. 9.86 crores, while in Odisha it was Rs. 08 crores.

## Issues

There are no legal issues that would impede repeal.

\*Standing Committee on Labour, Welfare of Beedi Workers, Ministry of Labour and Employment, 2611-03, 11, <http://164.106.47.134/scom/committee/Labour/computer-17.pdf>, 2014-08-21.



**Name:** Cine-workers Labour Welfare Cess Act, 1976

**Subject:** Outmoded Labour Relations

**Reason:** Amount of cess collected is negligible compared to administrative costs.

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## What is the law?

This Act provides for the levy and collection of cess on feature films and the amount so collected is used to finance measures for the welfare of cine workers. The duty of excise levied should not be less than Rs. 1,000 and more than Rs. 20,000 on every feature film. The proceeds of the cess are credited to the Consolidated Fund of India. The central government, after deducting the cost of collection, credits the proceeds to the Cine-workers Welfare Fund.

## Reasons for repeal

- As per the Receipt Budget of 2013-14, in 2011-12, only Rs. 1.6 crores were collected as cess under the Act. The estimates for collection in 2013-14 are Rs. 1.78 crores.
- Scrutiny of accounts of the Ministry of Labour and Employment revealed that the cess collected under this Act was not fully transferred to the Fund. In 2011-12, there was shortfall of approximately Rs. 0.81 crores and the same was not accounted for.
- The cess collected is inadequate and merely adds to administrative costs. The needs for which the cess is collected can instead be met by funds from the Consolidated Fund of India. This would prevent the huge administrative costs that go into collection of this cess.
- We have argued before that earmarked cesses are inefficient and ineffective public finance. In keeping with the principles of sound public finance and administration, such welfare cesses must be done away with.

## Issues

The Cine Workers Welfare Cess is one of the small cesses that brings in negligible amounts of money even as it adds to the administrative costs for the Government. The repeal of this Act would not entail severe consequences for the revenue collected. Aside from this, there are no legal issues that would impede repeal.



Name: Cine Workers Labour Welfare Fund Act, 1981

Subject: Outmoded Labour Relations

Reason: Disproportionate administrative costs compared to welfare benefits

### What is the law?

The Act provides for financing welfare measures, such as health, medical care, educational assistance, for cine-workers. The corpus of the Fund is created out of the duty of excise levied on feature films certified by the Central Board of Film Certification, which is credited to the Consolidated Fund of India under Section 5 of the Cine Workers Welfare Cess Act, 1981.

### Reasons for repeal

- The Welfare Fund has very low balances as shown below:

Cumulative balance in the Cine workers Welfare funds as on 31.12.2012 (Rs. In Crores)

Fund	Opening Balance as on 01.04.2012	Receipts April-Dec 2012	Expenditure April-Dec 2012	Prov. Closing Balance as on 31.12.2012
Cine	1.03	1.63	1.04	1.71

- Welfare schemes under the Act are largely limited to health schemes and a few educational and recreational schemes. The amount that is eventually allocated for the implementation of these schemes is very low. For instance, the budget allocation for this fund in Maharashtra in 2011-2012 was only Rs. 36.30 lakhs, while in Orisha it was Rs. 3.9 lakhs.

### Issues

There are no legal issues that would impede repeal.

# Restrictive Business and Economic Regulations

India ranked 134 out of 189 economies in the World Bank Ease of Doing Business 2014 data.<sup>a</sup> It not only slipped 4 points in its ranking (down from 131 in 2013), but was also the least open among the BRICS countries, and below average among South Asian economies.<sup>b</sup> Despite being liberalised in 1991, the Indian economy is still held back by the license-permit-quota raj. Big businesses have the resources and connections to get past legal requirements and bureaucratic red tape. But small and medium enterprises find themselves curtailed and constrained in navigating overlapping, archaic, and confusing laws.

In order to realise the current government's ambitious target of 8% growth, in this set, we present 13 regressive business and economic laws for repeal. These laws are among the many that stand in the way of India realising its economic potential, and run counter to the policy of liberalisation and deregulation, which has helped bring millions out of poverty. Repealing these laws is no silver bullet; in fact it may seem that some of these laws are minor irritants. But this will be a step in the right direction—signalling to the domestic and foreign market that Make in India is not just a sentiment, but an active and sincere policy stance.

Most of the laws in this segment are behind the times and no longer serve any conceivable purpose. Some of these are pre-Independence laws, while others were passed during the protectionist 70s. In other cases, the law has either served its purpose or the subject matter is now governed under another law or government policy. Many of these laws, such as those on sugar and land, impose excessive control on the production, export and sale of goods and resources. This control often has an adverse impact on the industry in question, creating artificial scarcity, limiting competition, and running counter to its aim of providing protection to some stakeholders, particularly in the case of rent control laws that we recommend for repeal.

These Acts give widespread discretionary powers to public officials, often breeding rent seeking behaviour. Laws like the Sarais Act (1867) and the Delhi Hotels (Control of Accommodation) Act (1949), although not in use for all practical purposes, have become tools of harassment. On the other hand, the Boilers Act (1923) has put in place a complicated system of Inspectors, Deputy Inspectors and Chief Inspectors, which have led to unnecessary extortion and harassment.

The present National Democratic Alliance government has reportedly taken a number of measures to improve the business environment in the country, emphasising on simplification and rationalisation of the existing rules, timeliness for clearance of applications, and de-licensing manufacturing of many defence products. Notably, this includes simplification and digitisation of the process of applying for an Industrial License.<sup>c</sup> Repealing the following laws will serve as an important part of this narrative.

<sup>a</sup>World Bank, Report on Doing Business 2014, Doing Business Data 2014, 2014-10-20.

<sup>b</sup>Business Standard, Why is India Slipping in Ease of Doing Business Rankings?, 2013-11-10.

<sup>c</sup>India Tribune, Government Takes Measures to Improve Ease of Doing Business, 2014-08-16.



**Name:** The Sarais Act, 1867

**Subject:** Restrictive Business & Economic Regulations

**Reason:** Out-of-date law that is prone to misuse

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## What is the law?

This 145-year-old law deals with the regulation of public sarais by the District Magistrate, requiring registration of sarais, character certificates and written reports from the sarai keeper etc. It also imposes detailed duties on the sarai keeper including cleaning and repair, 'removal of noxious vegetation', appointing the prescribed number of watchmen and so on.

## Reasons for repeal

- This Act is archaic and serves no useful purpose, since an adequate regulatory mechanism exists for the regulation of hotels by Tourism Departments in every state.
- The subject matter of this Act belongs to the State list, under 'inns and inn-keepers' in Entry 31 of the State List. Thus it is not an appropriate subject for a Central legislation.
- The Act is used to harass hotel owners, as indicated by recent news reports.<sup>a</sup> For instance, a hotel in Delhi was harassed because it did not offer free drinking water to passers-by, as required under the Sarais Act.<sup>b</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Lubna Kably, Statutory Warning: Old Laws Hurt Industry, The Times of India, 2012-11-28, <http://timesofindia.indiatimes.com/business/india-business/Statutory-warning-Old-laws-hurt-industry/articleshow/17406315.cms>, 2014-06-20.

<sup>b</sup>Bibek Debroy, Usher in a new order, India Today, 2009-05-01, <http://indiatoday.intoday.in/story/Usher-in-a-new-order/1/30732.html>



Name: Indian Boilers Act, 1923

Subject: Restrictive Business & Economic Regulations

Reason: Encourages inspector raj and rampant corruption

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## What is the law?

This Act was formulated during British rule with the objective of providing mainly for the safety of life and property of persons from the danger of explosions of steam boilers and for achieving uniformity in registration and inspection during operation and maintenance of boilers in India. It creates a cumbersome procedure, requiring a boiler manufacturer to get approval from the Inspecting Authority, prior to the manufacture of a boiler, during erection and prior to repair of either the boiler or a boiler component. It also mandates registration of the boiler by the owner. The Inspecting Authority has been given wide-ranging powers to shut down a boiler unit for inspection and also to intervene in the appointment of agencies for repair and maintenance work of boilers.

## Reasons for repeal

- The Act gives widespread powers to the inspectors, encouraging rent seeking. In order to avoid inspection, some industrial units resorted to using boilers with capacities below the regulatory limits. There was also reported to be a shortage of inspectors, due to which many boilers could not be registered, leading to the shutting down of many units. This led to an amendment in the law in 2007 (notified in 2010) providing for third party certification and audit, in order to ease the situation.
- Self-Certification Schemes could be a better alternative. In June 2014, the Commerce and Industry Ministry asked for a repeal of the Act and moving towards a system of self-certification. States like Gujarat, Madhya Pradesh and Rajasthan have already formulated Self-Certification cum Annual Consolidated Return Schemes, in order to curtail unnecessary inspections without compromising on the provisions of health, safety and welfare of the workers. Under the Scheme, an owner of a boiler unit may opt for self-certification by agreeing to abide by certain undertakings and filing of annual returns to the concerned authority; and giving a security deposit. Where the owner fails to file annual returns in time or fails to follow the terms and conditions of the Scheme, the security deposit is forfeited. The concerned authority randomly picks around 10% of the units enrolled under the Scheme for inspection once a year. Once inspected, the unit is not likely to be inspected in the same year or the next three years, unless specific violations are brought to the notice of the authorities.

## Issues

This Act has created the posts of Inspectors, Deputy Chief Inspectors and Chief Inspectors to implement the provisions of the Act. There is also an Appellate Authority existing under the Act.



**Name:** The Delhi Hotels (Control of Accommodation) Act, 1949

**Subject:** Restrictive Business & Economic Regulations

**Reason:** The purpose for which this law was enacted no longer exists

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## What is the law?

This Act was enacted immediately after Independence to address the shortage of accommodation for government officials in Delhi at the time. The Act empowered the Director of Estates, attached to the Ministry of Urban Development, to reserve up to 25 accommodation in private hotels in Delhi for government officials.

## Reasons for repeal

- This is an archaic law, which empowers the government to force bookings in hotels in Delhi for government employees.<sup>4</sup>
- The Act serves no conceivable purpose now because arrangements for transit accommodation for government officials can be made through the India Tourism Development Corporation (ITDC) hotels and in State guesthouses.<sup>5</sup>

## Issues

The Delhi Hotel (Control of Accommodation) Repeal Bill, 2014, which seeks repeal of this Act for the above reasons, is pending in the Rajya Sabha. Instead of an individual repeal bill, however, this Act may be repealed through an omnibus repealing Act.

<sup>4</sup>Business Standard, Cabinet approves repealing of Delhi Hotels Act, 2014-01-09, 2014-06-23.

[http://www.business-standard.com/article/pti-stories/cabinet-approves-repealing-of-delhi-hotels-act-114010901172\\_1.html](http://www.business-standard.com/article/pti-stories/cabinet-approves-repealing-of-delhi-hotels-act-114010901172_1.html)

<sup>5</sup>PRS Legislative Research, Bill Summary, 2014-02-26.

<http://www.prsindia.org/uploads/media/Delhi%20Hotels/3E%20Summary-Delhi%20Hotels%20Repeal%20Bill.pdf>, 2014-06-22.



Name: Telegraph Wires (Unlawful Possession) Act, 1950

Subject: Restrictive Business & Economic Regulations

Reason: Telegraph wires are no longer in use

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### What is the law?

This Act provides for regulating possession of telegraph wires. A telegraph wire is defined as any copper wire the diameter of which in millimetres (mm) is between, (a) 2.43-2.53 mm, (b) 2.77-2.87 mm or (c) 3.42-3.52 mm.

### Reasons for repeal

India sent out its last telegram on 16 July 2013, after which the telegraph services were permanently shut down. Hence, this Act has become obsolete.

### Issues

There are no legal implications arising from the repeal of the Act.





**Name: Prize Competitionz Act, 1955**

**Subject: Restrictive Business & Economic Regulations**

**Reason: States where this Act is applicable have passed own legislations**

## What is the law?

This Act provides for the control and regulation of prize competitions in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words or figures that do not involve the use of any skill[Section 2(d)]. It largely applied to competitions involving gambling and betting in the States of Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Pradesh, Patiala and East Punjab and all Part C States.\*

## Reasons for repeal

The Prize Competitions Act was passed by the Centre, on a resolution passed by the aforesaid States under Article 252 of the Constitution. However, each of these states has its own legislation pertaining to regulation of gambling and betting, namely,

- The Bombay Prevention of Gambling Act, 1887 (also applicable in Gujarat)
- Madras City Police Act, 1888
- Orissa Prevention of Gambling Act, 1955
- UP Public Gambling Act, 1867
- Andhra Pradesh Gaming Act, 1974
- Madhya Pradesh Gambling Act, 1949
- Punjab Public Gambling Act, 1961
- Rajasthan Public Gambling Ordinance, 1949
- Public Gambling Act, 1867
- Karnataka Gambling Law/Act
- The Oelbi Public Gambling Act, 1955

Additionally, some of the states mentioned in Section 1(2) of the Act no longer exist.

## Issues

Repeal will impact pending cases under the Act. Along with repeal, a saving clause can be enacted to save application of Act on pending cases.

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\*Though many of these states are now subsumed in other states, the Act continues to use these names.



Name: Sugar Export Promotion Act, 1958

Subject: Restrictive Business & Economic Regulations

Reason: Not being implemented since deregulation of sugar began in 1997

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### What is the law?

This Act was passed to regulate and promote the export of sugar. It provides for setting up an export agency to manage all aspects of sugar export and empowers the government to fix the quantity of sugar permissible for export, apportion the quantity to be exported among owners of sugar factories, mandate owners of sugar factories to deliver fixed quantities to the export agency and impose additional excise duty on sugar (for consumption in India), where the factory owner fails to deliver the quantity of sugar fixed for export.

### Reasons for repeal

- The Act is not being implemented. Up until 1997, exports of sugar were carried out under the provisions of the Sugar Export Promotion Act (1958), through the notified export agencies, i.e., Indian Sugar and General Industry Export Import Corporation Ltd. and State Trading Corporation of India. In a move to deregulate the sugar industry, the Act was repealed on 15 January 1997, through an ordinance by the United Front Government. However, the ordinance was never validated by legislation. Now, the export of sugar can be undertaken directly by various sugar mills after obtaining export a Release Order from the Directorate of Sugar. Hence, the Act continues to be in force, although it is not implemented.
- The Act is not in tune with the policy of liberalising the sugar sector. The gradual liberalisation and delicensing of the sugar industry from 1998 allowed investments to flow in, enabled increase in installed capacity and scale of operations, and made the sugar industry more competitive. The average annual growth rate of the installed capacity of the sugar industry increased from 3.3% between 1990-01 and 1997-98 to 6.9% between 1998-99 and 2011-12.<sup>a</sup> However, the export policy, based on domestic availability, demand and price, continued to be heavily regulated and complicated. In 2011-2012, sugar exports were placed under the Open General License System (OGL). In May 2012, the Government further deregulated sugar exports, by removing quantitative restrictions in order to expedite shipments.<sup>b</sup> In October 2012, the Report of the Committee on the Regulation of Sugar Sector in India: The Way Forward, under the chairmanship of the then Chairman of the Economic Advisory Council to the Prime Minister, Dr. C. Rangarajan, also recommended removal of all quantitative restrictions on trade in sugar and abolition of export licensing.<sup>c</sup>

### Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Dr. Rangarajan C., Keynote Address: Improving the Economics of Sugar Sector, Economic Advisory Council, 2013-05-24. [http://eac.gov.in/aboutus/sch\\_sugar3105.pdf](http://eac.gov.in/aboutus/sch_sugar3105.pdf)

<sup>b</sup>Business Today, Government Frees Sugar Exports, Scraps OGL, Export Price, 2012-05-02. <http://businesstoday.intoday.in/story/sugar-exports-onion-export-price/1/24537.htm>

<sup>c</sup>Committee on the Regulation of Sugar Sector in India, Report of the Committee on Regulation of Sugar Sector: The Way Forward, Government of India, 2012-10-05. [http://eac.gov.in/reports/rep\\_sugx1210.pdf](http://eac.gov.in/reports/rep_sugx1210.pdf)



**Name:** The Delhi Rent Control Act, 1958

**Subject:** Restrictive Business & Economic Regulations

**Reason:** Adversely impacts affordable housing, particularly for the poor

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## What is the law?

This Act, applicable in certain areas of the Union Territory of Delhi provides for the control of rent prices by fixing a standard rent and the protection of tenants from arbitrary evictions.

## Reasons for repeal

- The Act has very limited scope in so far as it exempts government property, upper bracket housing where rent exceeds Rs. 3500 and slums. Hence, regulation is limited to rental spaces for lower income groups. Two, the Act fixes a standard rent (which is as low as Rs. 600 per month in certain cases), and permits revision of the standard rent by 10% if eviction of tenants is stringent and strictly monitored, and rarely can landlords extricate their property from the grip of this rent policy. As a result, renting of property is a very low return business for landlords, discouraging them from repairing and maintaining their property. It also disincentivises prospective landlords from entering the rental market. Consequently, there is an artificial scarcity of rental housing. The difficulty that the Act poses in allowing landlords to get rented property vacated after illegality and litigation and create a flourishing black market. In sum, the Act runs counter to its intentions and ends up being both anti-tenant and anti-landlord, adversely affecting accessibility and availability of affordable housing for lower income groups in urban areas.
- The Task Force on Rental Housing under the Ministry of Housing and Urban Poverty Alleviation, Government of India, in its Report on Policy and Interventions to Spur Growth of Rental Housing in India, March 2011, has recommended simple contract-based Lease/Rent agreements between willing renters and willing tenants, without the State imposing draconian price controls that in effect drive away legitimate renters and force tenants to enter into unrecorded and informal arrangements that are detrimental to their interests.

## Issues

The Delhi Rent Act, 1995 (providing for repeal of the Delhi Rent Control Act, 1958), seeking to marginally ease rent control policy, was passed by Parliament (in 1995). However, the Act was never notified, due to severe resistance by tenancy groups. Consequently, the 1958 Act continues to operate, despite approval for its repeal by the Parliament. In 2013, the Government introduced the Delhi Rent Repeal Bill for repeal of the 1995 Act to bring about a more comprehensive law. The Bill is pending in Rajya Sabha. Repeal of the Act will impact pending litigation. This can be addressed by enacting a saving clause.



**Name:** Delhi Land Holdings (Ceiling) Act, 1960

**Subject:** Restrictive Business & Economic Regulations

**Reason:** Repeal of similar legislations in other parts of India

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## What is the law?

The Act provides for the imposition of land ceilings, i.e. upper cap and limit, on the amount of land one can hold in the Lal Dora<sup>a</sup> areas of the Union Territory of Delhi and for matters connected therewith.

## Reasons for repeal

The Urban Land Ceiling Act, 1976, a similar central legislation, was repealed in 1999 on the ground that it created an artificial shortage in the supply of land, which resulted in a steep rise in land prices, adversely impacting accessibility and affordability of land, particularly for the poor. Similarly, this Act runs counter to the government's aim of providing cheap and affordable housing.<sup>b</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>Sumit Jha, Lal Dora Demystified, The Economic Times, 2006-11-12. <http://articles.economicstimes.indiatimes.com/2006-11-12/personal-finance/27467100.1.lal-dora-urban-villages-mod-socs>

<sup>b</sup>Prachi Bani, Repeal Of, The Economic Times, 2006-05-28. <http://articles.economicstimes.indiatimes.com/2006-05-28/news/27431735.1.land-prices-urban-land-ceiling-act-uc>



**Name:** The Sugar (Regulation of Production) Act, 1961

**Subject:** Restrictive Business & Economic Regulations

**Reason:** Provides for excessive regulation of the sugar industry

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## What is the law?

This law empowers the government to issue orders fixing the quantity of sugar that may be produced in any factory in a year. If the quantity of sugar produced exceeds the quota fixed, the excess amount attracts an additional excise duty under the Act.

## Reasons for repeal

- This Act gives wide powers to control the production of sugar and is out of sync with the move towards deregulation of the sugar industry that has been taking place since 1997.<sup>a</sup>

In any case, the Act has not been in use in the last few decades, even before the process of deregulation began. The sugar industry is instead regulated through Orders under the Essential Commodities Act, 1955.

- The Competition Commission of India (CCI) has characterised the many laws and rules governing the sugar industry as a regulatory stranglehold. The CCI observed that the sugar industry is controlled by various Acts, Rules and Orders, and this web of legislative provisions means that sugar prices are not free to be determined by the market forces of demand and supply.<sup>b</sup>
- The Special Economic Zones Act, 2005 (SEZ Act) excludes the operation of this Act in a Special Economic Zone. While this is not in itself ground for repeal, perhaps it is an indication that this cess is a hindrance to economic activity and should not operate anywhere else in the country.

## Issues

No rules or orders operate under the Act. There are no legal implications due to the repeal of the Act.

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<sup>a</sup>Committee on the Regulation of the Sugar Sector in India, Report of the Committee on the Regulation of the Sugar Sector in India: The way forward, Economic Advisory Council to the Prime Minister, 2012-11, 16, [http://eac.gov.in/reports/rep\\_sugar1210.pdf](http://eac.gov.in/reports/rep_sugar1210.pdf), 2014-06-24.

<sup>b</sup>In Re: Sugar Mills, Case No. 1 of 2010, decided on: 30.11.2011.



Name: East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974

Subject: Restrictive Business & Economic Regulations

Reason: Imposes draconian price controls, prompts illegality and litigation

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## What is the law?

This Act provides for the extension of the East Punjab Urban Rent Restriction Act, 1949, to the Union Territory of Chandigarh. The 1949 Act provides for fixing of a fair rent by the Controller (appointed under the Act), prohibits taking of rent higher than the fair rent, sets limit on the maximum amount of rent in different areas, and prescribes eviction procedure. The landlord is allowed to increase the rent above the fair rent on very limited and specific grounds, namely, addition, improvement or alteration carried out on the rented premises at his expense, or when a fresh rate, cess or tax is levied on the rented premises, or there is an increase in the amount of an existing cess or tax. It prohibits the landlord from charging any premium for grant or renewal of tenancy and mandates him to make necessary repairs in the rented building.

## Reasons for Repeal

- The Act is onerous and makes renting of property a low return business, disincentivising prospective landlords from entering the rental market. Consequently, there is an artificial scarcity of rental housing. The complicated machinery under the Act and difficulty faced in getting property vacated, abet illegality and litigation, and create a flourishing black market.
- The Task Force on Rental Housing under the Ministry of Housing and Urban Poverty Alleviation in its Report on Policy and Interventions to Spur Growth of Rental Housing in India submitted in March 2013, recommended simple contract-based lease/rent agreements between willing renters and willing tenants<sup>a</sup>, without the State imposing draconian price controls that, in effect, drive away legitimate renters and forces tenants to enter into unrecorded and informal arrangements that are detrimental to their interests.
- Market-oriented rent control models in other Asian countries have shown a positive impact on the rental market. In 2004, Hong Kong enacted the Landlord and Tenant (Consolidation Amendment) Act, removing security provisions<sup>b</sup> for tenants to resume free operation of the private rental market. The Legislative Council Panel on Housing, Government of Hong Kong, studied the impact of the Ordinance in 2006.<sup>c</sup> The law resulted in a steady rise in rental levels, increased supply of private residential units and reduced tenancy disputes. Other countries like Japan and Singapore have also eased rent control policies.<sup>d</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>The Rajasthan Rent Control Act, 2001, permits fixing of rent amount as agreed between the landlord and the tenant.

<sup>b</sup>Previously, Government of Hong Kong forbade landlords from not renewing tenancies upon expiry of tenancy period.

<sup>c</sup>Legislative Council Panel on Housing, Impact of the Relaxation of Security of Tenure of Tenants, Government of Hong Kong, 2006-01

<sup>d</sup>Cruz Christian, Prince, Housing Sales and Rental Markets in India, Global Property Guide, 2008-07-10



**Name:** The Levy Sugar Price Equalisation Fund Act, 1976

**Subject:** Restrictive Business & Economic Regulations

**Reason:** Provides for excessive regulation of the sugar industry

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## What is the law?

The Levy Sugar Price Equalisation Fund Act, 1976 (LSPEF) establishes a Fund to ensure that the price of levy sugar may be uniform throughout the country. Levy sugar is 10% output that every sugar manufacturer has to sell to the government at reduced rates for the Public Distribution System. It was introduced in 1967-68. This system was challenged a number of times in the courts, and during the pendency of the judgements, levy sugar was sold at higher rates by manufacturers. The Supreme Court ultimately upheld the levy system, and the LSPEF Act was enacted to deal with the excess money manufacturers had made by selling levy sugar at higher rates while court cases were pending. This excess money was to be credited by manufacturers to the Fund set up under the Act, and used to reduce the retail price of levy sugar.

## Reasons for repeal

- The government has moved towards doing away with the system of levy sugar. In 2013, the Union Cabinet approved the removal of levy sugar, first for a period of two years, with a view to making the removal permanent. As a result, this Act is no longer necessary.
- The deregulation of the sugar industry has been a longstanding demand.<sup>a</sup> The system of levy sugar has cost the sugar industry an additional Rs. 3,000 crores a year, which is why the Indian Sugar Mills Association (ISMA) has been demanding its abolition.<sup>b</sup> Acts like this one are remnants of the controls regime that should therefore be done away with.
- This Act has resulted in a great deal of burdensome and unnecessary litigation. The Department of Food and Public Distribution reported in 2012 that Rs. 26 crores in dues from 53 manufacturers was caught up in litigation. In some cases, dues are pending from the 1970s while in other cases, appeals have gone right up to the Supreme Court.<sup>c</sup>

## Issues

The Act is mentioned in the Ninth Schedule to the Constitution. However, this does not affect the power of Parliament to repeal the Act. Pending litigation under the Act will remain unaffected by the repeal if a standard saving clause is added to the repealing provisions. A saving clause prevents the repeal from affecting any litigation that continues under the Act being repealed, and is usually worded as 'the repeal shall not affect any legal proceeding continued under the Act'.

<sup>a</sup>The New Indian Express, Deregulate sugar sector without further delay, 2013-02-07

<sup>b</sup>Ajit S. Shrivam, Sugar policy just turned sweeter, Business Line, 2013-04-07

<sup>c</sup>Dept. of Food and Public Distribution, Status of LSPEF Dues, 2012-15-05, <http://dfpd.nic.in/foamin/sugar/LSPEF-dues.xls>



Name: Semiconductor Integrated Circuits Layout Design Act, 2000

Subject: Restrictive Business & Economic Regulations

Reason: Duplicates government agencies

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## What is the law?

The purpose of the Act is to provide intellectual property protection to semiconductor integrated circuit (IC) layout designs, in compliance with India's obligations under TRIPS. Under the Act, original layout design, which is inherently distinctive, distinguishable from other designs, and not already in commercial use in India or another TRIPS-compliant country, can be registered under the Act. The Act provides for the setting up of a Registrar of Semi-Conductor Layout Design. Registration grants the owner the right to exclusively use the layout design registered, and also the right to institute proceedings for infringement. The Act also sets up a Layout Design Appellate Board, for appeals against the decisions of the Registrar, similar to the Intellectual Property Appellate Board under the Trademarks Act, 1999.

## Reasons for repeal

- This enactment made a distinction between intellectual property protection for the layout-design of ICs, and protection for all other inventions related to semiconductors. The former is protected by the present Act while the latter falls under the Patents Act. Intellectual property experts have pointed out that only a small part of the possible protection for ICs is covered under the present Act.<sup>4</sup> This leads to confusion regarding the suitable authority for registering intellectual property protection.
- The Act sets up parallel agencies for the sole purpose of registering IC designs, when this work can easily be carried out by the existing bodies for intellectual property protection, for example, through the Controller General of Patents, Designs & Trade Marks set up under the Trade Marks Act, 1999.
- Further, the parallel bodies set up are not actually in use. No design has been registered in the 14 years of the operation of the Registrar<sup>5</sup>, and no cases have been filed under the Act.

## Issues

In order to be TRIPS compliant, the protection under this Act can instead be granted under the Patents Act, which is already being used to protect all other aspects of semiconductors.

<sup>4</sup>Afsar S. and Chintan Japhet, Two lines of attack: protecting semiconductors in India, World Intellectual Property Review, 2013-09-01, <http://www.worldipreview.com/article/two-lines-of-attack-protecting-semiconductors-in-india>, 2014-08-01.

<sup>5</sup>While nothing has been reported recently on the use of this law, it difficult to say with absolute certainty without a further review by concerned departments.



## Ineffective Governance and Administration

Effective governance typically refers to processes and decisions that seek to define actions, grant power and verify performance. Ineffective governance occurs when there is breakdown in any or all of these three processes. The following set of 19 laws deal with certain governance and administrative aspects on wide range of subjects. These laws were enacted at different points in time with an intention to administer certain aspects of specific subject matters. However, the continuance of these laws in the legislative books is resulting in the breakdown of the processes that define effective governance.

For example, the Conservation of Foreign Exchange and Prevention of Smuggling Act (1974) (COFEPOSA) was enacted to control the movement of goods and foreign exchange. Contemporaneously, the statute books also have the Customs Act (1962) and Foreign Exchange Management Act (1999). The Customs Act and the Foreign Exchange Management Act are specific laws that lay out the principles of effective governance with respect to the movement of goods and foreign exchange into and from the country. On the other hand, COFEPOSA legislates on the same subject matter, interfering with principles of governance by creating imprecise actions, power and measures of performance on the subject of movement of goods and foreign exchange.

Another example that presses this point is the Drugs (Control) Act (1950). This Act provides for the control of the sale, supply and distribution of drugs. It was enacted to ensure that certain essential imported drugs and medicines were sold at reasonable prices. However, the sale, supply and distribution of drugs is now controlled under the Essential Commodities Act (1955) (EC Act). The Drugs (Prices Control) Orders of 1995 and 2013 have both been issued by the central government in exercise of its powers under the EC Act, which in effect are the governing laws on the subject. In other words, the EC Act read with the (Prices Control) Orders of 1995 and 2013 set out the principle of effective governance i.e., the precise actions, power and verifiable performance for sale, supply and distribution of drugs. As in the case of COFEPOSA, the existence of Drugs (Control) Act, 1950, on the same subject of sale, supply and distribution of drugs, interferes and results in diluting these three principles of effective governance.

The recommendation to repeal the laws in this segment does not stem from an in-principle disagreement on the subject matter or the intentions of the laws. It arises from the poorly worded language, redundant or repetitive content, dated stance and administrative burdens contained in these laws. In the spirit of the current government's commitment to weeding out laws that hamper governance by creating avoidable confusion, we propose to repeal these nineteen laws.



Name: Dekkhans Agriculturists' Relief Act, 1879  
Subject: Ineffective Governance & Administration  
Reason: States have their own Debt Relief Laws

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### What is the law?

The Act gave relief to indebted agriculturists in those parts of the Dekkhan (or Deccan) where it was in force. Presently, only Sections 11, 56, 50 & 62 are in force while the rest of the Act has been repealed.

### Reasons for repeal

- Most States now have their own Debt Relief Laws. Additionally, the Centre has also introduced and implemented the Agriculture Debt Waiver and Debt Relief Scheme, 2008 to relieve agriculturists from indebtedness. In light of these legislations, this particular Act is unnecessary.
- The PC Jain Commission recommended repeal of this Act (Volume 1, Entry 40).

### Issues

The subject matter of the Act does not fall within the Union List and that might offer a hindrance in recommending its repeal.



**Name:** The Legal Practitioners Act, 1879

**Subject:** Ineffective Governance & Administration

**Reason:** Only three sections remain in force, which may be incorporated into the Advocates Act, 1961

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## What is the law?

This law was enacted to consolidate all the rules relating to the enrolment, conduct, and service of legal practitioners. As the first modern legislation to govern the conduct of legal practitioners in India, this Act brought advocates, vakils, pleaders, mukhtars, munsifs and revenue agents under the jurisdiction of the concerned High Courts. It empowered High Courts to regulate the enrolment of a person as a legal practitioner, set conditions for suspension and dismissal of practitioners, and imposed penalties for persons illegally practising as mukhtars, pleaders, revenue agents, etc.

## Reasons for repeal

- The Advocates Act, 1961 has almost entirely replaced this Act, doing away with all but three sections that together empower High Courts to deal with touts. It is now the 1961 Act that regulates legal practitioners in India, and sets up the Bar Council to regulate matters such as enrolment and disciplinary action.
- Over time, all the provisions of the 1879 law were repealed except Sections 1, 3 and 36. These sections consist of the title clause, interpretation clause, the power of High Courts to frame a list of touts, and the punishment for touting. These provisions can easily be incorporated into the 1961 Act, so that the entire law on this subject can be found in one place.

## Issues

The provisions in the Legal Practitioners Act empowering courts to deal with touts can be moved to the Advocates Act in order to remove this law from the statute books.



Name: Police (Incitement to Disaffection) Act, 1922

Subject: Ineffective Governance & Administration

Reason: The Act is vague, widely worded and gives excessive powers to the police

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## What is the law?

This is a colonial era legislation providing for a penalty for spreading disaffection towards the Government amongst the members of police force and kindred offences. This Act makes it an offence to withhold a member of the police force from the performance of his/her duty or to commit a breach of discipline. The penalty for causing disaffection is imprisonment or fine or both.

## Reasons for repeal

- The Act is an archaic law passed by the British to suppress the freedom of speech and weaken the Independence movement. The law is widely worded to empower the government to take action against any person who intentionally causes or attempts to cause disaffection towards government amongst the member of police force.
- The Act is not in tune with the Code of Conduct for the Police in India, issued by the Ministry of Home Affairs on 4 July 1985. The Code of Conduct directs members of the police force to maintain high standards of discipline, faithful performance of duties in accordance with law, implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force. The police are required to maintain calm in the face of danger, scorn or ridicule and practice self-restraint in all circumstances. These guidelines indicate that the police force is required to be immune to the voices of disaffection.
- The Act is vague and loosely worded, and does not clearly explain what activity is regarded as spreading disaffection. Consequently, it is left to the arbitrary interpretation of enforcing authorities and is liable to be misused.
- The Act was first used against Lokmanya Tilak. Recently, in September 2013, the Andhra Pradesh Police filed a criminal case against the resident editor of Hindu for reporting the visit of a senior police officer to a local religious leader under IPC dealing with forgery, another dealing with inducing the commission of an offence against the State or another community, and also under this Act.<sup>9</sup>

## Issues

There are no legal issues that would impede repeal. The reference to the Act have to be removed from:

- Section 18 of the Railway Protection Force Act, 1957.
- Section 19 of the Central Industries Security Force Act, 1968.
- Schedule 1 Part 1 of the Delhi Police Act, 1978 at Point 5.
- Schedule to the Puducherry Extension of Laws Act, 1968.
- Schedule to the Merged State Laws Act, 1949.

<sup>9</sup>Sridhar Madabhushi, Disaffection Case Against Hindu Editor: We Are Like That Only, The Hoot, 2013-10-01. <http://www.thehoot.org/web/freetracker/storynew.php?storyid=5273&sectionid=14>



**Name:** Public Suits Validation Act, 1932

**Subject:** Ineffective Governance & Administration

**Reason:** The Act is applicable to suits pending on or before 1932

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### What is the law?

The Act seeks to provide validation to public suits instituted under Sections 91 and 92 of the Civil Procedure Code 1908 (related to public nuisance and public trusts) which were pending in 1932.

### Reasons for repeal

The Act is applicable to suits pending at the time of institution of the Act, i.e., in 1932. Since 82 years have passed since the Act came into force, any litigation ought to have been disposed off by now. The Law Commission in its 96th Report (1984) refused to recommend repeal of this Act, on the sole ground that whether all suits under the Act have been disposed off cannot be said with utter certainty. The problem can be resolved by enacting a saving clause, alongside repeal, protecting all action taken under the Act.

### Issues

There is reference to the Act in First Schedule of the Berar Laws Act, 1941. With the saving clause, there are no legal issues that would impede repeal.

201.



Name: The Registration of Foreigners Act, 1939

Subject: Ineffective Governance & Administration

Reason: Outdated, cumbersome and ineffective system of reporting by foreigners

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## What is the law?

This legislation, dating back to World War II, requires every foreigner staying in India for more than 130 days to report his/her entry, movement from one place to another and departure, to the Government of India. Additionally, it requires owners and managers of hotels, lodges and boarding houses, and aircrafts or vessels to report the presence of any foreigners. It was enacted by the British to regulate the entry and movement of foreigners in India, particularly of Indian revolutionaries from abroad.

## Reasons for repeal

- This Act is largely ineffective since there is no fool proof way of tracking whether all foreigners entering India are reporting themselves at all the required points.
- The Act has become a tool for harassing foreigners, and is damaging India's reputation as a welcoming tourist destination. Anecdotal evidence and newspaper reports cite long waiting lines, unclear instructions and frustrating bureaucracy, demands for bribes, and sexual harassment on account of this Act.<sup>6</sup> In addition, cases alleging harassment of persons living on the borders under this Act have been reported from time to time.<sup>6</sup>
- The Foreigners Act, 1946 and the Passport Act, 1967 provide sufficient powers to keep track of foreigners. Section 3 of the Foreigners Act empowers the government to issue orders prohibiting, regulating and restricting the entry of foreigners into India. Section 12 of the Passport Act makes failure to produce travel documents on demand by prescribed authorities and to comply with the conditions laid down in these documents a criminal offence. The government is further empowered, under Section 10, of the Passport Act to vary, impound or revoke any travel document for conviction under any offence.
- While the Passport Act provides reasonable opportunity to an aggrieved person to seek relief through appeal and provides protection at the time of arrest, search and seizure, the 1939 Act provides no such relief. Instead, it reverses the burden of proof upon the accused instead of the prosecution, increasing chances of harassment.

## Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Lasania Y Vinus, It is a Pillar-to-Post Run for Them, The Hindu, 2013-12-28.  
<http://www.thehindu.com/news/cities/Hyderabad/It-is-a-pillar-to-post-run-for-them/article5509216.ece>

<sup>6</sup>PUCCL Bulletin, The People Speak Out: Police Harassment of Bengali Speaking Muslims of Yamuna Pushta, PUCCL, 2000-12.

202



Name: The Drugs (Control) Act, 1950

Subject: Ineffective Governance & Administration

Reason: Price control of drugs is carried out under Essential Commodities Act

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## What is the law?

The Act provides for the control of the sale, supply and distribution of drugs. It was enacted to ensure that certain essential imported drugs and medicines were sold at reasonable prices. It allowed the government to fix the maximum price that may be charged by a dealer or producer, maximum quantities that may be possessed by a dealer or producer, and the maximum quantity that may be sold to a person in one transaction. The Act also imposes penalties for the violation of these provisions.

## Reasons for repeal

- The sale, supply and distribution of drugs are now controlled under the Essential Commodities Act, 1955 (EC Act), since drugs have been included under essential commodities. The Drugs (Prices Control) Orders of 1995 and 2013 have both been issued by the central government in exercise of its powers under the EC Act. Thus, the Drugs (Control) Act, 1950 is now redundant, since no rules or orders currently operate under this Act.
- To avoid confusion with regard to the legal framework governing the pricing, supply and distribution of drugs, the Drugs (Control) Act, 1950 should be repealed. This would clear the air surrounding the pricing of drugs and assist stricter enforcement and prosecution of the Drugs (Control) Orders.
- In 2006, the 1950 Act was sought to be repealed for the above stated reasons.<sup>4</sup> The Drugs (Control) Repeal Bill, 2006 was introduced in the Lok Sabha but it lapsed subsequently. Since circumstances have not changed since 2006, this Act is fit for repeal.

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>PRS Legislative Research, Bill Summary, 2006-11-07, 2014-07-18.  
[http://www.prsindia.org/uploads/media/1167468868/summary1197284690\\_Bill-Summary\\_-\\_Drug\\_Control\\_Repeal\\_Bill\\_2006.pdf](http://www.prsindia.org/uploads/media/1167468868/summary1197284690_Bill-Summary_-_Drug_Control_Repeal_Bill_2006.pdf)



Name: The Companies (Donation to National Funds) Act, 1951

Subject: Ineffective Governance & Administration

Reason: The Act's purpose can be achieved through the Companies Act, 2013

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## What is the law?

The Act empowers any company to make donations to the Gandhi National Memorial Fund, the Sardar Vallabhbhai Memorial Fund or any other fund established for a charitable purpose and approved by the central government by reason of its national importance.<sup>a</sup> The Company can make these donations notwithstanding anything contained in the Companies Act, or any other law, or its Memorandum or Articles of Association.<sup>b</sup>

## Reasons for repeal

- The Department of Company Affairs has proposed repeal of the Act by incorporating the relevant provisions under the Companies Act, 1956. The Law Commission in its 159th Report (1998) has noted this fact in Chapter 3 on Page 23.
- The Act is legally untenable, in so far as it empowers the Company to make donations irrespective of its Memorandum or Articles of Association, in view of Section 36 of the Companies Act, which makes the aforesaid documents binding not only on the Company but also its members.<sup>c</sup>
- Section 135 of the Companies Act, 2013, read with, Schedule VII of the Act and the Companies (Corporate Social Responsibility) Rules, 2014, mandatorily requires companies to contribute a fixed percentage of profits, for a social and charitable purpose. The 2013 Act has application and scope wide enough to achieve the purpose that the Companies (Donation to National Funds) Act, sought to achieve.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>A fund shall be considered to be of a national importance under section 3 of the Act, if the central government holds it to be. The term National Importance is serving the purpose of a guiding principle for the central government, that it must follow to determine whether a fund for a charitable purpose can be placed within the scope of the Act.

<sup>b</sup>A Memorandum of Association contains certain fundamental clauses that describe the conditions of the company's incorporation, namely: Name Clause, Registered Office Clause, Objects Clause, Liability Clause and Capital Clause. The Articles of Association contains rules, regulations and by-laws for the general administration of the company.

<sup>c</sup>Claudio-Lila Parulekar vs Sekai Papers (P) Ltd., (2005) 11 SCC 73.



204



**Name:** The Requisitioning and Acquisition of Immovable Property Act, 1952

**Subject:** Ineffective Governance & Administration

**Reason:** The Land Acquisition, Rehabilitation and Resettlement Act, 2013 covers the subject matter

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## What is the law?

The Act provides a summary procedure for the requisition and acquisition of immovable property for the purposes of the Union, primarily for defence.

## Reasons for repeal

- LARR Act, 2013 includes acquisition for strategic purposes. The provisions of the LARR Act relating to land acquisition, compensation, rehabilitation and resettlement apply when the appropriate government acquires land for its own use, to hold and control including for public sector undertakings and for public purpose.
- The LARR Act also includes the acquisition for strategic purposes relating to naval, military air force, and armed forces of the Union.<sup>a</sup>
- The Act has to comply with provisions made relating to compensation, rehabilitation and resettlement of the LARR Act, within a year of commencement of the latter.<sup>b</sup> This means that, if the central government directs, that the provisions of any other law for land acquisition as provided in the 4th schedule of the Act, must comply with the provisions of the LARR Act (as per section 105). Hence, the provisions of the Act will need to be amended to comply with the provisions of the LARR Act, which is far more humane in its provisions. We recommend repeal instead of this amendment, since the responsibilities of the Act can be exercised under LARR Act 2013.

## Issues

Repeal of this Act may entail amendment in the LARR Act to provide for temporary acquisition of immovable property for defence purposes in limited cases.

<sup>a</sup>Section 2(1)(a), LARR Act 2013.

<sup>b</sup>Section 105, LARR Act 2013.

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Name: Public Wakfs Extension of Limitation Act, 1959

Subject: Ineffective Governance & Administration

Reason: Redundant as its period of operation has expired

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## What is the law?

The Act was passed with the objective of extending the limitation period for the institution of suits for the recovery of possession of immovable property forming part of public wakfs (the permanent dedication by a person professing Islam of any immovable property for any purpose recognised by Muslim law as a public purpose of a pious, religious or charitable nature), where the dispossession took place between 14 August 1949 and 7 May 1954.<sup>a</sup>

## Reasons for repeal

- The Act was only applicable to the period between 1949 and 1954. The Act sought to provide protection to property in the nature of public wakfs, which were dispossessed in the given period.
- As per Section 3 of the Act, the period of limitation for institution of suit extended only until 31 December 1970. Although the Government could further extend the limitation period through an amendment, it has not done so since 1970.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>During the post-partition period, many public wakfs were encroached upon by dismantling of boundary walls and erecting new enclosures.

206



**Name:** Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974

**Subject:** Ineffective Governance & Administration

**Reason:** Redundant in view of the Customs Act, 1962 and Foreign Exchange Management Act, 1999

## What is the law?

This Act provides for preventive detention for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities. It provides wide powers to the executive to detain individuals on the mere apprehension of their involvement in smuggling activities.

## Reasons for repeal

- The Act is redundant in view of the Foreign Exchange Management Act, 1999 (FEMA). FEMA is the primary law relating to foreign exchange, which aims at facilitating external trade and payments, and promoting orderly development and maintenance of the foreign exchange market in India. It classifies any foreign exchange violation as a civil offence.<sup>5</sup> FEMA replaced the Foreign Exchange Regulation Act under which foreign exchange violation was a criminal offence. However, COFEPOSA continues to criminalise (by providing for preventive detention) the aforesaid violations.
- Provisions related to smuggling under COFEPOSA are adequately covered under Chapter XVI of the Customs Act, 1962 (Section 115). The Customs Act has provisions for the confiscation (under Section 111, 113 and 118) and seizure of the smuggled goods (under Section 110) while also providing penal provisions. Apart from the wide interpretation of the word smuggling to include a range of activities, it also has penal provisions for non-accounting of goods (under Section 116).
- The Act has increasingly become a source of harassment, manipulation and corruption.<sup>6</sup> Stringent provisions of COFEPOSA are invoked to harass exporters against minor violations of foreign exchange regulations. Customs authorities resorted to COFEPSA to detain exporters without any trial in cases where they had unintentionally violated foreign exchange regulations.

## Issues

In *Dropti Devi and Anr. Vs. Union of India*<sup>6</sup>, the constitutional validity of the Act was upheld. The Court highlighted the importance of the Act and the need to protect foreign exchange. Aside from this, there are no legal issues that would impede repeal.

<sup>5</sup>Section 13, Foreign Exchange Management Act, 1999.

<sup>6</sup>The Hindu, COFEPOSA Must Go: Assocham, 2005-08-03; <http://www.hindu.com/2005/05/03/stories/2005050301981906.htm>, The Hindu, Detention of Two COFEPOSA Accused Quashed, 2013-04-12, <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/detention-of-two-cofapasa-accused-quashed/article4408819.ece>

<sup>7</sup>*Dropti Devi vs Union of India*, [2012] 6 SCR 307.

207



Name: Indian Law Reports Act, 1975

Subject: Ineffective Governance & Administration

Reason: The Act is redundant and unnecessary

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## What is the law?

Under this Act, an Indian Court of Law is not bound to hear the report of any case law other than ones published in a law report authorised by the State Government.

## Reasons for repeal

- Today different types of law reports are cited and accepted in all the Courts. In fact, the Indian Law Reporter (ILR) is seldom used as a source of authority.
- This legislation was enacted at a time when ILR was the primary reporter for publishing case laws. Today, the Act is unnecessary since there are many good quality reporters like Supreme Court Cases, All India Reporters, Supreme Court Reporter, etc. Additionally, courts are also publishing their judgements and orders on their websites.
- The Act is prone to be abused and adversely impact administration of justice. By virtue of this statute, a lower judge bench can ignore the judgement of a higher bench solely because it was not reported in the official report.<sup>2</sup> This anomaly was pointed out by the Law Commission in its 96th Report (1984), which recommended repeal of the Act.

## Issues

There are no legal issues that would impede repeal.

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<sup>2</sup>Law Commission 1984 96th Report.

208



Name: The Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976

Subject: Ineffective Governance & Administration

Reason: The Act has served its purpose

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## What is the law?

The Act provided for the transfer of officers serving in the Indian Audit and Accounts Department (selected through the Indian Audit and Accounts Service) to any Ministry, Department or office of the Central Government for facilitating the efficient discharge of responsibilities related to compiling accounts within these offices.

## Reasons for repeal

- The Act has served its purpose. This legislation led to the creation of Indian Civil Accounts Service (ICAS). The initial intake into the ICAS was by deputing and transferring personnel from the Indian Audit and Accounts Service (IAAS). This law facilitated the transfer of personnel from the IAAS to the ICAS.
- ICAS personnel are now selected through the Civil Services Examination; hence there is no need for transfer of personnel from the IAAS to the ICAS as it has its own recruitment service.<sup>4</sup>

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>Adukia S. Rajkumar, A Study on Government of India Some Recent Developments.  
<http://www.casa.in/image/51%20hbca.pdf>

209



**Name:** The Disputed Elections (Prime Minister and Speaker) Act, 1977

**Subject:** Ineffective Governance & Administration

**Reason:** Emergency-era law that is unconstitutional

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## What is the law?

This Act provided that the general procedure for disputing an election by way of presenting an election petition to the High Court, would not apply in cases where the elected representative went on to become the Prime Minister or Speaker of the Lok Sabha. In such cases, this special law would apply, and election petitions questioning their elections would be heard by a single judge of the Supreme Court as a separate authority set up under this Act. The decisions of the authority were deemed final. In order to permit the special treatment of these representatives, a Constitutional amendment, Article 329A, was introduced which allowed this distinction to be made. Both the amendment and this law were created during the time the Emergency proclamation was in place.

## Reasons for repeal

- Article 329A, which made it possible for this law to exist, was subsequently removed through the 44th Amendment to the Constitution in 1978. Without Article 329A, this law stands unconstitutional as the Constitution does not allow a distinction to be made between the election disputes of different types of elected representatives.<sup>a</sup>
- This Act has been used only once in 1977, when an Authority was set up to try election petitions against Morarji Desai, who headed the Janata coalition government.<sup>b</sup> Not only is it a redundant law, but also one that represents concentration of power, and the breakdown of the rule of law during the Emergency.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>*Jyoti Thomas v. Union of India*, (2013) 7 SCC 653.

<sup>b</sup>*Devi, V. U., and Manjiratta, S. K.*, *How India votes: election laws, practice and procedure*, 2007, 1054, LexisNexis Butterworths.

210



Name: Illegal Immigrants (Determination by Tribunals) Act, 1983

Subject: Ineffective Governance & Administration

Reason: Struck down by the Supreme Court

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### What is the law?

The Act instituted procedures to determine whether persons suspected to be illegal immigrants from Bangladesh did, in fact, fall under that category, and expel them from India. It was applicable only to the state of Assam (detection of foreigners in other states is done under The Foreigners Act, 1946). The Act established Tribunals for determining whether a person is an illegal migrant.

### Reasons for repeal

- The constitutionality of this Act was challenged in *Sarbananda Sonowal v. Union of India*<sup>a</sup>. The Supreme Court declared that this Act was far less effective than the Foreigners Act in identifying and deporting illegal immigrants. It violated the duty of the Union, under Article 355 of the Constitution, to protect states from external aggression and internal disturbance. The Court struck down the Act and Rules, ordered that the Tribunals under the Act cease to function, and declared that the Foreigners Act and other related Acts would operate in Assam instead.
- The Act, though inoperative, remains on the statute books, while a more effective system is in place in Assam as prescribed by the Foreigners Act, 1946. This Act should therefore be formally repealed.

### Issues

There are no legal issues that would impede repeal.

<sup>a</sup>(2005) 5 SCC 665.



Name: Punjab Disturbed Areas Act, 1983

Subject: Ineffective Governance & Administration

Reason: The Act has outlived its purpose

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## What is the law?

The Act was brought into force to curb militancy and public unrest in Punjab during the 1980s. It empowers the State Government to declare, by notification, any part or the whole of Punjab as a 'disturbed area', empowering any Magistrate or police officer not below the rank of a Sub-Inspector (or Havildar in the case of the Armed Branch of the police) to fire upon or use force (even if it leads to death), or prohibit the assembly of five or more persons or carrying of weapons, firearms, ammunition and explosive substances, where he considers necessary and after giving due warning.

## Reasons for Repeal

- The Act is now redundant since militancy in the State has been wiped out and no major terrorist activity has taken place in the past two decades. In the absence of the threat of terrorist activity specifically within Punjab, the Act gives excessive power to the police force.
- The Act is not being implemented in practice. Under the Act, the whole of Punjab was declared as a disturbed area, by a notification dated 16 November 1996, for a period of six months only, between 13 November 1996 and 17 May 1997. Prior to this, another notification, dated 09 March 1989, declared Amritsar, Gurdaspur and Ferozpur as disturbed areas. The 1989 notification was withdrawn on 25 July 2008.<sup>2</sup> Since then, no part of Punjab has been declared as a disturbed area.
- The law was enacted during President's Rule in Punjab. There is an elected government in place with powers under the Constitution to maintain law and order in the State.

## Issues

There are no legal issues that would impede repeal.

<sup>2</sup>Swinder Bhardwaj vs Union Territory of Chandigarh, CWP No. 499 of 2012, Punjab and Haryana High Court.  
<http://indiankanoon.org/doc/15467447d/?type=print>





**Name:** Chandigarh Disturbed Areas Act, 1983

**Subject:** Ineffective Governance & Administration

**Reason:** The Act has outlived its purpose

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### What is this law?

The Act empowers the Administrator of the Union Territory of Chandigarh to declare, by notification, any part or the whole of Union Territory of Chandigarh as a 'disturbed area', empowering any Magistrate or police officer not below the rank of a Sub-Inspector (or Havildar in the case of the Armed Branch of the police) to fire upon or use force (even if it leads to death), or prohibit the assembly of five or more persons or carrying of weapons, firearms, ammunition and explosive substances, where he considers necessary and after giving due warning. The Act also gives protection to persons acting in the exercise of powers under this Act.

### Reasons for Repeal

- The Act was brought into force to curb militancy and public unrest in Chandigarh during the 1980s and early 1990s, in wake of Operation Blue Star. Militancy in the Union Territory has been wiped out and no major terrorist activity has taken place since 1995.
- Under the Act, Chandigarh was declared as 'disturbed area', through Notifications dated 2 December 1986 and 5 December 1991. In 2012, the Punjab and Haryana High Court quashed these notifications on the grounds that they were not justified because the government failed to reply as to when the powers under the Act were last invoked or place on record any specific instances of threat perception warranting continuance of notifications under this Act.<sup>6</sup>
- The Act gives excessive power and impunity to the police force. For these reasons, the Act should be repealed.

### Issues

There are no legal issues that would impede repeal.

<sup>6</sup>Ibid.



Name: Shipping Development Fund Committee (Abolition) Act, 1986

Subject: Ineffective Governance & Administration

Reason: The Act has achieved its purpose

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### What is the law?

The Act was passed to abolish the Shipping Development Fund Committee constituted under the Merchant Shipping Act, 1958.

### Reasons for Repeal

The Act has achieved its purpose and is not needed any more. The Shipping Development Fund Committee has been abolished. All the assets and liabilities of the Committee were vested in the central government. In 1987, the Government delegated all the functions of the Committee to the Shipping Credit and Investment Company of India Limited.

### Issues

There are no legal issues that would impede repeal.

## Obstructive Civil and Personal Interference

Article 19(1)(a) of the Constitution of India accords to all citizens the fundamental right to freedom of speech and expression. This right, which lies at the foundation of all democratic organisations, includes the right to publicly discuss ideas and problems, religious, political, economic and social.

The freedom of speech is not absolute and can be curtailed, only under the authority of law, by imposing reasonable restrictions<sup>1</sup> under Article 19(2). The Supreme Court, in *S. Rangarajan vs. P. Jagjivan Ram* (1989),<sup>2</sup> has held that "our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to public interest".

It is with this in mind that we recommend the 4 laws in this category be repealed.

These laws directly or indirectly, curtail freedom of speech, by either imposing blanket prohibition on certain kinds of speech or restricting circulation of the same. These restrictions do not take into account the constitutionally permissible limits of curtailing freedom of speech.

These laws define offences in widely worded and vague terms. European Union Law recognises legal certainty as a fundamental principle of the rule of law, i.e., the law must be known and understood and to be understood it must be sufficiently precise and foreseeable as to provide legal certainty to its recipients. In India, the Supreme Court has recognised the doctrine of legitimate expectation in public law requiring regularity, predictability and certainty in the government's dealings with the public.<sup>3</sup> Contrary to these principles, these laws often use subjective words and phrases, such as, 'repulsive', 'horrible', 'offensive', 'leading to disturbance or public excitement', without providing adequate definitions or explanations of these terms. Consequently, they are left to the arbitrary interpretation of the public authorities, and are often misused to harass the media, artists and others.

These laws are repetitive as the offences listed in them are also a part of different criminal statutes. These laws largely contain offences related to sedition, obscenity, defamation and commission of offences. There are adequate provisions provided under the Indian Penal Code (1860), the Code of Criminal Procedure (1973) and other laws to prosecute these cases. It is imperative that such repetitive laws be repealed, as they merely perpetrate confusion and ambiguity, and are often used as a tool of harassment.

<sup>1</sup>2 SCC 574

<sup>2</sup>*Official Liquidator vs Dayanand*, (2008) 10 SCC 1



Name: Dramatic Performances Act, 1876

Subject: Obstructive Civil & Personal Interference

Reason: British era law, violates Article 19(1) of the Constitution

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## What is the law?

The Act grants the State Government the power to prohibit scandalous, defamatory performances or performances likely to excite feelings of disaffection against the State Government, and prescribes penalties for not obeying said prohibitions. It allows the penalisation of performers, spectators, persons assisting the performance, or owners/occupiers who allow their premises to be used for the purpose. The State Government may under this Act prohibit future performances, and notify that certain areas be prevented from staging performances without a license.

## Reasons for Repeal

- This is a British era law enacted to curb the nationalist movement, and is no longer relevant in light of modern constitutional principles of freedom of speech and expression.
- Adequate provisions already exist under the Indian Penal Code to prosecute cases of sedition, defamation or obscenity under Section 124A and others.
- The Constitutional validity of the Act is in doubt since the Madras High Court in 2012 struck down the Kerala Dramatic Performances Act, which contained similar provisions.<sup>a</sup>
- In 1993, the India Code Compilation of Unrepealed Central Acts included this Act in its list of obsolete Acts.<sup>b</sup>
- The Act gives wide and coercive powers to the government related to prohibition of present and future performances, arbitrary search and seizure procedures, allowing any area to be controlled, etc., that are unsuited to modern India.

## Issues

There are no legal issues that would impede repeal.

<sup>a</sup>N.V.Sankaran Alias Ganai v. The State Of Tamil Nadu, W.P.No.11511 of 2012 and M.P.No.1 of 2012

<sup>b</sup>Shivani, The greying laws on India, The Financial Express, 1997-07-22.

<http://www.financialexpress.com/old/ie/daily/19970722/20350553.html>, 2014-06-1



**Name:** The Prevention of Seditious Meetings Act, 1911

**Subject:** Obstructive Civil & Personal Interference

**Reason:** British-era law, violates the right to freedom of speech and expression

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## What is the law?

The Act consolidated and amended the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity. Section 5 of the Act empowers a District Magistrate or Commissioner of Police to prohibit a public meeting in a proclaimed area if, in his/her opinion, such meeting is likely to promote sedition or disaffection.

## Reasons for Repeal

- This legislation was specifically enacted to curb meetings being held by Indian freedom fighters and those opposed to British rule of India. The law empowers the government to declare by notification, a proclaimed area in the whole or any part of a province where the Act is in force.
- The continuation of this law is unnecessary and undemocratic because the provisions of this Act pose unreasonable restrictions on the freedom of speech and expression.<sup>3</sup> The law provides blanket provisions such as Section 4 which says that no public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement can be held unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police at least three days before. The Act does not lay down any qualifications for determining what would constitute likely to cause disturbance or public excitement. The provisions of the Act are quite stringent considering that even private meetings have been brought under its purview by means of section 3(2). Such provisions give scope for abuse by security forces.
- Public meetings and assemblies that are likely to cause disturbance are now managed under Section 144 of the Code of Criminal Procedure, 1973. Under this section, the District Magistrate or the Sub-divisional Magistrate can prohibit an unlawful assembly of people in an area to prevent disturbance of the public tranquillity, or a riot, or an affray.<sup>4</sup> Thus, there is no need for a law dealing specifically with seditious meetings.

## Issues

There are no legal issues that would impede repeal.

<sup>3</sup>Centre for the Study of Social Exclusion and Inclusive Policy and Alternative Law Forum, *Sedition Laws & the Death of Free Speech in India*, National Law School of India University, 56, 2011-02, [https://www.nls.ac.in/resources/csscip/Files/SeditionLaws\\_cover\\_Pinar.pdf](https://www.nls.ac.in/resources/csscip/Files/SeditionLaws_cover_Pinar.pdf), 2014-08-05.

<sup>4</sup>Section 144 of the Code of Criminal Procedure, 1973 deals with the power to issue order in urgent cases of nuisance and apprehended danger. Code of Criminal Procedure, 1973, 1974-01-25, 2014-08-05.



Name: Young Persons (Harmful Publications) Act, 1956

Subject: Obstructive Civil & Personal Interference

Reason: The law is repetitive and liable to be misused

## What is the law?

This Act prohibits the dissemination and advertisement of certain publications considered harmful to young persons. A harmful publication is one that tends to corrupt young persons by depicting commission of offences, acts of cruelty or violence and incidents of a repulsive or horrible nature.

## Reasons for Repeal

- Words such as repulsive and horrible contained in the definition of harmful publication are vague and subject to arbitrary interpretation, and consequently lead to widespread discretion and serve as an excuse for harassment. For instance, earlier this year Kerala Police raided shops that sold Bob Marley T-shirts, on the ground that these encourage youngsters to use drugs, and booked shopkeepers under the Act for promoting material that is harmful to youngsters.<sup>a</sup>
- India already has a variety of laws that penalise speech in various forms, like speech which causes incitement to an offence (Section 504, Indian Penal Code (IPC)) or leads to or has a tendency to cause violence like anti-national speech (Section 124A IPC), speech that is communal, racial, linguistic and indecent (Section 153A), anti-sovereignty speech (Section 153B), speech that outrages religious feelings (Section 295A), is obscene (Section 292), or is anti scheduled caste and scheduled tribe (SC and ST Act, 1989 and Protection of Human Rights Act, 1976). Recently, the Protection of Children from Sexual Offences Act, 2012 was brought into force to protect children from sexual assault, sexual harassment and pornography. Given the existence of all of these acts, this Act is repetitive and redundant.
- Indian law also provides for regulation of content on media. Under the Indian legal regime, Cable Television Networks (Regulation) Act, 1955, the Press Council of India Act, 1978, and Cable Television Networks (Amendment) Rules, 2006 (Rules) are the principal legislations which control the content on television to ensure that they do not offend morality, decency and religious susceptibilities of the consumers. The Information Technology Act regulates content on the internet, while the Censor Board for films.
- The Act does not seem to be implemented and appears to have a low rate of prosecution.

## Issues

Repeal will impact pending cases instituted under the Act. Along with repeal, a clause can be enacted to save application of the Act on pending cases.

<sup>a</sup>Shahina KK, Kerala Police versus Bob Marley, The Open Magazine, 2014-03-15.  
<http://www.openthemagazine.com/article/real-india/kerala-police-versus-bob-marley>



**Name:** The Newspaper (Price and Page) Act, 1956

**Subject:** Obstructive Civil & Personal Interference

**Reason:** Imposes excessive controls, partially struck down by the Supreme Court

## What is the law?

The purpose of the Act was to prevent unfair competition among newspapers, where newspapers with better financial resources could potentially monopolise the print media industry to the detriment of smaller newspapers. For the benefit of newspapers with smaller resources and those published in Indian languages, Section 3 of the Act empowered the central government to issue an order to regulate the prices charged by bigger newspapers. Under this section, the central government could also regulate the number of pages and the amount of space a newspaper allotted for advertisements. Section 6 of the Act imposed a penalty of Rs. 1,000 on the publisher if a newspaper was published or sold in contravention of an order under Section 3.

## Reasons for Repeal

- The main provision of this Act, Section 3, was struck down by the Supreme Court in *Sakal Papers Pvt. Ltd. and Ors. v. Union of India*,<sup>4</sup> on the ground that it violated the freedom of speech and expression of the petitioners. The Supreme Court held that the State could not make laws which directly affected the circulation of a newspaper for that would amount to violation of freedom of speech. The right under Article 19(1)(a) of Constitution of India, extends not only to the matter which the citizens are entitled to circulate but to the volume of circulation.
- Though Section 3 was struck down, the rest of the Act continues to remain on the statute books. It is a dead letter for all purposes. The Supreme Court itself noted in *Sakal Papers* that if Section 3 of the Act is struck down, nothing remains in the Act.<sup>5</sup> Since Section 3 of the Act has been done away with, the power of the central government to make an order under the Act no longer exists and provisions imposing penalties on the contravention of such orders are redundant.
- The print media has undergone a drastic transformation and the number of newspapers in circulation itself acts as a safeguard against unfair competition. The total number of registered newspapers in India till 2010-11 was 82,237.<sup>6</sup> Powers granted by the Act restrict the freedom of occupation, trade and business, and have no place in a liberalised economy.

## Issues

There are no legal issues that would impede repeal.

<sup>4</sup>AIR 1962 SC 305.

<sup>5</sup>AIR 1962 SC 305, at 52.

<sup>6</sup>Ministry of Information and Broadcasting, MIB, Percentage of growth of registered publications increase by 6.25% over the previous year, 2011-12-29, <http://pib.nic.in/newsite/erelease.aspx?relid=79265>, 2011-12-22.

## About The 100 Laws Project

Centre for Civil Society's iJustice, NIPFP Macro/Finance Group, and Vidhi Legal Centre, with the help of lawyers, legislative experts and economists have informally begun a project to help the administration live up to a key election message. During the campaigns, PM Narendra Modi had rightly proposed to clean up the statute books, by repealing 10 laws for each new one the government legislated, and to use his first 100 days to repeal 100 unnecessary laws. We picked up on this message, and invited some experts to brainstorm on how we might turn this promise into reality. The result is the 100 Laws Repeal Project.

### The Project

This is a research and advocacy initiative to identify for complete repeal 100 laws that are redundant, or materially impede the lives of citizens, entrepreneurs and the government. Each organisation involved has lent staff to analyse laws passed over different time periods, review the recommendations of various expert committees. Since this was an experiment to explore how collaborative working may help achieve a common goal, we kept the contours of the project simple: laws that could be repealed wholesale, were not too controversial, were material enough to help initiate reforms, and would help sell the idea of a clean and effective legislative and legal system.

This Project is an experiment to demonstrate how external experts may be able to help the government on different issues, and how a thinking machine might further common ideals and help build state capacity. The Project does not aim to reinvent the wheel. It simply revisits the work and recommendations of several experts before, and provides a clean compendium of low-hanging fruit that can easily be executed with minimal discomfort or encumbrances.

### The Process

- Three institutions involved in research and advocacy on legislative and economic policy reform came together for initial discussions around 22 May 2014. Each organisation committed 2-3 associates to analyse laws.
- The group invited experts including Supreme Court lawyers, economists, legal activists and legislative experts to join in weekly discussions on laws recommended for repeal.
- Each week the associates presented 10-20 laws and their reasons for recommending repeal. The group debates on the merit of repealing each law, and on fine-tuning the reasons.



- The associates drafted one-page cases, in a standard format. These were quality assured by senior members in the team, and whetted by the experts.
- At the end of 10 weeks (approximately 15 August 2014) the group produced an initial compendium of 100 Laws with cases outlining the repeal of each.
- The project took roughly 1,250 man-hours of public interest lawyers, economists, legislative experts and public policy specialists. The team combed through nearly a 1,000 laws to arrive at the shortlisted 100.
- We propose to present this compendium to the Prime Minister and Minister for Law, and initiate a discussion on broad based legislative reform.

## The Product

The team used a three-fold strategy to identify suitable laws, and draft cases, based on:

- Years and periods: for example, pre-1900, near-Independence (1938-1947), Nehruvian socialism (1950-1960), period of nationalisation and emergency (1966-79);
- Categories of laws: for example, archaic and redundant British era laws, laws curbing business freedoms, laws affecting efficiency of government administration, laws affecting labour relations;
- Recommendations of commissions: Law Commissions, PC Jain Commission, and UNDP LARGE project. In addition, research included previous Parliamentary decisions, recommendations of previous administrations, analysis of previous similar repeals, and suggestions on public forums by opinion makers and reform champions.

The team created a simple excel-based format to record findings and discussions: The format is available to all members of the team and helps avoid overlaps. On each Tuesday, associates presented the findings to the group and made a 'case for repeal'. The group debated each case based on the quality of the argument, evidence that favoured repeal, materiality that the repeal presented, a simple stakeholder analysis to identify potential opposition, and ease of repeal. A consolidated master-sheet captures laws the entire group recommends for repeal.

The team developed a one page 'case' for each recommendation: The case includes the name of the legislation, Reasons for Repeal, and issues that may need to be taken into account during repeal. The language has been kept simple, avoiding legal jargon and focusing on the economic and administrative evidence for repeal. Data, testimony, expert recommendations, and previous legal opinion have been referenced and cited. Where possible, Government of India budget and census data and last recorded case filings under each law have been used to reinforce the recommendations. For each law, the team has identified the repeal process, where most laws can be taken off the books with a simple majority in Parliament.

Across all laws, there are some common reasons for recommending repeal. These include:

- repetitions, redundancies and overlaps with other laws that add legal complications and often-times create loopholes;
- obsolescence that no longer matches India's current economic, political and social needs;
- rent-seeking and harassment opportunities created by complicated personal, economic and business regulations;
- red tape, inefficiencies and mis-governance generated on account of ill-advised legislations; and hindrances to further reform efforts.

We categorised the identified laws into 8 groups and scored them: The categories Archaic British Era Laws, obsolete partition and post-Independence reorganisation, unnecessary levies and taxes, restrictive business and economic regulations, redundant nationalisation, outmoded labour relations, ineffective governance and administration, and obstructive civil and personal interference. Each law has been scored on a 1-5 scale based on ease of repeal and impact of repeal.

Laws presented in this compendium range from high impact recommendations such as repeal of laws that constrain the business environment, to low impact such as repeal of the laws governing territorial organisation of provinces in the British era. The former set would help put India back on the growth track, and the latter would help clear the statute books of clutter. The spread of laws has been deliberately chosen to help demonstrate the range of possibilities for the administration to deliver on its promises, as also to show the extent of work that needs to be done. The list is not meant to be comprehensive: it aims to be a well-researched and demonstrative proof of concept on how such a goal can be accomplished over the next few years using a batch-process.

## The Organisations

The three key organisations involved in this effort are:

- **Centre for Civil Society:** CCS is one of India's leading think tanks advancing social change through public policy. CCS' work in education, livelihood, and policy training promotes choice and accountability across the private and public sectors. Justice is a public interest legal advocacy initiative of the Centre which supports and assists individuals and groups across India to challenge violations of fundamental rights and the rule of law.
- **NIPFP Macro/Finance Group:** The Macro group at NIPFP aspires to make a contribution to fiscal, financial and monetary policy reform, with a mix of quantitative research papers in academic journals, policy papers, ongoing analysis of macroeconomic policy. The group served as the secretariat for the Financial Sector Legislative Reforms Commission (FSLRC), providing economic, policy and legal inputs to the commission on a wide range of issues.
- **Vidhi Centre for Legal Policy:** Vidhi is an independent legal policy advisory group whose mission is to achieve good governance in India through imparting legislative and regulatory design. Vidhi engages with the Government of India, state governments, Standing Committees of Parliament, other agencies and instrumentalities of the state, advising on proposed legislation and regulation.

assisting in legislative drafting and providing independent critical analyses of existing law and policy with recommendations for reform.

Public interest lawyers and young researchers from India and the world's top law schools such as NLS (Bangalore), Amity Law School, NALSAR (Hyderabad), Harvard Law School, contributed over 1000 man-hours over 10 weeks to identifying, researching and analysing laws recommended in this compendium. In addition, experts such as Madhumita Mitra, Ravi Mantha, Nikhil Mehra, Seetha Parthasarathy, Dr Ajay Shah, Dr Parth Shah, and eminent Supreme Court lawyers contributed close to 110 man-hours on expert advice.

## The Team

**Anirudh Burman** is a lawyer with an LL.M. from Harvard Law School. He has previously worked with PRS Legislative Research and Amarchand Mangaldas. He currently consults with NIPFP, the Centre for Policy Research, and works part-time with Indian Express. His interests lie in public institutions, institutional design of public institutions, constitutional and administrative law.

**Ankita Srivastava** is a legal consultant at NIPFP. She has graduated from the National Law Institute University, Bhopal and has also completed her LL.M in International Taxation from the Vienna University of Economics and Business Vienna, Austria. She has worked with law firms in India focusing on international tax, social sector and CSR.

**Kushagra Priyadarshi** is a lawyer with around six years in practice. He started his career at Amarchand & Mangaldas, country's leading law firm. During his stint at Amarchand, he advised several fortune 500 companies in multi-million dollar transactions. He graduated from NUJS, Kolkata at the top of his class and last year completed his masters from the Harvard Law School. He is currently working as a Consultant with NIPFP.

**Pratik Datta** did his BA LLB (Hons) from WBNUJS, Kolkata. After his stint as a law clerk to the Supreme Court of India, he worked as a litigation lawyer in Delhi. Currently, Pratik is a consultant at NIPFP and assists the Department of Economic Affairs on financial policy matters.

**Ritwika Sharma** graduated with a B.A. LL.B. (Hons.) from Amity Law School, Delhi (GGS Indraprastha University) in 2013. She went on to complete an LL.M. from the National Academy of Legal Studies and Research (NALSAR), Hyderabad in 2014 where her choice of subjects largely revolved around constitutional law, legal theory and environmental law. She is currently a Junior Research Fellow at the Vidhi Centre for Legal Policy.

**Sanhita Sapatnekar** joined NIPFP as a Consultant, in 2014. Prior to that, Sanhita worked at GIZ in Cambodia and the UN in Indonesia. Sanhita holds a Bachelors of Science in Mathematics, from the University of Bristol (UK), and a Masters in International Cooperation and Development from Universit Cattolica del Sacro Cuore in Milan (Italy).

Shefali Malhotra is an Associate with iJustice. She graduated from the Symbiosis Law School, Pune in 2010. Previously, she has worked with the Lawyers Collective and Public Interest Legal Support and Research Centre (PILSARC). She was also attached with an Advocate on Record in the Supreme Court of India and worked extensively on contractual and property matters.

Shilpi S Kumar is a consultant at NIPFP. She received her M.S. in Economics from Indira Gandhi Institute of Development Research, Mumbai in year 2014 and her Bachelors in Economics from Hans Raj College, University of Delhi in 2012.

Srijoni Sen graduated with a B.A. LL.B (Hons.) from the National Law School of India University, Bangalore, in 2009. She subsequently worked with McKinsey & Company as a Business Analyst for two years. In 2013 she completed an LL.M from Columbia Law School, New York, and has also taught in NLSIU, Bangalore. She is currently Senior Resident Fellow at the Vidhi Centre for Legal Policy.

## The Experts

Dr. Ajay Shah studied at IIT, Bombay and USC, Los Angeles. He has held positions at the Centre for Monitoring Indian Economy, Indira Gandhi Institute for Development Research and the Ministry of Finance, and now works at NIPFP where he co-leads the NIPFP-DEA Research Program. His research interests include policy issues on Indian economic growth, open economy macroeconomics, public finance, financial economics and pensions.

Madhumita Mitra is an independent legal consultant working on a variety of regulatory issues. Starting her career with the Government of India, she has worked as a legal practitioner with a corporate law firm and as a consultant for non-governmental and international organisations. She has wide experience in law and public policy analysis. Her areas of interest are anti-corruption and transparency, business regulations, labour laws, property rights, and legal reforms.

Dr. Parth Shah is the founder president of CCS. Parth taught economics at the University of Michigan before returning to India to start CCS. He has published academic articles in development economics, welfare economics, business-cycle theory, free or laissez-faire banking, and currency-board systems. He has edited *Morality of Markets*, *Friedman on India*, *Profits in Courage: Dissert on Indian Socialism*, *Do Corporations have Social Responsibility?*, and co-edited *Law, Liberty, and Livelihood*, *The Terracotta Reader*, and *Agenda for Change*.

Ravi Mantha is an entrepreneur. He recently founded BOP Capital, which is working to set up a fund to invest in poverty reduction Asia. He is also a co-founder of BOP Hub, working to create Singapore as a hub for social impact in Asia. He is an angel investor and mentor to many start-ups and he has invested directly in 10 start-ups in Singapore and overseas, and indirectly in another 12 start-ups through JFDI Asia, an internet incubator.

**Seetha Parthasarathy** is a senior journalist who has worked in several leading publications and writes on political economy issues. She is the author of *The Backroom Brigade: how a few intrepid entrepreneurs brought the world to India* and co-author (along with R. C. Bhargava) of *The Maruti Story: how a public sector company put India on wheels*.

## **The Lessons**

This project provided a forum for collaborative working. Word of mouth and simple invitations to join have helped build a committed team. The idea behind the project has served as its own reference letter, and brought us volunteer experts and quality assurers. Each group involved committed manpower, space and consultation to put the compendium together. It helped craft an effective working model that allowed each organisation's expertise to stand out, and for an assembly line to be built for efficient delivery.

For more information on the project please write to [ajayshah@mayim.org](mailto:ajayshah@mayim.org) or [parth@ccs.in](mailto:parth@ccs.in).





सत्यमेव जयते

**REPORT OF THE  
NATIONAL COMMISSION  
ON LABOUR**

**VOLUME - I**

**MINISTRY OF LABOUR  
GOVERNMENT OF INDIA  
2002**

**RAVINDRA VARMA**  
Chairman



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June 01, 2002

Dear and Hon'ble Mr. Prime Minister,

I have the honour to submit herewith the report of the National Commission on Labour that the Cabinet was pleased to appoint on the 24<sup>th</sup> of December, 1998.

I wish to assure you that throughout its tenure, and in all its efforts and deliberations the Commission has been keenly aware of the importance of the task that has been entrusted to it, and the high expectations that are entertained from it by the working class, industry, the government and public bodies and citizens.

The resolution appointing our Commission asked us to take note of the developments that have followed liberalisation and globalisation, the demands that they make, and the effects they have on our working class, our industry, our government and all sections of our society; and to make recommendations on the laws and systems that we need to offer protection and welfare to our working population, and increase the economic efficiency and competitiveness of our industry.

This has not been an easy task. It has not been easy to get full information on the impact of globalisation and liberalisation on industry – including medium or small scale industries and crafts persons, partly because no pointed effort has been made by the government or related organisations to collect such data. It has not been easy therefore to quantify the effect on employment in the organised and unorganised sectors.



It has not been easy to find out whether all the social partners involved or even the general public are fully aware of the demands that global competitiveness is making, and will make on them, and the consequent obsolescence of old mindsets, attitudes, tactics and motivations; of the new responsibilities that have become imperative, and the vistas of vision that have appeared; of their readiness to balance short-term demands with the long-term needs that even a modicum of futuristic reflection will reveal. It has not been easy to visualise what cascading changes in technology, and national and international developments will bring, and what it is therefore that we should plan or provide for in terms of attitudes and institutions in respect of technology, international economic regimes and the like that will emerge and become dominant in the next two or three decades. The very rapidity and chain reactions of these changes are mind-boggling. In grappling with these, one has also to take into account operational difficulties that can affect an attempt of the kind we have been asked to undertake. I will not detail them here.

In the light of all these factors, we felt that our work could not be accomplished without the widest possible consultation, without acquainting ourselves with the views of the widest possible circle of all those who are affected or interested. Our terms of reference gave us the freedom to choose a method that we considered appropriate. In choosing the method we have had to keep in mind the time and resources at our disposal.

We, therefore decided to elicit opinion on the basis of (1) an elaborate questionnaire that we formulated and made available to organisations and individuals who were related to the subject of enquiry; (2) specific requests for responses from organisations of workers and industries, state governments, academicians, labour institutes, labour lawyers, labour judiciary and so on; (3) visits to as many State capitals as possible to give the trade unions, chambers of commerce and industry, State governments, labour judiciary, labour lawyers, non-governmental organisations etc. an opportunity to present memoranda and give oral evidence before us to facilitate ground level interaction; (4) sponsoring or associating with a number of seminars and workshops dealing with different aspects of our field of study.

We also decided that the best method to focus on different aspects and make in-depth studies of the subject would be to appoint specialized Study Groups. We therefore appointed six Study Groups, - namely on Review of Laws, Umbrella Legislation for the Workers in the Unorganised Sector, Social Security, Globalisation and Its Impact, Women and Child Labour, and Skill Development, Training and Workers' Education.

We requested distinguished persons of experience and vision to chair these Study Groups. Each Study Group was constituted to be fully representative. We are glad to report to you that many men and women of outstanding competence, experience and reputation served on these Study Groups. The Commission is deeply grateful to all the members and chairpersons of the Study Groups which conducted specialized studies and submitted their valuable reports. We are happy to record that all the Study Groups except one submitted unanimous reports to us. We are appending the full texts of the reports of these Study Groups. They reflect the depth and earnestness of the efforts that every Study Group made. In view of the outstanding contribution that the reports made to our work, we have made copious use of these reports, and very often adopted or adapted paragraphs from them.

Our Commission studied these reports and the large volume of oral and written evidence that was tendered before us. More than 2000 witnesses appeared before us or submitted memoranda to us.

On the basis of these reports and evidence, the Commission addressed the task that you had outlined for us. I am glad to be able to submit that the Commission discussed each of the areas that have been crystallized into the chapters of the report, at least thrice - and in some cases many more times - once when the Study Group Report was received and taken up for discussion; once when the first draft of each chapter in the Commission's report was presented for discussion; and at least once when the penultimate and final drafts of the reports of each chapter were considered. There are some subjects that we had to discuss and re-discuss many times.

In all these discussions our attempt was to find a consensus. The consensus we arrived at was that the challenges that we face can be met only on the basis of mutual concern and co-operation among all the social partners. Obviously there were many points on which there was unanimity, but there were also many points on which there were diverse views, sometimes views that appeared difficult to reconcile. In most matters we were able to convince each other, and identify a consensus that balanced the interests of all social partners and assured the common interests of all sections of our people. Yet there were some specific questions, more germane to what might be described as the contentious issues of the present, on which differences had to be stated. We have attempted to indicate the differences in views on some such issues, and have also recorded the general consensus that emerged from our deliberations. However, we have received a note of dissent from one of our members, and we have appended it to our report along with a brief response.

I need not add that the Report should be viewed as the consensus on the recommendations that we wanted to make. It follows therefore that every member of the Commission accepts the consensus, not necessarily each word, each phrase and each argument. Even so, we are happy we could evolve a meaningful consensus to submit to you.

As Chairman I am profoundly grateful to all my colleagues in the Commission for their desire and efforts to find a consensus as well as the full and cordial co-operation that they extended to me and to each other all through these months of endeavour. The Commission is grateful to the Member Secretary and all the officers and staff who contributed to the success of our efforts in many ways. It is also grateful to the Trade Unions, Chambers of Commerce, State Governments, Non-Governmental Organisations, Academicians and all officers and others at the Centre and in all the States and Union Territories who were generous with their assistance and goodwill.


There are some areas - related areas - to which we have not been able to do justice for lack of time. These include special studies that we wanted to undertake on the disabled, on a policy of wages, and on efforts for the generation of employment. We do hope some others will fill these gaps in the future.

In submitting our Report we will also like to emphasise that our attempt has been to suggest a holistic alternative to what exists, not merely to suggest an amendment to one clause or another, because we feel that the massive demands that are being made on us cannot be met by tinkering at the periphery. What we need is a new outlook and a new system. We will therefore beg of you to take our report and our proposals as a whole, calculated to ensure protection, welfare, security, and competitiveness, so that our national response to the fast changing world may be in tune with our national aspirations and needs, and commensurate with the changes, both in speed and effect.

In concluding, Mr. Prime Minister, we wish to record our deep gratitude to you for giving us an opportunity to undertake this task in the service of our people.

With warm regards,

Yours sincerely,

  
(Ravindra Varma)

**Hon'ble Shri Atal Behari Vajpayee**  
**Hon'ble Prime Minister**  
Government of India  
South Block  
New Delhi-110 001.

**APPENDIX - I****MODEL STANDING ORDERS**

(For establishments employing 20 or more but less than 50 workers)

**1. Classification of Workers**

(1) Workers shall be classified as: -

- (i) Permanent: - A worker who has been engaged on a permanent basis or who has satisfactorily completed his probation period.

Provided that if no appointment letter is issued or where the worker has been appointed on probation, no letter of confirmation is issued at the end of the probation period, the worker shall be deemed to be a permanent worker.

- (ii) Probationer: - A worker who has been employed to fill a permanent vacancy but is on trial.

Provided that period of probation shall be one year which may be extended by three months at a time so, however, that the total period of probation shall in no case exceed eighteen months.

Provided further that if the employer fails to issue the letter of confirmation after the maximum period mentioned in the first proviso the worker shall be deemed to have been confirmed.

- (iii) Temporary: - A worker who is engaged for a fixed term for work which is temporary or for temporary increase in normal work.

- (iv) Apprentice: - A person appointed under the provisions of the Apprentices Act, 1961.

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- (v) Trainee: - A person appointed for the purpose of being trained provided that such worker shall be paid at the same rate as a temporary worker.
  - (vi) Badli: - A person who is appointed to work in the place of a regular or temporary worker who is on leave of absence.
- (2) Every worker shall be issued token number or identity card containing his name, his father's name, address, name of the establishment where he is employed, his designation, and classification such as permanent, probationer and so on.

## 2. Appointment Letter

- (1) Every worker shall be issued appointment letter containing the following details:
- (i) Name of the Worker
  - (ii) Father's name
  - (iii) Residential Address - Local & Permanent
  - (iv) Designation
  - (v) Date of appointment
  - (vi) Classification
  - (vii) Terms of Appointment
  - (viii) Nominee for Social Security purposes
- (2) The letter of appointment shall be issued by a person duly authorised in this behalf by the employer.

## 3. WORKING HOURS

- (1) The working hours of the establishment shall be \_\_\_\_\_ to \_\_\_\_\_ (here give details of the timings of the establishment and also of the worker) and any change in this regard shall be communicated to the worker 24 hours in advance.

- (2) All workers shall be at work at the time fixed and notified. Workers attending late would be liable for deductions of wages.
- (3) For the work, beyond normal working hours overtime wages shall be paid to the workers as prescribed in the Law on Hours of Work, Leave & Other Working Conditions at the Workplace at double the rate of his normal wages, on a hourly basis.

#### 4. Shift Working

Workers may be required to work in shifts, provided that no worker shall be required to work continuously for more than fifteen days in the night shift.

#### 5. LEAVE

- (1) Every worker who has worked for 240 days or more shall be allowed during the subsequent calendar year one days earned leave with wages for every 20 days work in case of all establishments above ground and one days earned with wages for 15 days work in case of a worker working in a mine where the work is carried on below ground, provided that the employer may allow leave on a pro rata basis to the workers even before the completion of one year.
- (2) A worker who desires to go on leave shall apply to the employer or any other officer of the establishment specified by the employer who shall issue orders on the application within a week of its submission or two days prior to commencement of leave applied for and where the leave application is made three days before its commencement, the order shall be given on the same day and if the leave is refused or postponed, the fact of such refusal or postponement shall be recorded in writing in the register to be maintained for the purpose and the worker shall be supplied with a copy of the entry made in the leave register. If the worker desires an extension thereof he shall apply to the employer or to the specified officer who shall send a written reply either granting or refusing extension of leave to the worker at his address maintained in the record or given in the original application for leave.

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- (3) If the worker remains absent for more than 10 days beyond the period of leave originally granted or subsequently extended he shall lose the lien on service unless he explains to the satisfaction of the employer his inability to return before the expiry of his leave.

#### 6. **Casual Leave and Sick Leave**

- (1) Every worker shall be allowed 8 days casual & sick leave in a year.
- (2) Casual leave shall not be granted for more than three days at a time except in case of sickness. The casual and sick leave is intended to meet special circumstances which cannot be foreseen. Ordinarily previous permission of the employer or the Head of the Department or Section shall be obtained before availing such leave and where the same is not possible the Head of the Deptt. shall be informed as soon as is practicable.

#### 7. **Festival Holidays**

Every establishment shall observe 8 holidays in a year, out of which 3 would be National Holidays, i.e. Republic Day, Independence Day & Gandhi Jayanti and the remaining holidays shall be declared every year and notified to the workers by displaying the same on the notice board.

#### 8. **Attendance**

All workers shall be at the workplace specified for them and shall not leave the place of work without permission during working hours or without sufficient reasons and any unauthorised absence shall be treated as absence liable to deductions being made from the wages pro-rata to the period of absence.



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**9. Stoppage of Work**

The employer may in the event of breakdown of machinery, stoppage of power supply, raw material or for any other reason stop the working of the establishment and in the event of such stoppage the workers shall be notified by notice put up on the notice board. The workers shall be required ordinarily to remain within the establishment after commencement of stoppage for not more than 2 hours unless the employer has declared the lay off. In the event of lay off or if they are not required after remaining 2 hours in the establishment they shall be paid the lay off compensation. In case the lay off continues for more than 45 days the employer may retrench the workers as per law on the subject.

**10. Termination of Service**

- (1) For termination of employment of a permanent worker a one month's notice shall be required to be given either by the employer or the worker or either party may make payment of wages for one month in lieu of the notice period.
- (2) No notice shall be required by either side for termination of employment of a temporary, probationer or a badli worker unless the termination is on account of misconduct.
- (3) Where an employment of any worker is terminated or he or she quits, the wages earned by him or her and the other dues shall be paid before expiry of 48 hours of termination or as the case may be quitting of employment.

**11. Discipline, Misconducts and Disciplinary Action**

- (1) All workers shall perform the duties entrusted to them by the management from time to time.
- (2) All workers shall maintain discipline in the establishment and with respect to the work of the establishment.

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- (3) The following is an illustration of acts or omissions which shall be treated as misconduct: -
- (a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
  - (b) Theft, fraud or dishonesty in connection with the employer's business or property.
  - (c) Wilful damage to or loss of employer's goods or property or to the work in progress.
  - (d) Taking or giving bribes or any illegal gratification.
  - (e) Habitual absence without leave or absence without leave for more than 10 days.
  - (f) Habitual late attendance.
  - (g) Habitual breach of any law applicable to the establishment.
  - (h) Riotous or disorderly or violence behaviour during working hours at the establishment or any act subversive of discipline.
  - (i) Habitual negligence or gross neglect of work.
  - (j) Resorting to 'go-slow' or 'work to rule'.
  - (k) Striking work or inciting others to strike work in contravention of the provision of any law, or rule having the force of law.
  - (l) Conviction in any Court of Law for any criminal offence involving moral turpitude.
  - (m) Drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at the place of work.
  - (n) Failure or refusal to wear or use any protective equipment given by the employers.

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- (o) Failure to comply with norms relating to safety or working in a manner which is likely to cause an accident.
  - (p) Causing sexual harassment to female workers.
  - (q) Sleeping on duty.
  - (r) Malingering or slowing down the work.
  - (s) Leaving work without permission or sufficient reason.
  - (t) Threatening or abusing or assaulting any superior or co-worker.
  - (u) Preaching of or instigating others to resort to violence.
  - (v) Going on illegal strike either singly or with others.
  - (w) Disclosing to any unauthorised person of any confidential information in regard to the working or process of the establishment which may come into the possession of the worker in the course of his work.
  - (x) Refusal to accept any order or notice or any communication in writing.
- (4) No order of punishment under the Standing Orders shall be made unless the worker concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental inquiry shall be instituted before dealing with the charges or awarding any punishment.
- (5) Where a disciplinary proceeding against a worker is contemplated and where the presence of such worker is likely to, in the opinion of the employer, create indiscipline or jeopardise the investigation into alleged misconduct, the employer may suspend the worker pending enquiry.

Provided that during the pendency of suspension, the worker shall be paid subsistence allowance at the rate of 50% of the wages for the first three

months and 75% wages thereafter and if after enquiry, the charges levelled are not proved, the worker will be entitled to full wages.

Provided further that if the delay in completion of proceedings and enquiry into misconduct is attributable to the worker the subsistence allowance shall not exceed 50% of his wages.

- (6) Where a worker is found guilty of misconduct after an enquiry, the employer may warn the worker or impose the punishment of suspension without wages for a period of not exceeding 15 days or stoppage of increments or demotion or termination or dismissal from service depending on the gravity of the misconduct.

Provided that no such punishment shall be imposed without giving an opportunity to the worker to explain his position except if he or she is only warned.

- (7) If a worker is arrested on charge of offence relating to moral turpitude, the employer may suspend the worker without pay till such time the worker is honourably acquitted and where the worker is held guilty and sentenced, the employer may terminate the services of such a worker.

## 12. Payment of Wages

- (1) The employer shall specify a wage period and the date on which wages shall be paid, provided that no wage period shall exceed one month.
- (2) Wages to monthly paid workers shall be paid by the seventh day of the succeeding month and in other cases as per provisions of Wages Act.

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**13. Transfer**

Every worker shall be liable for transfer from one department to another and from one unit to another provided such units are under the same management.

**14. Retirement**

A worker will be liable to retirement on attaining the age of superannuation, i.e. 58 years.

Provided that a worker may be retired earlier on medical grounds.

**15. Certificates on Termination of Service**

Every permanent worker shall be entitled to a service certificate at the time of his dismissal, discharge, resignation or on termination of employer - employee relationship for any other reason or retirement from service.

**16. Providing a Copy of Standing Orders to the Workers**

A copy of these Standing Orders shall be given to every worker along with the appointment letters.

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APPENDIX - III

**THE SMALL ENTERPRISES  
(EMPLOYMENT RELATIONS) ACT 2002**

1. Act to regulate the employment in small enterprises.

WHEREAS it is expedient to consolidate and amend the laws relating to regulation of employment in small enterprises and for certain other purposes hereinafter specified, it is hereby enacted as follows:

**CHAPTER I**

**Preliminary**

**1. Short Title, Extent, Commencement and Operation**

- (1) The Act may be called The Small Enterprises (Employment Relations) Act 2002.
- (2) It extends to whole of India.
- (3) It shall come into force on ~~the~~ or from the date notified by the Central Government in this behalf.
- (4) It shall apply to all establishments or enterprises in which not more than 19 workers are employed.

Provided that nothing in this Act shall apply to an establishment of a Government.

**2. Definitions:** In this Act unless there is anything repugnant in the subject or context

- (1) Appropriate Government in respect of an establishment under this Act shall mean the Government of the State in which the establishment is situated

- (2) **Charitable institution:** A Charitable institution means an institution which is established for the purpose of charity to any living being or formed for not any profit motive or formed for the welfare of living beings or for preservation of environment or of heritage or for religious purposes.
- (3) **Child:** Child means a person who has not completed his 14<sup>th</sup> year of age.
- (4) **Day:** Day means a period of 24 hours beginning at mid night.
- (5) **Worker:** Worker means a person who is wholly or principally employed directly for wages or reward in connection with the work of any small enterprise or establishment to which this Act applies but does not include a supervisor or manager.
- (6) **Employer:** Employer means an owner or who has the ultimate control over the affairs of the small enterprise or establishment.
- (7) **Establishment:** An establishment or enterprise means manufacturing (except of hazardous nature), or mining (except underground mining) activity, plantation, construction, service, transport or other enterprises and include hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, shops and establishments, charitable, research, training and educational institutions, consultancy and solicitors or lawyer organisations and other professions such as C.As., Architects, etc.
- (8) **Factory:** A factory means a place where any manufacturing process is carried on and wherein not more than 19 workers are employed.
- (9) **Hotel:** Hotel means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of a sum of money by a traveller or any member of the public or a class of the public and includes a club.
- (10) **Inspector:** Inspector means a person appointed as inspector by the Government for securing the compliance of this Act, and the Chief Inspector and the Dy. Chief Inspector mean the Chief Inspector and the Dy. Chief Inspector of small enterprises appointed under this Act.

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- (11) **Restaurant:** Restaurant means any premises in which is carried on wholly or principally the business of the supply of meals or refreshment to the public or a class of the public for consumption on the premises.
- (12) **Shop:** Shop means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or commercial establishment.
- (13) **Weekly Off:** Weekly Off means a day on which a worker shall be given a holiday under the provisions of this Act.
- (14) **Wage:** Wage means the basic wage, dearness allowance, city compensatory allowance or house rent allowance or overtime wages or wages for leave period or bonus.
- (15) **Young Person:** Young person means a person who has not completed his eighteenth year of age.
- (16) The terms used in this Act but not defined shall have the same meaning as assigned in the relevant laws.

## Chapter II

### Registration of Small Enterprises

#### 3. Procedure for Registration.

- (1) Within 30 days of commencement of this Act, every employer shall furnish an affidavit on a non-judicial stamp paper of Rs. 10/- to the Chief Inspector or Dy. Chief Inspector of the State appointed for the area or district where the small enterprise is located along with the information in Form 'A' appended to this Act and the fee for registration of his establishment.



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- (2) The affidavit shall contain the name and address of the employer, the name and address of small enterprise and such other information as may be prescribed and an undertaking that information furnished by him in the Form is correct to his knowledge and belief and nothing material has been concealed.
- (3) A fee as may be prescribed shall be payable by an employer along with affidavit filed by him for seeking registration.
- (4) If an employer seeking registration under this Act has furnished the information and fee as required in Sections (1) to (3) above, the Chief Inspector shall forthwith issue the certification of registration and make an entry in this behalf in a register maintained for the registration of small enterprises and if at any time any change occurs subsequently in the information submitted by an employer along with the affidavit, the same shall be intimated by the employer within 30 days of occurrence of such change by a written communication by the Chief Inspector.
- (5) A registration granted under Section (4) shall be valid for five years and the registration may be renewed by following the procedure provided in Section (1) to (3) by making an application within 30 days before the expiry of registration and if an employer fails to make an application before 30 days of expiry of the registration his registration may be renewed provided he pays double the fee for registration prescribed in Sub Section (3).

### Chapter III

#### Conditions for Employment of Certain Persons

4. **Prohibition of Employment of Children:** No child below the age of 14 years shall be permitted to work in any establishment and a young person who has completed 14 years but not completed 18 years of age may be employed after he has been declared fit by a qualified medical practitioner. In mining establishments any person who has not completed 18<sup>th</sup> years of his age shall not be employed.
5. **Non-Discrimination against female workers**  
The female workers shall not be discriminated against in matters of recruitment, training, transfers or promotions.

**Chapter IV – Conditions of Work****6. Health –**

- (1) Every employer shall ensure to keep the enterprise clean and free from harmful material including gases, dust and fumes. He shall ensure that there is no overcrowding and there is proper light and ventilation at the place of work and shall provide facilities such as toilets, drinking water and for washing either individually or collectively.
- (2) He shall ensure disposal of wastes and effluents properly and in case he is not able to arrange the disposal of wastes and effluents by himself he shall with the cooperation of other enterprises in the same area take effective steps for disposal of wastes and effluents.
- (3) The State Government may provide facilities for toilets common for a cluster of shops or establishments by seeking cooperation of local bodies.

**7. Safety**

- (1) Every employer of the enterprise where manufacturing, construction or mining activity is carried on shall ensure the following safety measures at the work place
  - (a). Every employer shall ensure that all moving parts of the machines are properly secured, fenced and guarded.
  - (b). Every employer shall ensure that Lubrication or adjusting operation or mounting or shipping of belts and other hazardous work near or on the machinery in motion is not allowed except by a specially trained male worker and proper care of the safety of the operator is taken.
  - (c). Safety measures in respect of the hoists, lifts, chains, ropes and tackles shall be taken wherever the same are used and it shall be ensured that they are of good mechanical construction and safe for working at the rated capacity.

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- (d). Young persons are not allowed to work on dangerous machines or engaged in actual mining of the minerals.
  - (e). The equipment using/operating at more than atmospheric pressure shall be ensured to be safe for working.
  - (f). Wherever there is danger of injury or irritation taking place to the eyes of the operator/worker proper protective equipment shall be provided to prevent the eye injury.
  - (g). In mining activity the working is done by making benches of not more than 6 metres height from the superjacent ground.
  - (h). In case of construction work proper scaffolding is provided where the construction of building is being done at the height of 6 ft. or above and in roofing no substandard material shall be used.
- (2) Every Employer of the enterprise shall ensure that
- (a) Necessary fire-fighting equipment and arrangements for the safe exit of the persons employed in the event of the fire is provided.
  - (b) First aid facilities within the enterprises and the medical care in case of accidents requiring immediate medical attention is provided.
  - (c) Where in any enterprise an accident occurs resulting in death or bodily injury to any person which prevents the concerned person from working for a period of 48 hours or more, the same shall be reported by sending a notice to the Deputy Chief Inspector in form 'E' with a copy to the Commissioner for Workmen's Compensation.

8. **Application of Factories Act and Other Laws:**

The Factories Act and other relevant laws shall apply to small enterprises wherever storage and handling of hazardous acids, chemicals, gases or explosives material is involved.

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**9. Welfare**

- (1) The employer shall provide shelters/rest rooms/lunchrooms for the workers if employing 10 or more workers.
- (2) In case of a cluster of establishments the employer may in cooperation and combination with other employers in the area take steps to provide measures for the welfare of the workers such as latrine and urinals, canteen, crèche for the children below the age of 6 years of the women workers and a local dispensary or hospital for the immediate medical care of the workers.

**10. Hours of Work**

- (1) No adult worker shall be required to work for more than 48 hours in a week and 9 hours in a day and no worker shall be asked to work continuously for more than 5 hours unless he has been given a break of not less than half an hour provided that limit of working hours or of weekly rest may be relaxed in case of urgent repairs.
- (2) The total number of hours of work including the rest interval shall not exceed 10½ and in case a worker is entrusted with intermittent nature of work, urgent repairs and for shops the spread over shall not exceed 12 hours.
- (3) Women workers shall not be asked to work normally between 9 pm and 6 am and during these hours women workers can be asked to work only if not less than five women are working during this period at the workplace and the employer takes proper steps for the security of the women workers and provides a transport from the place of work to their residences.
- (4) The total number of hours of work including overtime shall not exceed 60 hours in a week.

## 11. Annual Leave & Holidays

- (1) Every worker shall be allowed a weekly holiday with wage for the whole day as may be fixed by the employer in respect of the worker and any change in the weekly holiday shall be notified to the worker at least a day in advance provided that State Government may fix different days as weekly holidays for different establishments or areas.
- (2) Every worker shall be entitled to eight days casual and sick leave with wages every year. A worker who has joined after 1<sup>st</sup> January shall be entitled to casual leave pro-rata.
- (3) Every worker who has worked for at least 240 days in a calendar year shall be entitled to 15 days earned leave in the following calendar year and a worker who has put in less than 240 days work in the previous calendar year shall be entitled to earned leave proportionate to his attendance.
- (4) A worker shall be permitted to accumulate leave upto 45 days in addition to the leave entitlement of the current year earned on the basis of the work done by him in the previous year and he shall be entitled to encashment of entire accumulated earned leave including leave earned during the current year pro rata in case his services are terminated or he quits the service.
- (5) A worker shall be entitled to three holidays in a calendar year, namely, Independence Day, Republic Day and Gandhi Jayanti.

## Chapter V

### Wages, Bonus and Social Security

## 12. Wages

- (1) The State Govt. may fix the minimum rates of wages in respect of the enterprises covered under this Act. The Minimum Wages may be fixed area wise if required and the minimum wages shall be revised once in

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five years. However, the State Govt. may declare DA twice a year on the minimum wages. All the minimum wages shall be fixed or revised after consulting the committee or an advisory board set up in this behalf for the purpose and any contract or agreement whereby a worker agrees to work for less than minimum wages shall be void ab initio.

- (2) A female worker shall be paid same wages as are paid to a male worker if the work performed by the female worker is same or similar as that performed by the male worker.
- (3) Nothing shall prevent the employer from paying better wages than the minimum fixed by the State Government by mutual agreement with the workers.

### 13. **Payment of Wages and Deductions from Wages**

- (1) Every employer, manager or occupier shall be responsible for payment of wages to all person employed by him before the expiry of the 7<sup>th</sup> day after the completion of the wage period.
- (2) No wage period shall exceed one month.
- (3) All the wages shall be paid in current currency and coin and it may be paid by cheque drawn in favour of the worker or by transfer to his account in the bank.
- (4) All wages shall be paid on a working day during the working hours and every employer shall issue a wage slip to every worker containing the wage period, name, token number, designation, number of days worked or units produced, gross wages payable, deductions and net wages payable at least 24 hours in advance.
- (5) The wages of a person whose employment has been terminated shall be paid before the expiry of the second working day after the day on which his employment is terminated.

- (6) Where a worker has worked for more than 48 hours in a week or 9 hours in a day the employer shall pay extra wages at the rate one and half times of the ordinary wages and where the total hours worked by an worker exceeds 9 hours in a day and 56 hours in any week the wages for the hours of work put in by the worker above 56 hours he or she shall be paid at the rate of twice his ordinary wages.
- (7) The employer shall keep a record of all wages paid by him to his workers including the signature/thumb impressions obtained by him while making the payment of wages. Such records shall be maintained for a period of three years.
- (8) Deductions may be made from the wages or bonus payable to workers on account of the following: -
- (a) For absence from duty in proportion to the period of absence (in terms of hours or days).
  - (b) For causing loss or damage to the property of the employer specifically entrusted to him and in such a case the employer shall issue a prior notice to the worker and give him an opportunity to be heard.
  - (c) For recovering the instalments of loans or advances given by the employer to the worker.
  - (d) On account of subscription of the worker towards social security under this Act or subscription to any welfare fund constituted by the state govt.
  - (e) On account of Income Tax or any other tax payable by the worker to the extent the employer is responsible to recover the same from the worker from his wages under the relevant tax law.
  - (f) The cost of any amenity such as electricity or water supplied at the residence of the worker by the employer or the rental of accommodation provided by the employer.

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- (g) The subscription or recovery of loans/advances of any cooperative credit and thrift society or cooperative store or any other cooperative for which the worker has authorised the employer.
  - (h) Any donation to Prime Minister Relief Fund or any other relief fund if so authorised by the worker.
  - (i) Any subscription made by the worker to a union if so authorised by the worker.
- (9) The employer shall ensure that the recoveries/deductions from wages of workers are so arranged that a worker receives at least 50% wages in cash after such recoveries or deductions.

14. **Bonus**

- (1) Every worker who has put in at least 90 days work in a calendar year shall be entitled to annual minimum bonus at the rate of 8.33% of wages earned by him during the previous year.
- (2) The bonus will be disbursed to the workers within three months from the close of the accounting year of the enterprise and where the workers desire that the same may be paid to them at the time of mutually agreed festival the employer shall pay the bonus at the time of the festival.
- (3) An enterprise which has not been established with a view to make profits and which is in the nature of charitable or religious institution, educational training and research institutions, a construction establishment shall be exempt from payment of bonus.
- (4) Any new establishment will be exempt for first three years from payment of bonus.
- (5) A worker who has put in 90 days or more but has not worked for all the days worked by the establishment in the previous calendar year shall be paid bonus proportionately to the wages earned by him during the calendar year.



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- (6) The salary limit for eligibility or for calculation of bonus as prescribed in the general law shall apply to small enterprises.

15. **Recovery of unpaid wages, illegal deductions etc.**

- (1) Where a worker (including a worker who has been retrenched, removed, dismissed or who has resigned) has not been paid wages on the due date, or has been paid less wages than that are payable as per this Act or has not been paid over time wages, leave wages, bonus, retrenchment compensation or any other dues by his employer he may himself or a union of which he is a member or an inspector appointed under this Act may file a claim before the prescribed authority within a period of one year from the date such unpaid dues became payable or came to be detected and the application shall contain the name of the employer and his address, the name and address of the enterprise, the name and address of the manager if any, the nature of dues which are unpaid or have been paid less, the period to which such dues pertain, or illegal deductions if made from the wages and wage period to which the illegal deduction pertain.
- (2) The authority shall immediately proceed to hear the claim by calling the employer or the manager of the enterprise and the complainant and pass an order rejecting or upholding the claim. Any person aggrieved by the order of the authority may file an appeal before the Labour Court.
- (3) Where an authority upholds the claim either wholly or in part it shall require the employer to make payment to worker and furnish proof of making the payment or require the employer to deposit the amount by cheque or demand draft of the amount ordered drawn in favour of the worker with the authority.
- (4) If the employer fails to make payment as prescribed in Sub-Section (3) the authority shall issue a certificate to the collector of the district who shall recover the same and send it to the authority for payment to the concerned worker.

- (5) The State Government shall designate one of the official of the Labour Department not below the rank of an Asstt. Labour Commissioner to be authority to hear the claim cases under this Section.

#### 16. Social Security

- (1) Every worker shall be entitled to following social security benefits
- (a) Medical Care for self and dependents
  - (b) Compensation in respect of employment injury as prescribed under the Workmen's Compensation Act or according to law on social security applicable to the worker.
  - (c) Provident Fund equal to 8% of wages of employers and 8% of wages as his own contribution plus interest and/or a pension at the prescribed rate.
  - (d) In case of a female worker the maternity benefit i.e. 12 weeks leave with wages upto two surviving children.
  - (e) Gratuity at the rate of 15 days of wages for every completed year of service provided the worker has put in uninterrupted service for at least five years provided further that the condition of completion of five years shall not be necessary for receiving gratuity in case of death or permanent total disablement of the worker.
  - (f) Any other benefit such as unemployment insurance or pension, as may be introduced under the social security law by the government.
- (2) The social security benefits mentioned at sub section (1) above will be provided out of the fund consisting of contributions from the employer @ 16% of wages paid by him to the workers, contributions by workers @ 12 % of the wages and contributions equal to 2% of the wages by the State Government.

- (3) The implementation of social security programme will be on the lines of the recommendations made by the National Commission on Labour on social security.
- (4) Till such time the new social security system is set up the present system will continue.

Explanation 1- for the purpose of this section the dependents include the spouse, dependant children below 18 years of age, dependant parents or parents-in-laws, unmarried daughter and invalid children.

Explanation 2 – Wages for the purpose of this section means the basic wages and dearness allowance but does not include any house rent allowance, C.C.A. or leave encashment money received from the employers w/o actually availing the leave or any travelling allowance or bonus or overtime wages.

## Chapter VI

### Lay Off, Removal from Service and Settlement of Disputes & Closure

17. **Lay Off:** An employer may lay off his workers for the reasons of shortage of power, coal, raw material, accumulation of stocks, break down of machinery, natural calamity or for lack of orders. He shall pay to his workers lay off compensation at the rate of 50% of wages for the period of lay off and unless mutually agreed a worker shall be entitled to lay off compensation if he presents himself daily at the appointed time at the gate of the enterprise/establishment. If the lay off continues for more than 45 days, it shall be lawful for the employer to retrench the workers.

### 18. Separations/Removals from Service

- (1) An employer may dispense with the services of a worker who has been in his employment for five years or more by giving one months notice or wages in lieu of the same and by paying separation compensation calculated @ 20 days' wages for each completed year of service and a

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worker who has not completed five years of service shall be entitled to one-month notice or notice pay in lieu and separation compensation of 15 days wages for each completed year of service.

- (2) The employer may dismiss or remove the worker from service without giving any notice or paying any compensation on account of proven misconduct which may include absence from duty without notice or without sufficient reasons for more than ten days, for going on or abetting a strike which is illegal prima-facie or for grave violent behaviour at the workplace or for causing wilful damage or loss to the property of the employer or for misappropriation or theft.
- (3) A worker who is retrenched as per provisions of sub-section (1) or is dismissed by the employer or resigns from service by the employer shall be paid his wages and other dues if any and retrenchment compensation within 48 hours of such retrenchment removal/dismissal or resignation.
- (4) If a dispute arises between the worker and the employer on account of any condition of service excluding wages but including removal or dismissal from service the same shall be resolved as under: -
  - (a) The aggrieved worker will first approach his immediate superior who in consultation with the head of the establishment will try to resolve the grievance and give a suitable reply to the worker within 15 days.
  - (b) If the worker is not satisfied with the reply received from the immediate superior he shall make an application within 10 days to the head of the establishment for personal hearing and on receipt of such application the head of the establishment will give a personal hearing to the worker and also give his decision, after personal hearing within 10 days of making of application by the worker.
  - (c) In case the worker is not satisfied with the decision of the head of the establishment he may approach the conciliation officer of the

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appropriate Government within 45 days who shall hold conciliation proceedings in the matter to resolve the grievance of the worker and make efforts to resolve the same within three months.

- (d) If the conciliations fail the dispute shall be referred to a mutually agreed arbitrator and where there is no agreement regarding the appointment of an arbitrator, the appropriate Government shall appoint the arbitrator who shall give his award within a period of four months.
- (5) An aggrieved worker may be represented in any conciliation or arbitration proceedings by a trade union registered under the general law, provided such a union has at least 30% membership amongst the workers of the establishment where such aggrieved workman is or was employed.

#### 19. Closure

Where an employer intends to close down his establishment he shall serve one month's notice to the workers before the intended date of closure or pay wages in lieu thereof and he shall also have to pay compensation @ 15 days wages for every completed year of service to his workers.

#### 20. Collective Disputes

- (1) Any collective dispute between the workers and an employer or employers arising out of employment, non-employment, terms of employment or conditions of labour of the workers may be settled between the workers and the employer by negotiations between the employer and the trade union if there is a union in existence in the establishment failing which the employer or union may take the help of conciliation officer of the state government for resolution of their collective dispute.
- (2) If the collective dispute is not resolved bilaterally or in conciliation the same shall be required by the employer and the workers to be referred to a mutually agreed arbitrator.
- (3) The bilateral settlement will be valid for a period of four years or for a period mutually agreed upon by the parties.

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- (4) Where the dispute has been referred to an arbitrator the arbitrator shall give his award within six months from the date of reference. If there is no mutual agreement regarding appointment of the arbitrator the same shall be appointed by the Appropriate Government.
- (5) In any collective dispute in a small enterprise the workers may be represented in conciliation or arbitration proceedings by a union which has at least 40% membership amongst workers of the establishment to which such dispute pertains.

## Chapter VII

### Miscellaneous

#### 21. Registers/Records

- (1) Every employer shall maintain a register of workers, in form 'B', a register of leave in form 'C' and a register of muster roll cum wages in form 'D' which will also show the attendance put in by the workers during the wage period, the total wage earned and the deductions made from the wages of the workers.
- (2) The employer shall exhibit at a prominent place in his establishment in the language understood by the majority of his workers, the notice/notices containing information on registration number and date of registration of the establishment, the hours of work and the weekly off, the list of holidays, the wage period, the wages and allowances payable to workers and the date of payment and the name and address of the employer and the manager and name and address of inspector under the Act.
- (3) Every employer shall submit a return to the authority with whom the enterprise is registered within 30 days after the close of the calendar year. The return shall contain the following information:
  - (a) Name of the establishment and its complete address

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- (b) Name and address of the employer.
  - (c) Name and address of the manager (if employed)
  - (d) The nature of business, occupation, trade or industry
  - (e) The date of commencement of the business, occupation, industry or trade
  - (f) Average number of persons employed including the break up of male, female and young persons (above 14 years but below 18 years of age).
  - (g) The number of man-days actually worked during the calendar year
  - (h) The number of persons taken on rolls as new recruits during the year
  - (i) Number of persons whose services were dispensed with during the year
  - (j) The number of accidents that have taken place during the year (fatal and non fatal)
  - (k) The total wages paid to the workers during the year
  - (l) Information on the strike or lockout if it has taken place or was declared during the year under report and the period of strike or lockout, the nature of loss of production and loss of wages to the workers.
  - (m) Any other information as may be prescribed.
- (4) The employer shall issue an identity card to every worker employed by him containing such details as may be prescribed.

**22. Self Inspection/Inspection**

- (1) Every employer, within 30 days after the end of the calendar year shall certify confirming in form 'F' that all requirements of safety, health, welfare and payment of wages have been complied with by him and the certificate will be sent by the employer to the Dy. Chief Inspector with a copy to the Inspector of the area by registered post and where the employer fails to send the self certificate the Deputy Chief Inspector shall direct the Inspector concerned to carry out the inspection of the enterprise and the inspector shall after carrying out the inspection furnish a report of the violations committed by the employer to the Chief Inspector who shall issue a show cause notice to the employer to rectify the same specifying the period for carrying out rectification.
- (2) Any complaint about violation of this law received from the workers shall be taken note of by the Deputy Chief Inspector himself whereupon he shall direct an Inspector to look into the complaint and furnish a report to him and in case the Deputy Chief Inspector finds that the employer has violated any provisions of the law he shall call upon the employer by a written communication to rectify the same within the specified period.
- (3) In case the employer fails to rectify the same in spite of the show cause notice of the Deputy Chief Inspector as provided in sub section (1) or sub section (2) in writing the Deputy Chief Inspector will take up the matter with the trade or business organisation of which the employer is a member. In case it is still not rectified within 30 days, the Deputy Chief Inspector shall be free to take steps to prosecute the employer and where the employer is not a member of any trade or business organisation the Deputy Chief Inspector may take steps to prosecute the employer if the employer has not rectified the violations in spite of issue of show cause notice.
- (4) The State Government shall appoint the Chief Inspector, Joint Chief Inspector, Deputy Chief Inspectors and Inspectors of Small Enterprises area-wise or district-wise as deemed appropriate and may distribute the work jurisdiction amongst them.



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(5) The officials mentioned in sub sec (4) shall be deemed to be public servants within the meaning of sec 21 of IPC (Act XLV of 1860).

### 23. Non Application of Certain Laws

(1) Subject to the provisions contained in sub sec (4) of Sec 1 and Sec 8 of this Act where this Act applies to an establishment nothing in the following laws shall apply to that establishment.

- i) The Factories Act, 1948 (except those covered by Sec.8)
- ii) The Industrial Disputes Act, 1947
- iii) The Industrial Employment (SO) Act, 1946
- iv) The Minimum Wages Act, 1948
- v) The Payment of Wages Act, 1936
- vi) The Payment of Bonus Act, 1965
- vii) The EPF& Misc. Provisions Act 1952
- viii) The Employees State Insurance Act
- ix) The Maternity Benefit Act
- x) The Workmens' Compensation Act
- xi) The Equal Remuneration Act, 1976
- xii) The Contract Labour (R&A) Act, 1972
- xiii) The Interstate Migrant Workmen (RE&CS) Act 1979
- xiv) The Shop & Establishment Act
- xv) The Mines Act 1951 (except the mines where work is being carried on below ground)

(2) If the Shops & Establishment Act of a State confers better benefits than provided under this Act, the State may make amendments in this Act.

## 24. Penalties

- (1) Fines may be imposed by Chief Inspector or the Joint Chief Inspector as specified below:
- (a) Any person who violates any provisions of this Act as mentioned in Part I of the Form F shall be punishable with a fine which shall not be less than Rs. 1000/- but which may extend to Rs. 2,500/-.
  - (b) For any second or subsequent offence of the same nature and where an employer is held guilty of furnishing false information as contained in Part-I of Form 'F' a fine may be imposed which shall not be less than Rs. 2,000/- but which may extend to Rs. 5,000/-.
  - (c) Where a violation as mentioned in Part I of Form F has not been rectified by an employer in spite of the notice issued by the Deputy Chief Inspector or Inspector for rectification of any violation, a fine of Rs.100/- per day for each violation may be imposed for the period till the violation is rectified.
- (2) Before imposing fine the Chief Inspector or as the case may be the Joint Chief Inspector shall give an opportunity to the person or the employer concerned to show cause why the fine as proposed should not be imposed on him.
- (3) Without prejudice to any other provision contained in this Act, the Chief Inspector or the Joint Chief Inspector shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while exercising any powers under this section, in respect of the following matters, namely: -
- (a) summoning and enforcing the attendance of witnesses;
  - (b) requiring the discovery and production of any document;
  - (c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

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

## 25. Trial of Certain Offences

- (1) Whosoever wilfully obstructs the Chief Inspector, the Jt. Chief Inspector, the Dy. Chief Inspector or the Inspector in the exercise of any power under this Act or in carrying out the purposes of this Act including by prevention of any worker from appearing before the above mentioned authorities shall be punishable with a fine which shall not be less than Rs. 5000/- but which may extend to Rs. 10,000/- or with imprisonment for one month or both.
- (2) Whosoever furnishes false information as given in Part II of Form 'F' shall be punishable with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000/- or with imprisonment which may extend to one year or both.

## 26. Cognizance of offences and competence of courts

- (1) No court shall take cognizance of any offence under this Act unless it is filed by a Deputy Chief Inspector or an Inspector appointed under this Act.
- (2) No court lower than that of a Metropolitan Magistrate or a First Class Magistrate shall try any offence as prescribed under Section 25 of this Act.

27. The State Government may grant exemption to any establishment from any provision of this Act in any case of emergency occurring in an establishment or in case of hardship.

28. **Rules under Act**

State Government may make rules in respect of any provision of the Act for securing the implementation of this Act.

29. **Protection to Official Persons Acting Under This Act**

No suit, prosecution or other legal proceedings shall lie against any public servant or any other person in the service of a Government acting under the direction of any such public servant for anything done in good faith or intended to be done in pursuance of the provisions of this Act, rule or order made thereunder.

30. **Power to Remove Difficulties**

The Central Government shall have powers to remove difficulties if any that arise in the implementation upto a period of 3 years.

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FORM 'A'

**Format for Furnishing Information While Applying for Registration**

1. Name of the establishment, if any :
2. Postal address and situation of the establishment :
3. Whether the establishment falls under Public Sector or Private Sector :
4. Situation of office, store-room, godown, warehouse, or Workplace, if any, attached to shop but situated in premises different from those of the shop or the enterprise :
5. Name of the employer :
6. Residential address of the employer :
7. Name of the Manager, if any and his residential address :
8. category of the establishment, i.e. whether a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or any other :
9. Nature of business :
10. Date of commencement of business :
11. Names of members of employer's family employed in the establishment -

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

12. Names of other persons occupying position of management or workers engaged in confidential capacity. (Indicate sex and age in case of young persons)
13. Total number of workers (including part-time workers)

	Adults	Young persons	Total
Male	_____	_____	_____
Female	_____	_____	_____
Total	_____	_____	_____

14. The trade or business association of the area of which the employer is a member

Note: Any change if it occurs in the above mentioned particulars it shall be the duty of the employer of the establishment to inform the Dy. Chief Inspector by a registered post within 30 days of occurrence of such change.

Dated:

(Signature of employer)

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Form 'B'

## Register of Persons Employed

Name of the establishment & Address	
Location of Work	
Name & Address of Employer	
1. Name, Father/Husband's name & address of the worker (Permanent & Temporary)	
2. Designation/Category	
3. Date of Birth	
4. Age	
4-A If the employed person is below 18 years, whether a certificate of fitness is maintained	
5. Date of Joining	
6. Sex: Male or Female	
7. Nationality	
8. Date of termination of Employment with reason	
9. Specimen signatures/thumb impression	
10. Remarks	

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Form C

**Leave Register**

1. Name of the worker and his token number
2. Date of entry into the service
3. Calendar year of service for which leave is earned
4. The balance leave brought forward at the beginning of the calendar year as at 3 above
5. Number of days earned leave availed during the calendar year as at 3 above
6. Number of days work performed during the calendar year as at 3 above
7. Number of days leave earned during the calendar year as at 3 above
8. Total number of days leave to credit of the worker at the beginning of the current calendar year (4-5+6)
9. Number of days earned leave availed during the current year
10. Any other kind of leave availed during the current year (e.g. casual leave, maternity leave, etc.)

Form 'D'

**Master Roll-Cum-Wage Register**

Name of establishment & address: \_\_\_\_\_

Location of work: \_\_\_\_\_

Name and address of Employer: \_\_\_\_\_

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Sl. No.	Name & father's/husband's name/category of worker	Attendance 1:2:3: 30:31	PF No.	ESI No.	Wage rate/ scale of pay or piece rate/wages per unit	Other allowances e.g. D.A. (a) HRA (b) Night allowances (c)	O. T. Worked No. of hours in the month	Amount of OT Wages	Amount of advance & purpose of advance	Totally gross earnings	Deductions e.g. (a) PF (b) Advance (c) ESI (d) other amount	Net amount payable (13-12)	Signature/ receipt of wages/advance for column no. 14	Remarks
						(a) (b) (c)					(a) (b) (c) (d)			



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Form 'E'

**Report of the Accident by the Employer**

1. Name & Address of the occupier/employer
2. The Registration Number of the Occupier/employer
3. Name & Address of the premises of the establishment/enterprise
4. Nature of work/business/activity carried on in the enterprise/establishment
5. Name(s) of the injured person/persons & their token/insurance number, their sex, age and designation
6. Addresses of the Injured person(s)
7. Date and hour of the accident
8. The time at which he/they had started work on the day of accident
9. Cause of Accident including the nature of work being done by the injured person/ persons at the time of accident
10. In case the accident occurred while travelling in the transport
  - (b) whether the injured person(s) was/were travelling as passenger(s) to and from his/her/their residence to place of work
  - (c) whether the injured person(s) was/were travelling with the expressed or implied permission of the occupier/employer
  - (d) whether the transport vehicle was provided by the occupier/ employer or it was a public transport vehicle
11. Names and addresses of the witnesses
12. Nature and extent of injury
  - a) Whether fatal
  - b) location of injury i.e. the part of the body injured
  - c) in case of non fatal accident whether the worker(s) has/have returned to work
  - d) if not the approximate period the worker(s) is/are likely to take for returning to work
13. The clinic or dispensary or the hospital where the treatment of the injured worker(s) was arranged
14. Whether the expenses for the treatment were borne by the employer or not.

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FORM 'F'

As prescribed under Small Enterprises (Employment Relations) Act.

Form for Self-Certification by an Employer.

Name of Enterprise \_\_\_\_\_

Address of the Enterprise \_\_\_\_\_  
\_\_\_\_\_**PART I**

I certify that the status of compliance of Labour Laws in my enterprise mentioned above during the year \_\_\_\_\_ is as under:

1. (i) Number of persons employed as on 1.1. \_\_\_\_\_ was \_\_\_\_\_.
- (ii) Number of persons terminated/left employment during the year \_\_\_\_\_
- (iii) Number of persons who joined the employment during the year \_\_\_\_\_
2. That I have complied with the provisions of this Act pertaining to payment of wages and bonus. The wages were paid as per law and no deductions that are not authorised under the law have been made from the wages thereof of the workers.
3. That no child below the age of 14 years has been employed in the enterprise and women workers have not been discriminated against in any manner.
4. That I have provided health and welfare measures as prescribed under the Act.
5. That I have observed the provisions of the Act as pertaining to the hours of work, leave, and holidays.
6. That I have complied with the provisions of the Act pertaining to the Social Security.
7. That \_\_\_\_\_ workers were removed or retrenched during the year and I have cleared their dues including the prescribed compensation.
8. That I have maintained the registers/records prescribed under the Act, displayed the required notices and sent the Annual Return to the prescribed authority.

**PART II**

I Certify that:

- (i) No hazardous substances like acids, chemicals, gasses and explosives are used, handled or stored in my establishment; and
- (ii) I complied with all the provisions pertaining to safety as prescribed under the Act.

Signature of the Employer  
And his office seal

Dated:

APPENDIX - III

DRAFT LAW ON WAGES

Chapter I

Preliminary

Whereas it is expedient to consolidate all legal provisions relating to wages of workers, it is hereby enacted as follows: -

1. **Extent, application and commencement**

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

2. **Definitions**

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: Wages means basic wage and dearness allowance
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: means wages, all other allowances and the value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

3. **Prohibition of Discrimination Against Female Workers**

- (1) There shall be no discrimination between male and female workers in the matter of wages; and the principle of equal pay for equal work shall be applicable to all workers under the same employer, in respect of work of same or similar nature.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature or where female workers has been discriminated against in any manner the matter shall be decided by the appropriate government who may designate a person to decide the question.

**Chapter II**

**Minimum Wages**

4. **Payment of Minimum Wages**

No employer shall be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

5. **National floor level minimum wage**

There shall be a National Floor Level Minimum Wage which the Central Government shall determine and notify; the National Floor Level Minimum Wage shall be revised by the Central Government from time to time and in no case less frequently than once in two years if no dearness allowance is declared, linked to All India Consumer Price Index Number and if dearness allowance linked to AICPI is declared at least once in six months it shall be revised once in 5 years.

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The national floor level minimum wage will be applicable throughout the country to every worker in employment, irrespective of the nature of the activity, and shall be notified as daily rate, weekly rate and/or monthly wage.

6. **Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory shall also notify for all employments or activities a state minimum wage which shall not be less than the National Floor Level Minimum Wage and where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that no minimum wage is not less than the national floor level minimum wage.

7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

8. **Composition of Minimum Wage**

The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every six months on the basis of 100% neutralisation to a cost of living index as may be prescribed and cash value of any food items given on concession to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other cases once in two years.

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Note: In fixing the national floor level minimum wage, the Central Government shall keep in view the conclusions of the Indian Labour Conference in its 15<sup>th</sup> session as also the decision of the Supreme Court of India in the case of Raptakos Brett & Co.

9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages shall be so fixed that the output by a normal worker in a 8 hour working shift will enable the worker to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the work for all the 8 hours in a shift, the worker shall be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75% of the notified daily minimum wage.

### Chapter III

#### Payment of Wages

10. **Mode of Payment of Wages**

All wages to workers shall be paid in cash or credited, with the workers consent, to the workers bank account and where majority of workers in the establishment give their consent in writing, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind shall, in case of dispute, be determined by the appropriate Government or its designated authority and its decision shall be final.

11. **Fixation of Wage Period**

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

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**12. Time of Payment of Wages**

- (1) All wages shall be paid before the 7<sup>th</sup> day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it shall be paid at the end of the shift, in cases of weekly rated payments, it shall be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.
- (2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

**13. Payment of Wages without deductions**

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

**14. Deductions which may be made from wages**

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(Explanation II) – Any loss of wages resulting from the imposition, for good and sufficient cause, upon a worker of any of the following penalties, namely:-

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- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar):
  - b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
  - c. Suspension;  
shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.
- (2) Deductions from the wages of worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely: -
- (a) fines;
  - (b) deductions for absence from duty;
  - (c) deductions for damage to or loss of goods expressly entrusted to the worker for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
  - (d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
  - (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.



Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payments of wages;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)
- (j) deductions, made with the written authorisation of the worker for payment of any premium of his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;) or to a scheme of insurance maintained by the Indian Post Office;

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- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
  - (l) deduction for payment of insurance premia on Fidelity Guarantee Bonds
  - (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the worker of counterfeit or base coins or mutilated or forged currency notes;
  - (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the worker to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
  - (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
  - (p) deductions, made with the written authorisation of the worker, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the Official Gazette, specify;
- (3) Notwithstanding anything contained in this Act, the total amount of deductions which maybe made under sub-section (2) in any wage-period from the wages of any worker shall not exceed —
- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (i) of sub-section (2), seventy five percent of such wages, and

(r) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorised under sub-section (2) exceed seventy five per cent or, as the case may be, fifty percent of the wages, the excess may be recovered in such manner as may be prescribed.

- (4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

#### Chapter IV

##### Payment of Bonus

15. There shall be paid to every worker who has worked atleast for 90 days in calendar year and whose wages do not exceed Rs. 7500/- per month an annual bonus calculated at 8 1/3% of the wages earned by him/her during the previous accounting year, to be paid within eight months of the close of the accounting year or as may be determined by negotiationis between the employer and the negotiating agent. (Wages for the purpose of calculating bonus shall comprise basic wage, dearness allowance, retention allowance, if any, in case of seasonal industries and no other allowance) Demand for bonus in excess of this annual bonus, either on the basis of profits earned in the accounting year or on basis of production/productivity will be determined by collective bargaining between the parties, failing which by arbitration or adjudication as an industrial dispute, so however, the total bonus including the 8 1/3% annual bonus shall not exceed 20% of the wages.

Provided that where the wages of a worker exceed Rs. 3500/- per month his wages for the purpose of calculation and payment of bonus shall be reckoned as Rs. 3500/- per month.

**16. Payment of Bonus out of Allocable Surplus**

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per prescribed rules as may be
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus payable the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

**17. Disqualification for bonus**

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

- i Fraud; or
- ii Riotous or violent behaviour while on the premises of the establishment; or
- iii Theft, misappropriation or sabotage of any property of the establishment.

**18. Proportionate reduction in bonus in certain cases**

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher bonus that is payable to him shall be proportionately reduced taking into consideration the number of days worked in the establishment in a calendar year and number of days work put in by the worker.

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**19. Set on and set off of allocable surplus**

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 15, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth rules.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) rules.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

20. **Adjustment of customary or interim bonus against bonus payable under the Act**

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to a worker before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. **Deduction of certain amounts from bonus payable under the Act**

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

Provided that the worker shall be given an opportunity to be heard before making such deductions.

22. **Time limit for payment of bonus**

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

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- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

**23. Special provision with respect to payment of bonus linked with production or productivity**

Notwithstanding anything contained in this Act -

- (i) Where an agreement or a settlement has been entered into by the workers or the negotiating agent with their employer before the commencement of the Wages Act.
- (ii) Where the workers or the negotiating agent enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

**24. The Provisions of Payment of Bonus not to apply to certain classes of workers**

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishments & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chambers of commerce, or

charitable institutions not established for making profits, workers of universities, other educational institutions, or a construction work which is not carried for more than a year shall not be entitled to bonus under this Act.

## Chapter V

### Miscellaneous

#### 25. **Removal of difficulties**

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

#### 26. **Making of Rules**

The Central Government will have the power to make Rules.

#### 27. **Repeal and Savings**

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

#### 28. **Issue of Wages Slip**

Every worker shall be issued a wages slip indicating the name of the establishment, name of the worker, designation, details of wages and allowances to be paid and such other details as may be prescribed, when such payment has been made showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payment.

#### 29. **Claims under the Act**

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages or remuneration of a worker which are not according to this Act, payment of less wages than the



minimum, wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.

- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (1) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

### 30. Records, Returns and Notices

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
  - (i) Register of persons employed
  - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.

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- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

### 31. Appointment of Inspectors

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or for different areas to carry out the objectives and purposes of this Act.

### 32. Cognisance of offences

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

### 33. Penalties

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.
- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable or making deductions from wages not authorised under this Act, then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1,000/-.

34. **Exemptions**

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

35. **Burden of Proof**

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

36. **Contracting Out**

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

APPENDIX - IV

**THE HOURS OF WORK, LEAVE AND OTHER  
WORKING CONDITIONS  
AT THE WORKPLACE ACT, 2002**

An Act to provide for regulation of hours of work, leave and other working conditions in all establishments

Whereas it is expedient to consolidate the provisions pertaining to hours of work, leave and other working conditions in all enterprises and for certain other purposes as in hereafter specified, it is hereby enacted as follows:

**CHAPTER I**

**PRELIMINARY**

1. **Short title, extent, commencement and application**

- (1) The Act may be called the Hours of Work, Leave, and Other Working Conditions at the Workplace Act, 2002.
- (2) It extends to whole of India.
- (3) It shall come into force on ... or from the date notified by the Central Government in this behalf
- (4) It shall apply to all establishments of factories, mining, plantation, construction, service, motorised transport or air transport or inland water transport or establishments of shipping companies, ports & docks or other establishments including cinema theatres workers, cinema and clubs, hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, charitable, research, training, educational institutions, consultancy and solicitors or lawyers organisations wherein 20 or more workers are employed.

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Provided that Chapters III and IV of this Act shall not apply to workers governed by FRs & SRs, Central or State Civil Service Rules, CSR or any other Rules as may be specified in this behalf by the appropriate Government.

## 2. Definitions

- (1) In this Act unless there is anything repugnant in the subject or context the:
- (a) 'appropriate Government' means the Central Government in respect of the establishment for which it is the appropriate Government under the Labour Management Relations Act and in respect of any other establishment the Government of the State in which that other establishment is situated.
  - (b) 'adolescent' means a person who has completed 14<sup>th</sup> year of his age but not completed the 18<sup>th</sup> year.
  - (c) 'child' means a person who has not completed 14<sup>th</sup> year of his age.
  - (d) 'contract labour' means a worker employed in or in connection with the work of an establishment when he or she is hired in or in connection with such work by or through a contractor with or without the knowledge of principle employer.
  - (e) 'contractor' means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.
  - (f) 'construction' means the construction, alteration, repair, maintenance or demolition of or in relation to buildings, roads, streets, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage work), generation, transmission, and distribution of power, water works (including channels for distribution of water), oil and gas installations,

electric lines, wireless, radio, television, telephone, telegraphs, and overseas communication, dams, canals, reservoirs, water course, tunnels, bridges, wire ducts, aqua ducts, pipelines, towers, cooling towers, transmission towers, and such other works as may be specified in this behalf by the appropriate Government by notification.

- (g) 'day' means a period of 24 hours beginning at midnight.
- (h) 'employer' means an owner thereof or a person who has ultimate control over the affairs of the establishment.
- (i) 'factory' means a place where manufacturing process is carried on.
- (j) 'manufacturing process' means the process for making altering, making, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal and includes pumping of oil, water, sewage or any other substance or generating transforming or transmitting power or composing, type printing, letter printing, lithography or other similar processes or book binding or constructing, repairing, refitting, finishing or breaking up of ships or vessels or preserving or storage of articles in cold storage.
- (k) 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes-
  - (i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oilfields;
  - (ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;
  - (iii) all levels and inclined planes in the course of being driven;

- (iv) all open cast workings;
  - (v) all conveyors or aerial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom;
  - (vi) all adits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;
  - (vii) all protective works being carried out in or adjacent to a mine;
  - (viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purpose connected with that mine or a number of mines under the same management;
  - (ix) all power stations, transformer sub-stations, convertor stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management;
  - (x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any operation in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;
  - (xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on;
- (l) 'plantation' means any land used or intended to be used for growing tea, coffee, rubber or cardamom which admeasures 5 hectares or more and in which 20 or more persons are employed or were employed on any day of preceding 12 months

Explanation: The appropriate Government may declare growing of any other plant on land which admeasures not less than 5 hectares and in which 20 or more workers are employed as plantation by notification in official gazette after obtaining the approval of the Central Government.

- (m) 'principal employer' includes -
- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf;
  - (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, (63 of 1948), the person so named.
- (n) 'worker' means a person who is employed for wages or reward in connection with the work of the establishment and includes a contract labour engaged through a contractor in accordance with the provisions made in chapter VII but does not include a person employed in supervisory, managerial or administrative capacity.

All other terms used in this Act but not interpreted or defined shall have the same meaning as assigned to them under the Labour Management Relations Act or Wages Act.

## CHAPTER II

### REGISTRATION

#### 3. Application of this Chapter

- (1) The provisions of this chapter shall apply to all establishments except the establishment of factories, mine, plantation, construction or any other establishment covered under the Occupational, Safety and Health Law.



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- (2) In respect of the establishments exempted from the provisions of this chapter under sub section (1), the registration issued by a governmental authority under the Occupational, Safety and Health Law shall hold valid under this Law also.

#### 4. Registration of establishments

- (1) Within three months from the date of setting up on an enterprise the employer of the establishment shall send an application in the prescribed form for registration of his or her establishment to the authority as mentioned below.
- i Where the central Government is the appropriate Government – to the Regional Labour Commissioner (Central) of the region.
  - ii In all other cases the Labour Commissioner of the State or as the case may be the Union Territory.
- (2) The application shall be accompanied by prescribed fee and shall be sent or delivered to the concerned authority either personally or by registered post.
- (3) The authority concerned on being satisfied about the correctness of the information shall register the establishment and issue a certificate of registration within one month. The registration certificate so issued by the authority shall be valid for a period of five years.
- (4) Any change in particulars furnished by the employer for the purposes of registration, if occurs after the registration of the establishment the same shall be intimated by the employer to the concerned authority within 30 days of occurrence of such change and the authority shall, after being satisfied of the correctness of the information furnished by the employers in this regard record the change and inform the employer of the same within three weeks.

## 5. Renewal of Registration

- (1) The application for renewal in the prescribed format shall be made at least one month before the date of expiry of the registration and where the employer fails to make an application within one month of the date of expiry of the registration he or she shall be required to pay additional fee as may be prescribed by the appropriate Government. The renewal shall also be valid for a period of five years.

## CHAPTER III

### HOURS OF WORK

#### 6. Daily & Weekly Hours of work

- (1) The hours of work of any adult worker employed in any establishment shall not exceed 9 hours in a day and 48 hours in a week except in case of adult workers employed in a mine below ground.
- (2) The hours of work in case of adult workers working in a mine below ground shall be 8 hours a day and 48 hours in a week.

Provided that the hours of work mentioned in sub sections (1) and (2) may be exceeded to facilitate the change of shifts.

#### 7. Intervals of rest

- (1) The work periods of an adult worker shall be so fixed that no work period shall exceed 5 hours and the worker shall not work for more than 5 hours unless he or she has had an interval of rest of not less than half an hour.
- (2) The appropriate Government may by written order or by making rules exempt any establishment or a class of establishments from the provisions of sub section (1) so however that the total number of hours worked by a worker without an interval of rest does not exceed 6.

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- (3) The hours of work in respect of the workers working in mines below ground as prescribed in sub section (2) of section 6 shall be inclusive of interval of rest.

8. **Spread over**

- (1) The period of work of an adult worker in an establishment except in case of below ground working in a mine shall be so arranged that the spread over including the interval for rest shall not exceed ten and half hours on any day.

Provided that the Chief Inspector may for reasons to be specified in writing increase the spread over to 12 hours.

9. **Weekly holidays**

- (1) No adult worker shall be required or allowed to work in an establishment on the first day of the week i.e. Sunday.

Provided that the appropriate Government may prescribe that there shall be different days of weekly rest for different areas or for different establishments.

- (2) Where it is not possible for an employer to give a weekly holiday to a worker as laid down under sub section (1) or prescribed by the appropriate Government, the employer shall give a holiday to the concerned worker on one of the three days immediately before or after the said day.

- (3) Where the employer substitutes a weekly holiday in respect of a worker as provided in the sub section (2) he shall forthwith issue a notice to the concerned worker and also display a copy of the same on the notice board at a prominent place in the establishment.

Provided that no substitution shall be made in such a manner that any worker is required to work for more than ten days consecutively without a holiday for the whole day.

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- (4) A notice issued to the worker under sub section (3) may be cancelled by another notice not later than a day before the said day or the holiday to be cancelled whichever is earlier, and a copy of the notice is also displayed in the establishment.
- (5) The appropriate Government may by making rules provide for granting exemption to an establishment from operation of sub section (3) and where due to such an exemption granted by the appropriate Government a worker loses a weekly holiday he shall be allowed a compensatory holiday in lieu of the weekly holiday so lost within the month in which the holiday was due to him or within two months immediately following that month.

#### 10. Shift Working

- (1) The shift working shall be so arranged that as far as possible there is one relay of workers engaged in the work of same kind at the same time.
- (2) In case a shift of a worker working extends beyond midnight then a weekly holiday for a whole day in respect of that worker shall mean 24 consecutive hours beginning when his shift ends and the hours of work he has worked after midnight shall be counted in the previous day.

#### 11. Overtime work and extra wages for overtime

- (1) A worker may be required to work overtime in case of exigency such as urgent repairs or break down of machinery or non reporting of a worker required to work at the beginning of a new shift without prior intimation of his absence.
- (2) Where a worker other than a person holding a supervisory, managerial and administrative position who is required to work extra hours above 9 hours a day or 48 hours a week including due to relaxation given under this Act or work on weekly holiday or a holiday so declared by an establishment, he shall be paid in respect of the extra hours or in respect of the work done on a holiday, extra wage at double the rate of ordinary wages.

- (3) In case of a worker paid wages on piece rate basis the time rate shall be deemed to be equivalent to daily average of his full time earnings for the days on which he actually worked on the same job or on a job identical to his job during the month preceding the month in which the overtime is done by him and such time rate shall be deemed to be the ordinary rate of wage for him.

## 12. **Notice of periods of work for adults**

- (1) Every employer shall display in every establishment a notice of periods of work for adults clearly stating the periods during which the adult workers will be required to work.
- (2) Any change required to be made in the periods of work shall be intimated to the workers at least twenty-four hours in advance and also displayed on the notice board.

## 13. **Conditions for Employment of Female Workers**

- (1) No female employee shall be required to work in any establishment between 7 p.m. and 6 a.m. except as following
  - (a) There are at least five female workers working at the premises of the establishment.
  - (b) The work is not carried on beyond 10.30 p.m. except where permission to employ female workers is granted to the employer.
  - (c) The employer arranges for the safety of female workers at the workplace and their transportation from the place of work to their residences.
- (2) No female worker shall be employed in a mine in below ground working.
- (3) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotion vis-à-vis the male workers.

## 14. Power to make Rules

- (1) Every employer shall prepare a list of persons who hold the position of supervision or management or are employed in confidential capacity in an establishment and who shall be exempt from the provisions of daily hours and weekly hours of work, intervals of rest and compensatory holidays. The list so prepared by the employer shall be subject to the approval of the state Government.
- (2) The workers as are required to work beyond the daily and weekly hours of work prescribed under this Act shall be paid overtime irrespective of the fact that they are working in confidential capacity or they are required to work due to exempting rules prepared by the appropriate Government.
- (3) The appropriate Government may make rules for the workers in all establishments for exempting them from the provisions of Sec. 6,7,8,9,10,12 and 13 of the Act including the conditions of exemptions as under:
  - (a) The workers engaged in urgent repairs in a factory or mine,
  - (b) Workers engaged in the work which is in the nature of preparatory or complementary and which must be carried on outside the limits laid down for weekly and daily hours of work, rest intervals and spread over
  - (c) Workers engaged in any work which for technical reasons or reasons of public convenience must be carried out continuously
  - (d) Workers engaged in making or supplying articles of prime necessity for the community which must be supplied every day.
  - (e) The workers engaged in the manufacturing process which can be carried on during a fixed season.
  - (f) Workers engaged in public transport for carrying of passengers by

road, by air or by inland water transport system.

- (g) Workers engaged in medical and hospital services for treating the sick persons.
- (h) Workers working in hotels, restaurants and eating-houses.
- (i) Workers engaged in securing sanitation and hygiene
- (j) Workers engaged in manufacturing process which cannot be carried on except at times dependent on irregular action of natural forces
- (k) The workers working in or tending the engine rolls, boiler house, power plant, pressure plant and transmission machinery
- (l) Workers engaged in printing of newspapers
- (m) Workers engaged in loading/unloading of railway wagons, lorry or trucks
- (n) Workers engaged in any work notified by the central or state government to be of national importance
- (o) In a mining activity:
  - (i) 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;
  - (ii) of all or any of the persons so employed, in case of an accident actual or apprehended;
  - (iii) 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; and
  - (iv) In any construction:

- (i) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
  - (ii) persons engaged in any work which for technical reasons has to be completed before the day is over;
- (3) In prescribing rules under this section the following limits shall be adhered to
- (a) The total number of hours of work on any day shall not exceed 11
  - (b) The spread over inclusive of interval shall not exceed 12 hours on any day
  - (c) The total number of hours of work in a week shall not exceed 64.
  - (d) The total number of hours of overtime work shall not exceed 90 in a quarter

Explanation: Quarter means a period of three consecutive month beginning first of January, April, July and October.

- (e) The appropriate Government may grant exemption to an establishment if it satisfied that going by the nature of work carried on in the establishment or to meet the targets of production or the orders received by the employer of the establishment for delivery of goods or services produced by him on time subject to the limits prescribed in the sub section (4) above, the exemption is justified.

#### 15. **Prohibition and Regulation of Employment of Children & Adolescents**

- (1) No child shall be required or allowed to work in any establishment.
- (2) No adolescent shall be required or allowed to work in any establishment of a mine.
- (3) Where an adolescent is intended to be employed in any establishment except in a mine the employer shall get the adolescent medically examined and such adolescent shall be employed in the establishment if he or she is declared medically fit for the work in that establishment.



## CHAPTER IV

## EARNED LEAVE WITH WAGES, HOLIDAYS AND CASUAL LEAVE

## 16. Entitlement of Earned Leave

(1) Every worker employed in an establishment who has worked for 240 days or more in a calendar year in the establishment shall be allowed during the subsequent calendar year earned leave with wages to be calculated as following

- (a) One days earned leave for every 20 days work put in, in case of all establishments including an establishment of mine above ground
- (b) One days earned leave for every 15 days work put in, in case of a mine where the work is being carried on below ground

Provided that where a worker joins the establishment after 1<sup>st</sup> January he shall be required to work for at least 2/3 number of days calculated from his date of joining the establishment upto the end of the calendar year to be entitled to earned leave.

- (c) For the purpose of calculation of 240 days or 2/3 of the total attendance the number of days on which worker was laid off by agreement or contract or law, in case of female employee the maternity leave not exceeding 12 weeks and the leave earned and availed by the worker during the year on the basis of the work put in by him during the preceding year shall be counted.
- (2) The leave earned by a worker under sub sec (1) shall be allowed in addition to the weekly and other paid holidays.
- (3) Where a worker is discharged or removed form service or dismissed or he quits his employment or is superannuated or dies while in service, he or his nominee shall be entitled to wages in lieu of the quantum of leave to his credit and the leave which he shall be entitled to be calculated as above till the date of his separation on account of any of the above mentioned grounds and such wages shall be paid within 48 hours of such separation.

- (4) The worker shall be permitted to accumulate the leave upto 60 days.
- (5) Every employer shall decide the procedure for making application for the leave and for sanction thereof in consultation with recognised negotiating agent or college and the procedure so decided shall be displayed on the notice board for the information of the workers.

#### 17. Entitlement for better leave

- (1) Where a worker is entitled to better benefits of leave in accordance with any agreement or settlement with the recognised negotiating agent or college or as per the rules framed by the employer he shall be governed by such better provisions of leave.

#### 18. Wages for the Leave Period

- (1) For the leave allowed to a worker under sec 16 or 17 as the case may be, he shall be entitled to wages at the rate equal to his daily average of total remuneration or earnings for the days on which he actually worked during the preceding month excluding the overtime and bonus but including the house rent allowance, dearness allowance, the city compensatory allowance or any other allowance.
- (2) The worker shall be allowed wages to be paid in advance before proceeding on leave if he has made an application in this regard at least five days in advance.

19. Every worker shall be allowed 12 days casual and sick leave in a year. A person joining the services in a establishment after 01<sup>st</sup> January shall be allowed casual leave pro-rata.

20. Every establishment shall observe 8 holidays in a year out of which 3 national holidays i.e. Independence Day, Republic Day and Gandhi Jayanti shall be observed by every establishment and balance of holidays will be decided in consultation with the negotiating agent.

**CHAPTER V**

**OTHER WORKING CONDITIONS & WELFARE**

**21. Cleanliness**

- (1) Every establishment shall be maintained clean by removal of dirt, dust and refuse by sweeping or other effective methods including the staircases and passages. The sweeping and dusting shall be done on daily basis.
- (2) The employer shall ensure effective disposal of diffuse, effluvia arising from any drain or in case of a factory the disposal of fumes or gases.
- (3) The employer shall make arrangement for treatment of wastes and affluent arising from the manufacturing processes if it is carried on in his establishment.

**22. Ventilation, Temperature and Lighting**

- (1) The employer shall take effective steps for adequate ventilation by circulation of fresh air and maintenance of temperature at reasonable levels.
- (2) It shall be the duty of the employer to see that there is no overcrowding in workrooms and workplaces in his establishment.
- (3) The employer shall ensure that there is proper lighting, natural or artificial, as per the requirement of work carried on in the establishment.

**23. Drinking Water**

- (1) There shall be effective arrangement to provide and maintain suitable points for wholesome drinking water at convenient places for all workers employed in the establishment. All these points will be marked drinking

water in the language understood by the majority of workers employed in the establishment.

- (2) Provision shall be made for cool drinking water during summer.
- (3) The drinking water points shall be away from latrines, urinals and located at places away from the places where there can be possibility of contamination.

#### 24. **Latrines & Urinals**

- (1) There shall be sufficient latrines & urinals of prescribed type conveniently located for use by the workers during working hours.
- (2) Separate enclosed accommodation for latrines & urinals shall be provided for male and female workers.

#### 25. **Washing Facilities**

- (1) In every establishment of a factory, plantation, construction or mine adequate and suitable facility for washing shall be provided and maintained.
- (2) For female workers such facilities for washing to be provided in adequately screened accommodation.
- (3) The washing facilities shall be provided at conveniently accessible places and shall be maintained clean.

#### 26. **Facilities for Storing of Clothes**

- (1) In every establishment of a factory, mine or construction suitable arrangement shall be provided for keeping clothes not worn during the working hours.

#### 27. **Facilities for sitting**

- (1) In every establishment including a factory, mine, plantation or construction suitable arrangement shall be provided for all workers for sitting wherever workers are obliged to work in a standing position in

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order to enable them to make use of the same during opportunities for rest due to rest intervals or otherwise.

## 28. Canteens, lunch rooms and rest rooms

- (1) In every establishment employing 200 or more workers the employer shall arrange to provide a canteen or canteens with arrangement to supply items of food and beverages on no profit no loss basis.
- (2) The appropriate Government shall make rules laying down the time limit by which the canteen shall be required to be provided, prescribe the standards for construction of canteen accommodation, furniture and the other equipment of canteen, the food stuffs to be served and the charges which may be levied for such food stuff, constitution of managing committee for managing the canteen consisting of representatives of workers and the management and the items of expenditure which will not be taken into consideration while fixing the cost of foodstuff.
- (3) The Employer of every establishment to which this Act applies shall provide lunch rooms and rest rooms for the workers where the workers can take their meals brought by them and take rest during the rest intervals or the lunch period.

## 29. Crèches

- (1) In every establishment the employer shall provide and maintain a suitable room or rooms for the use of children under the age of 6 years of workers.
- (2) Such rooms as are required under sub section (1) shall have adequate accommodation and lighted and ventilated and shall be maintained in a clean and hygienic condition. Rooms shall be under the charge of women trained in the care of children and infants.
- (3) The establishments (including those employing no female workers) may provide crèches in collaboration with other employers/establishments in the same area on cost sharing basis.

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**30. Welfare Officers**

- (1) In every establishment or factory, mine, plantation, construction, hospital or service organisation wherein 300 or more workers are ordinarily required to be employed, the employer shall appoint one or more welfare officers.
- (2) The appropriate Government shall prescribe the duties, qualifications, conditions of service and the number of officers required to be appointed.

**31. Welfare Committees**

- (1) In every establishment employing 300 or more workers a welfare committee shall be constituted by the employer in consultation with the negotiating agent identified by the employer under the Labour Management Relations Law to advise the employer on the management of welfare measures.

**32. Seeking Help of Local Bodies in Creation of Common Facilities**

The appropriate Government shall make efforts to provide common facilities of canteen, crèches, toilets, and dispensary in industrial and business clusters by seeking cooperation of local bodies.

**CHAPTER VI****ADDITIONAL WELFARE MEASURES FOR PLANTATION WORKERS****33. Housing**

The workers employed in plantation establishments shall be provided family accommodation or dormitory accommodation of the prescribed type having facilities as may be prescribed.

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**34. Educational Facilities**

Every employer in plantation establishments either by himself or jointly with other employers of plantation establishments shall provide educational facilities for the children of workers of plantation establishments as may be prescribed.

**35. Medical Facilities**

(1) In every plantation the employer shall provide and maintained so as to be readily available such medical facilities for the workers and their families as may be prescribed by the appropriate Government.

(2) If medical facilities are not provided and maintained by any employer as required in sub sec (1) the Chief Inspector may cause to be provided and maintained such facilities and recover the cost thereof from the defaulting employer by sending a recovery certificate to the collector who shall recover the same from the employer as arrears of land revenue.

Provided that if the Central Government enacts a composite law on social security to provide for health care and such a provision is extended to the plantation workers and their families this section will cease to apply to establishments of Plantations.

**CHAPTER VII****CONDITIONS OF EMPLOYMENT OF CONTRACT LABOUR****36. Application of this Chapter**

(1) The provisions of this chapter shall apply to every establishment employing 20 or more contract labour and to every contractor who employs 20 or more contract labour in relation to the work of an establishment.

(2) It shall not apply to establishments in which the work only of an intermittent or casual nature is performed. Where the question arises whether the work performed in an establishment is of intermittent or casual nature the question shall be decided by the Labour Court or the Labour Relations Commission appointed by the appropriate Government under Labour Management Relations Law.

Explanation : For the purpose of this sub section work performed in an establishment shall not be deemed to be of intermittent nature –

- (i) if it was performed for more than 120 days in the preceding 12 months or
  - (ii) if it is of seasonal character was performed for more than 60 days in a year.
- (4) For the purposes of this chapter establishment means-
- (i) any office or department of the Government or local authority or
  - (ii) any place where any industry, trade, manufacturer, business or occupation is carried on.

### 37. **Registration of Establishment for Engaging Contract Labour**

- (1) Every principal employer of an establishment to which this Act applies shall before engaging contract labour in his establishment make an application to the registering officer appointed by the appropriate Government for registration of his establishment. The application shall be accompanied by the information as may be prescribed and the prescribed fee.
- (2) If the application for registration is complete in all respects the registering officer shall register the establishment and issue to the principal employer a certificate of registration containing such particulars as may be prescribed within 10 days of furnishing the complete information by the principal employer.
- (3) Any change occurring in the information rendered by the principal employer for seeking registration shall be communicated by him to the registering officer and the registering officer if he is satisfied that the material change has taken place as may be prescribed shall affect the change in the particulars of registration of the establishment. Wherever such change is on account of increase in the number of contract labour to be employed such request for change shall be accompanied by the required fee.



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- (4) If the registering officer is satisfied that registration of an establishment has been obtained by misrepresentation or suppression of material fact or that the registration has become ineffective and requires to be revoked the registering officer shall after giving an opportunity to the principal employer to be heard revoke the registration after seeking prior approval of the appropriate Government.

### 38. Effect of Non-Registration

- (1) No principal employer of an establishment to which this Act applies, shall
- (i) if the establishment was required to be registered but which has not been registered within the prescribed period or
  - (ii) if the registration of the establishment has been revoked, employ contract labour in the establishment.

### 39. Licensing of Contractors

- (1) Every contractor to whom this Act applies shall before engaging contract labour in relation to an establishment of principal employer obtain a license from a licensing officer appointed by the appropriate Government by making an application in the form as may be prescribed with a prescribed fee and security.
- (2) Any change occurring after obtaining the license shall be intimated to the licensing officer by the contractor and where the change involves increase in number of contract labour to be employed in the establishment such intimation shall be accompanied by additional fee and security deposit as may be prescribed and the licensing officer shall accordingly issue an amended license.
- (3) The license shall be issued subject to such conditions as may be prescribed.
- (4) The license of the contractor may be cancelled or revoked or security may be forfeited by a licensing officer if he is satisfied that the license was

obtained by misrepresentation or suppression of material fact or that the conditions of license have not been fulfilled or the contractor has violated the provisions this Act or the rules made thereunder.

#### 40. **Prohibition of Employment on Contract Labour**

- (1) Notwithstanding anything contained in this Act no contract labour shall be employed in any core function or activity of an establishment.
- (2) In non-core function or activity of perennial nature as given in Schedule I an employer may employ contract labour.

Provided that where a question arises whether an activity is core or non-core activity the same shall be decided by the Labour Court or Labour Relations Commission.

- (3) Where engagement of contract labour in non-core activity of perennial nature results in retrenchment or displacement of regular employees on the pay rolls of the principal employer, the principal employer shall engage contract labour in such activity after consulting the negotiating agent.
- (4) Nothing in this section shall prevent an employer from engaging workers on temporary basis including in core activity to meet the sporadic seasonal demand or supply/despatch products against sudden or sporadic orders.

#### 41. **Welfare Measures and Payment of Wages of the Contract Labour**

- (1) The contractor shall be responsible for provision of welfare measures in respect of a contract labour as prescribed under Chapter V of this Act and if the contractor fails to provide the same within 15 days of engaging the contract labour the principal employer shall be responsible for providing the same.
- (2) The contract labour shall be subject to the same hours of work and leave as prescribed under this Act.

- (3) The contractor shall be responsible for payment of wages to the contract labour as per Wages Act and all wages shall be paid by the contractor in the presence of a representative of the principal employer and where the contractor fails to pay the wages within the period prescribed under the Wages Act or pays wages at lesser rate than that are prescribed under that Act the principal employer shall be held responsible to pay the wages to the contract labour as per provisions of the Wages Act.
- (4) The principal employer shall be responsible for complying with the provisions of Social Security Laws in respect of the contract labour employed in his establishment and he may do so either directly or through the contractor but the principal employer shall be held responsible for non deposit of any contribution to the social security fund in respect of the contract labour.

#### 42. **Wages to be paid to contract labour in certain cases**

- (1) Where a contract labour is performing same or similar work as performed by a regular worker of the Principal Employer such Contract Labour shall be paid same wages as are paid to the regular worker and where there is no such comparable regular worker in the establishment of the principal employer, the contract labour shall be paid wages at the lowest rate of the comparable unskilled, semi skilled or skilled regular worker.

### **Chapter VIII**

#### **Miscellaneous**

#### 43. **Employer's obligation in respect of interstate migrant workers in certain circumstances**

- (1) It shall be the duty of every employer to see that the workers belonging to a State other than the State in which his establishment is situated are not discriminated against in any manner such as in hours of work, leave, welfare measures and payment of wages.
- (2) Where a workmen belonging to a State other than the State in which the establishment is located is employed in the establishment in any unskilled

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or semi skilled category work the employer shall inform the State of origin of such worker and also the State in which the establishment is situated about the employment of such worker by registered post.

**44. Bar against double employment**

No worker shall work in an establishment on the day on which he has already worked in another establishment.

**45. Removal of difficulties**

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

**46. Making of Rules**

The Central Government as well as the State Government will have the power to make Rules.

**47. Registers/Records, Returns, Notices, Identity cards**

(1) Every employer of an establishment and every contractor to whom this Act applies shall in addition to maintaining the registers as are prescribed under the Wages Act shall maintain the following registers:

- a. Register of relays of shifts
- b. Leave Record Register

(2) Every employer who engages contract labour through contractors shall maintain a register of contractors.

(3) Every contractor shall send an annual return to the inspector with a copy to the licensing officer in the prescribed form provided that where the work allotted to the contractor by the principal employer comes to an end without completing full calendar year the return in question shall be sent by the contractor to the inspector of the area with a copy to the licensing officer within 15 days of completion of the work.

**48. Repeals and Savings**

- (1) The Shops and establishments Acts of different States, Chapter VI and VII of the Mines Act, 1952, Chapter III, Chapter V, Chapter VI, Chapter VII & Chapter VIII of the Factories Act, 1948, Chapter III, Chapter IV & Chapter VI of the Building & Other Construction Workers (RE&CS) Act, 1996, Contract Labour (R&A) Act, 1970, the Interstate Migrant Workmen (RE&CS) Act, 1979, the Motor Transport Workers Act, 1961, Cine Workers and Cinema Theatres Workers (Regulation of employment) Act, 1981, Bidī and Cigar Welfare (Conditions of Employment) Act, 1966 and Chapters I to VI A of the Plantation Labour Act, 1951 shall stand repealed on enactment of this Act.

**49. Appointment of Inspectors**

- (1) The inspectors appointed under the Wages Act by the appropriate Government shall be the inspectors under this Act.

**50. Cognisance of Offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by an inspector or a worker or a Trade Union operating in the establishment or a recognised welfare institution.
- (2) Fines may be imposed for violation for any provision of the Act by the Chief Inspector or an Joint Chief Inspector as provided in Section 43.

**51. Penalties**

For every violation of the Act fine may be imposed which shall not be less than Rs. 5,000/- but which may extend to Rs. 10,000/-. For every subsequent offence or violation of the same nature a fined of Rs. 10,000/- may be imposed. Where the violation continues an additional fine of Rs. 200/- per day may be imposed for the period till such violations continues.

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**SCHEDULE -I**

- a) Canteen
- b) Watch and Ward
- c) Cleaning

Note : More non-core perennial functions, as determined by the appropriate Government may be added

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**ERRATA TO APPENDIX – III DRAFT LAW ON WAGES**  
Page No. 476 to 490 is repetition of page No. 432 to 448. This is a  
Printer's devil and may kindly be ignored.

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**DRAFT LAW ON WAGES****Chapter I****Preliminary**

Whereas it is expedient to consolidate all legal provisions relating to wages to workers, it is hereby enacted as follows: -

**1. Extent, application and commencement**

- (i) This may be called the Wages Act.
- (ii) It extends to the whole of India
- (iii) It applies to all establishments wherever there are 20 or more workers irrespective of the nature of activity that is carried on in the establishment.

**2. Definitions**

In this Act, unless the context indicates otherwise:

- a. Appropriate government: (Same as in laws on Labour Management Relations Act.)
- b. Bonus
- c. Employer: (Same as in Law on Labour Management Relations Act)
- d. Worker: (Same as in Law on Labour Management Relations Act)
- e. Wage: (As defined at present under P.W. Act)
- f. National Floor Level Minimum Wage
- g. Central or State Minimum Wage
- h. Remuneration: (Means wages and value in terms of money of the facilities or benefits given by the employer at concessional rates or free of cost.

**3. Prohibition of Discrimination Against Female Workers**

- (1) There shall be no discrimination between males and female workers in the matter of wages; and the principle of equal pay for equal work will be applicable to all workers under the same employer, in respect of work of same or similar nature.
- (2) Female workers shall not be discriminated against in matters of recruitment, training, transfers and promotions vis-à-vis the male workers.
- (3) Where there is any dispute as to whether work is of same or similar nature, the matter will be decided by the appropriate government who may designate a person to decide the question.

**Chapter II****Minimum Wages****4. Payment of Minimum Wages**

No employer will be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

**5. National floor level minimum wage**

There shall be a National minimum wage which the Central Government will determine and notify; the national minimum wage will be revised by the Central Government from time to time and in no case less frequently than once in two years. In fixing the national minimum wage, the Central Government will keep in view the conclusions of the Indian Labour Conference in its 15<sup>th</sup> session as also the decision of the Supreme Court of India in the case of Raptakos Brett & Co.

The national minimum wage will be applicable throughout the country to every worker in employment, irrespective of the nature of the activity, and shall be notified as daily rate, weekly rate and/or monthly wage.

**6. Determination of Minimum Wage by Appropriate Government**

As in section 5 above, each State/Union Territory will also notify for all employments or activities a state minimum wage which shall not be less than



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the national minimum wage; where considered appropriate, State/Union Territory may notify separate minimum wages for different regions of the State, so however that so that minimum wage is not less than the national minimum wage.

#### 7. **Central and State Minimum Wages Advisory Boards**

The Central Government and State Government shall constitute Minimum Wages Advisory Boards for advising the Central Government or as the case may be the State Government in fixation or revision of minimum wages and other connected matters. The Boards may constitute committees to look into any matter pertaining to minimum wages. The wages may be determined on the advice of the board/committee or by notification method.

#### 8. **Composition of Minimum Wage**

The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every quarter on the basis of 100% neutralisation to a cost of living index as may be prescribed and cash value of any food concession given to the worker. Where the appropriate Government is declaring dearness allowance as mentioned herein above the minimum wages of workers shall be revised at least once in five years and in other case once in two years.

#### 9. **Minimum Wages of Piece Rated Workers:**

Where a worker is employed on a job the wages whereof are paid based on piece rate, the piece rate wages must be so fixed that the outputs by a normal worker in a 8 hour working shift will enable the workers to earn the equivalent of a time rated daily minimum wage that is notified. Where there is a failure or inability on the part of the employer to provide the worker with the work for all the 8 hours in a shift, the worker will be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75% of the notified daily minimum wage.

**Chapter III****Payment of Wages****10. Mode of Payment of Wages**

All wages to workers shall be paid in cash or credited, with the workers consent, to the workers bank account and where majority of workers in the establishment give their consent in writing, the wages may be paid partly in kind and partly in cash, so however that at least two thirds of the wages are paid in cash. The value of wages paid in kind will, in case of dispute, be determined by the appropriate Government or its designated authority and its decision will be final.

**11. Fixation of Wage Period**

The employer shall fix the wage period for workers as either daily, or weekly or fortnightly or monthly. Provided that no wage period in respect of any worker shall be more than a month.

**12. Time of Payment of Wages**

(1) All wages will be paid before the 7<sup>th</sup> day of the succeeding month, in cases of monthly payment; where daily wage payments are made, it must be paid at the end of the shift, in cases of weekly rated payments, it must be paid on the last working day of the week i.e. before the weekly holiday and in case of fortnightly period before end of second day after the end of the fortnight.

(2) Where a worker has been removed or dismissed from service or has been retrenched or has resigned, the wages payable to him shall be paid to him within 48 hours of his removal, dismissal, retrenchment or as the case may be of his resignation.

**13. Payment of Wages without deductions**

There shall be no deductions made from the wages of the worker, except those as are specified in Sec 14.

**14. Deductions which may be made from wages**

- (1) Notwithstanding the provisions of sub-section (2) of Section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of a worker shall be paid to him without deductions of any kind except those authorised by or under this Act.

(Explanation I) – Every payment made by the worker to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(Explanation II) – Any loss of wages resulting from the imposition, for good and sufficient cause, upon a worker of any of the following penalties, namely:-

- a. The withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
- b. The reduction to a lower post or time-scale or to a lower stage in a time scale; or
- c. Suspension;

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

- (2) Deductions from the wages of worker shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely: -
- (a) fines;
  - (b) deductions for absence from duty;
  - (c) deductions for damage to or loss of goods expressly entrusted to the worker for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

- (d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- (e) deductions for such amenities and services supplied by the employer as the appropriate Government (or any officer specified by it in this behalf) may by general or special order, authorise.

Explanation- the word services (in this clause) does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of loans and advances by the employer from the funds of the establishment or from any Welfare Fund statutory or otherwise constituted by the employer or a trade union for welfare of workers and their families with approval of appropriate Government of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over payments of wages;
- (g) deductions of income tax payable by the worker or any other tax levied by the Government or deductions required to be made by order of a court or other authority competent to make such order;
- (h) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- (i) deductions for payment to cooperative societies approved by the appropriate Government (or any officer specified by it in this behalf)

- (j) deductions, made with the written authorisation of the worker for payment of any premium of his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;) or to a scheme of insurance maintained by the Indian Post Office; and
- (k) deductions made, with the written authorisation of the worker, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926)
- (l) deduction for payment of insurance premia on Fidelity Guarantee Bonds
- (m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the worker of counterfeit or base coins or mutilated or forged currency notes;
- (n) deductions for recovery of losses sustained by a railway administration on account of the failure of the worker to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
- (o) deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the worker where such loss is directly attributable to his neglect or default;
- (p) deductions, made with the written authorisation of the worker, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the Official Gazette, specify;

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

- (q) in cases where such deductions are wholly or partly made for payments to cooperative societies under clause (j) of sub-section (2), seventy five per cent of such wages, and
- (r) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorised under sub-section (2) exceed seventy five per cent or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed.

(4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the worker or otherwise any amount payable by such person under any law for the time being in force other than Indian Railways Act, 1890 (9 of 1890).

#### Chapter IV

##### Payment of Bonus

15. There shall be paid to every workers an annual bonus calculated at 8 1/3% of the wages earned by him/her during the previous accounting year, such amount to be paid within three months of the close of the accounting year. (Wages for the purpose of calculating bonus will comprise basic wage, dearness allowance, retention allowance, if any, in case of seasonal industries, city compensatory allowance and no other allowance) Demand for bonus in excess of this annual bonus, either on the basis of profits earned in the accounting year or on basis of production/productivity will be determined by collective bargaining between the parties, failing which by arbitration or adjudication as an industrial dispute, so however, the total bonus including the 8 1/3% annual bonus shall not exceed 20% of the wages.

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**16. Payment of Bonus out of Allocable Surplus**

- (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% of the available surplus arrived at as per provisions of sub Sec (2)
- (2) The available surplus shall be the amount calculated as per schedule appended to Act.
- (3) Audited accounts of companies shall not normally be questioned. Provided that wherever there is any dispute regarding the quantum of payment of bonus the authority such as the Labour Court or LRCs may call upon the employer to produce the balance sheet before it. However, the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

**17. Disqualification for bonus**

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

- i Fraud; or
  - i Riotous or violent behaviour while on the premises of the establishment; or
  - ii Theft, misappropriation or sabotage of any property of the establishment.

**18. Proportionate reduction in bonus in certain cases**

Where a worker has not worked for all the working days in an accounting year, the minimum bonus of 8.33 percent of his salary or wage or higher that is payable to other workers in the establishment for the days he has worked in that accounting year, shall be proportionately reduced.

**19. Set on and set off of allocable surplus**

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- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the workers in the establishment under section 11, then, the excess shall, subject to a limit of twenty percent of the total salary or wage of the workers employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the workers in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the (Fourth) Schedule.
- (3) The principle of set on and set off as illustrated in the (Fourth) Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest account year shall first be taken into account.

**20. Adjustment of customary or interim bonus against bonus payable under the Act**

Where in any accounting year

- (a) An employer has paid any Puja Bonus or other customary bonus to worker; or
- (b) An employer has paid a part of the bonus payable under this Act to worker before the date on which such bonus becomes payable, then, the



employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the worker under this Act in respect of that accounting year and the worker shall be entitled to receive only the balance.

21. **Deduction of certain amounts from bonus payable under the Act**

Where in any accounting year, worker is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the worker under this Act in respect of that accounting year only and the worker shall be entitled to receive the balance, if any.

22. **Time limit for payment of bonus**

All amounts payable to worker by way of bonus under this Act shall be paid in cash by his employer-

- (a) where there is a dispute regarding payment of bonus pending before any authority under Section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
- (b) in any other case, within a period of eight months from the close of the accounting year

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

23. **Special provision with respect to payment of bonus linked with production or productivity**

Notwithstanding anything contained in this Act -

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- i Where an agreement or a settlement has been entered into by the workers with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 (23 of 1976) or
- ii Where the workers enter into any agreement or settlement with their employer after such commencement,

For payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable under this Act, then, such workers shall be entitled to receive bonus due to them under such agreement or settlement, as the case may be.

**24. The Provisions of Payment of Bonus not to apply to certain classes of workers**

Notwithstanding anything contained in this Act the workers employed as seamen in the establishment of Merchant Shipping Companies, workers of establishment & Departments of Central Government, State Government and local authorities, workers of Indian Red Cross Society or any like institutions, workers of hospitals, chamber of commerce, or charitable institutions not established for making profits, workers of universities, other educational institutions, a construction work which is not carried for more than a year.

**Chapter V**

**Miscellaneous**

**25. Removal of difficulties**

Power to be with the Central Government, for a period of three years from the commencement of the Act to remove difficulties.

**26. Making of Rules**

The Central Government will have the power to make Rules.

**27. Repeal and Savings**

The Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976 shall stand repealed on enactment of this law.

**28. Issue of Identity Cards**

Every worker must be issued an identity card indicating the name of the establishment, name of the worker, designation, details of wages and allowances to be paid and such other details as may be prescribed, in which entries must be made at the end of each wage period showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payment.

**29. Claims under the Act**

- (1) The appropriate Government shall appoint an authority to hear the claims arising out of non-payment of Remuneration, deductions made by employer from the wages of a worker which are not according to this Act, payment of less wages than the minimum wages non-payment of wages for the leave period, non-payment of over time, non-payment of equal remuneration to female workers as prescribed under this Act or non-payment of bonus.
- (2) The authority may order compensation upto 10 times in addition to the dues involved as specified in sub section (1). The authority shall before ordering compensation have regard to the circumstances due to which the dues had remained unpaid or less paid.
- (3) If an employer fails to pay the outstanding dues of a worker that are ordered to be paid by the authority under Sub-Section (1) the authority shall issue a certificate of recovery to the Collector of the District where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned worker.
- (4) Any claim arising out of any dues payable as prescribed under sub-section (i) above may be filed before the authority by either the worker himself or any Trade Union of which the worker is a member or a Non Government Organisation duly authorised by the worker or an Inspector appointed under this Act.

**30. Records, Returns and Notices**

- (3) Every employer of an establishment to which this Act applies shall maintain the following registers:
- (i) Register of persons employed
  - (ii) Register of muster roll cum wages.
- (4) Every employer shall display a notice on the notice board at a permanent place in the establishment containing the wage rates of workers category wise, the wage period, the day or date and time of payment of wages and the name of the person responsible for payment of wages to the workers.
- (5) Every employer of an establishment shall send an annual return in the prescribed form to the Chief Inspector or to the authority as may be prescribed.

**31. Appointment of Inspectors**

An appropriate Government shall appoint a Chief Inspector, Joint Chief Inspectors, Deputy Chief Inspectors, Assistant Chief Inspectors and sufficient number of Inspectors for the country as a whole or State or different areas to carry out the objectives and purposes of this Act.

**32. Cognisance of offences**

- (1) Cognisance of offence committed under this Act may be taken on the complaint filed by a worker or a trade union or a recognised welfare institution or an inspector appointed under this Act.
- (2) No court inferior to the Metropolitan Magistrate or Magistrate of first class shall try the offences mentioned in sub sec (2) of Section 33.

**33. Penalties**

- (1) For offences of minor nature such as non or improper maintenance of records fines may be imposed by an Assistant Chief Inspector or a Deputy Chief Inspector upto Rs. 5,000/- for each violation.

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- (2) For other offences such as non-payment of wages, or payment of wages at lesser rate than that are payable under then notwithstanding any other provision of this Act penalty of imprisonment which may extend upto 3 months or fine which may extend to Rs. 5,000/- or both may be imposed.
- (3) Whosoever files a claim which is found totally false shall be punishable with fine which may extend to Rs. 1000/-.

#### 34. Exemptions

Nothing in this Act shall apply to workers employed in any establishment carried on by a department of Government directly.

#### 35. Burden of Proof

Where a claim has been filed on account of non payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Act from the wages of a worker the burden to prove that the above mentioned dues have been paid shall be on the employer.

#### 36. Contracting Out

Any contract or agreement whereby a worker forgoes his right to minimum wages or agrees to deductions from his wages not authorised under this Act or foregoes his right to bonus shall void ab initio.

## APPENDIX - V

**LAW ON LABOUR MANAGEMENT RELATIONS**

An Act to consolidate and amend the law relating to registration of Trade Unions, rights and obligations of registered Trade Unions, conditions of employment of workers, settlements of disputes between the workers and the management, promoting healthy industrial relations based on mutual cooperation with a view to ensure accelerated economic growth while securing social justice for the workers, be it enacted as follows:

**CHAPTER I****PRELIMINARY****1. Short title, Extent, Commencement & Application**

- (1) This Act may be called the Labour Management Relations Act, 2002.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may by notification appoint and different dates may be appointed for different provisions of this Act and for different States, so however, the entire provisions of the Act will be brought into force in the whole of India within three years of the enactment of the Act.
- (4) It shall apply to every establishment or undertaking wherein 20 or more workers are employed, provided that nothing in this Act shall apply to an establishment of a Government performing sovereign functions of the State.

**2. Definitions**

- (1) In this Act unless there is anything repugnant in the subject or context the
  - (a) 'appropriate Government' means the Central Government in respect

of establishments of Departments of Central Government, railways, posts, telecommunications, major ports, light houses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR NCERT and in respect of industrial disputes between the contractor and the Contract Labour engaged in these enterprises/establishments and in respect of all others, the concerned State Government/Union Territory administrations.

- (b) 'Arbitrator' means an Arbitrator or a body of Arbitrators chosen by parties to a dispute or named so in the collective agreement or settlement drawn from the panel of Arbitrators maintained by the State Labour Relations Commission or Central Labour Relations Commission or other eminent persons in the community who are accepted or nominated as such by any person or persons who is or are party to any individual, industrial or trade union dispute.
- (c) 'average wage' means the average of wages (including piece rate earnings) payable to a worker
- (i) in case of a monthly paid worker and piece rated worker, in three complete calendar months
  - (ii) in case of a fortnightly or weekly paid worker in four complete fortnights or four complete weeks
  - (iii) in case of daily paid worker, in the 12 full working days

preceding the date with reference to which the average pay becomes payable if the worker had worked for three complete calendar months or four complete fortnights or four complete weeks or as the case may be 12 full working days and where such average cannot be calculated, as

aforesaid, the average of wages payable to the worker during the period he actually worked.

- (d) 'award' means an interim or final determination of any individual dispute or industrial dispute or trade union dispute by an Arbitrator, Lok Adalat, Labour Court, State Labour Relations Commission, Central Labour Relations Commission or National Labour Relations Commission,
- (e) 'banking company' means a banking company as defined in section 5 of the Banking Companies Act, 1949, and includes the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934, the State Bank of India constituted under the section 3 of the State Bank of India Act, 1955, any subsidiary bank as defined in clause(k) of section 2 of the State Bank of India (subsidiary banks) Act, 1959, the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 and a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (f) 'negotiating agent' means a registered trade union recognised or certified as such under this Act being the single negotiating agent or a combination or college of more than one registered trade unions and includes a negotiating committee;
- (g) 'closure' means the permanent closing down of any place of employment or part thereof;
- (h) 'employer' means who employs workers in his establishment and where the establishment is carried on by any department of Central Government or State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department and in relation to an establishment carried on by a local authority, the Chief Executive of that authority;



- (i) 'establishment' means any activity carried on by co-operation between an employer and workers and includes any branch or office of the establishment within a specified local area as may be prescribed;
- (j) 'executive' means the body by whatever name called, to which the management of the affairs of a trade union is entrusted;
- (k) 'individual dispute' means any dispute or difference between an employer and any of his worker in relation to, or arising from, transfer or promotion of, or refusal or failure to promote, such worker or the termination of his employment or any punishment (including discharge or dismissal) imposed on such worker and includes any dispute or difference as to the money due to such worker from the employer or as to the amount at which a benefit, which is capable of being computed in terms of money, is to be computed.

\* Explanation: Where a question arises whether a dispute is an individual dispute or an industrial dispute the same shall be decided by a Labour Court or as the case may be the appropriate Labour Relations Commission.

- (l) 'Industrial dispute' means any dispute or difference between employers and workers, or between employers and employers, or between workers and workers, which is connected with the employment or non-employment or the terms of employment or conditions of labour, of any person, but does not include an individual dispute or a trade union dispute.
- (m) 'Insurance company' means a company defined as such in section 2 of Insurance Act, 1938
- (r) 'lay off' means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stocks or break down of machinery or natural calamity or for any other connected reason to give employment to

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a worker whose name is borne on the muster roll of his establishment and who has not been retrenched;

Explanation: Every worker whose name is borne on the muster rolls of the establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause:

Provided that if the worker, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid off only for one half of that day;

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

- (o) 'lock out' means the (temporary closing of a place of employment) or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;
- (p) 'managerial or other employee' for the purposes of Chapter X means a person who is appointed or engaged as a supervisor or an officer or a manager and includes a person engaged as a worker but excluded from the definition of a worker under this Act due to the wage limit but does not include a manager or a general manager who has overall control over the affairs of an establishment or the undertaking;

- (q) 'notification' means a notification published in the Official Gazette;
- (r) 'office bearer', in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;
- (s) 'prescribed' means prescribed by rules made under this Act;
- (t) 'registered trade union' means a trade union registered under this Act;
- (u) 'Registrar' means Registrar of a trade unions appointed under this Act;
- (v) 'retrenchment' means the termination by the employer of services of a worker on account of surplusage of manpower and does not include
  - (i) termination of service of a worker by way of punishment on account of misconduct;
  - (ii) voluntary retirement of a worker or resignation;
  - (iii) retirement of a worker on reaching the age of superannuation in terms of contract of employment, rules or standing orders, applicable to the worker;
  - (iv) termination of service of a worker on grounds of ill health;
  - (v) termination of service of a worker as a result of the contract of employment coming to an end or non renewal of contract of employment or termination of contract under stipulation in that behalf contained therein;
- (w) 'settlement' means a written collective agreement between the employer and the negotiating agent arrived at otherwise than in the course of conciliation proceedings which has been sent to the concerned Labour Relations Commission and includes a settlement arrived at in the course of conciliation proceedings a copy of which has been sent by the Conciliation Officer before whom it is signed to the concerned Labour Relations Commission and the appropriate Government;

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- (x) 'socially essential service' means an establishment carrying on the activity of water supply or sanitation or generation and supply of electricity or public transport or any activity connected with any medical service;
- (y) 'sovereign functions' mean and include the functions pertaining to maintenance of law and order, making of law and justice, levy and collection of taxes, external relations and defence of the country performed by Government;
- (z) 'strike' means total or partial cessation of work by body of persons employed in any establishment acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept work or employment;
- (aa) 'trade union' means any combination whether temporary or permanent formed primarily for the purpose of regulating relations between the workers and the employers or between workers and workers or between employers and employers and includes a federation of Trade Unions or a central organisation of Trade Unions and includes an association or union of unorganised sector workers registered under this Act notwithstanding the fact that there is no employer-employee relationship or such relationship is not clear;
- (bb) 'trade union dispute' means any dispute -
  - (i) between a trade union and another trade union or
  - (ii) between a member or two or more members of a trade union and the trade union, or between two or more members of a trade union relating to registration, certification, administration management of affairs of that trade union including election of officer bearers thereof;
  - (iii) between a worker and a trade union regarding non

admission as a member of the trade union without sufficient reason;

- (cc) 'undertaking' means a body set up under the Companies Act or under any other law relating to setting up of banking or insurance companies or a partnership or proprietary firm and includes the offices, sections, units and branches of an undertaking whether situated in an area or in the whole of the country.

Explanation: a body corporate, partnership or proprietary firm shall be treated as a separate undertaking where it is drawing a separate balance sheet and preparing separate profit and loss account.

- (dd) 'wages' or 'remuneration' will have the same meaning as assigned to them in the Wages Act and wages generally used in this Act may mean remuneration wherever the context so requires.
- (ee) 'worker' means any person employed for carrying out any activity in an establishment for hire or reward whether the terms of employment be expressed or implied and whose wages do not exceed Rs. 25,000 per mensem and for the purposes of any proceedings under this Act in relation to an individual dispute includes any such worker who has been dismissed, discharged or retrenched and whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -
- (i) who is a subject of Air Force Act, Navy Act or Army Act;
  - (ii) who is employed in the police service or as an officer or other worker of a prison; or
  - (iii) who is employed in a managerial, administrative or supervisory capacity;

## CHAPTER II

## AUTHORITIES TO BE SET UP UNDER THE ACT

## 3. Registrar of Trade Unions

- (1) Appropriate Government may by notification appoint a person to be the Registrar of Trade Unions, and other persons as Additional Registrars of Trade Unions, Joint Registrar of Trade Unions and Dy. Registrars of Trade Unions who shall exercise such powers and perform such duties of the Registrar as the appropriate Government may by notification specify from time to time.
- (2) Subject to the provisions of any order made by the appropriate Government where an Additional Registrar of Trade Unions or a joint Registrar of trade unions or a Dy. Registrar of Trade Unions exercises the powers and performs the duties of the Registrar in an area within which the registered office of a Trade Union is situated such Additional Registrar of Trade Unions or a Joint Registrar of Trade Unions or a Dy. Registrar of Trade Unions shall be deemed to be the Registrar in relation to that Trade Union for the purposes of this Act.

## 4. Grievance Redressal Committee

- (1) In every establishment there shall be established a Grievance Redressal Committee consisting of equal number of workers and employers representatives for looking into grievances of workers.
- (2) The Grievance Redress Committee shall consist of not more than 10 and not less than 2 members depending on the employment size of the establishment and where the number of representatives is 4 or more it shall have a chairman and a vice chairman elected by the Committee.
- (3) Where in respect of an establishment there is recognised negotiating agent, the workers representatives on the committee shall be nominated by such negotiating agent certified under this Act.

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- (4) The appropriate Government shall make rules to prescribe the number of representatives to be nominated by the negotiating agent and the employer depending on the employment size of the establishment, election of chairman and vice chairman and such other matters as may be necessary for the conduct of business of the Grievance Redressal Committee for resolution of grievances of workers.

#### 5. Lok Adalats

- (1) The appropriate Government may by notification establish such number of Lok Adalats as it thinks fit and define the local limits of their jurisdiction.
- (2) The Lok Adalat shall have its headquarter at such place as the appropriate Government may by notification specify in this behalf. Provided that nothing shall prevent the Lok Adalat from holding its sittings at such other place or places within the local limits of its jurisdiction as it considers necessary.
- (3) The qualification for appointment as Presiding Officer of a Lok Adalat shall be the same as have been prescribed for appointment of Presiding Officer of a Labour Court under this Act.
- (4) Lok Adalat shall subject to others provisions of this Act have powers to arbitrate in individual disputes, industrial disputes, trade union disputes and perform such other functions as may be assigned to it under this Act.

#### 6. Conciliation Officers And Their Duties & Functions

- (1) The appropriate Government may by notification appoint such number of persons as it thinks fit depending on the number of cases to be the Conciliation Officers charged with the duty of conciliating in and promoting the settlement of individual and industrial disputes.

- (2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area either permanently or for a limited period.
- (3) The duties and functions of a Conciliation Officer shall be as under:
  - (i) to assist employers or their representatives and the trade unions to achieve and maintain effective labour relations;
  - (ii) to chair conciliation proceedings;
  - (iii) to deal with such matters as are referred to him by the Labour Court or the Labour Relations Commission;
  - (iv) to offer his services to the parties to a dispute, and to assist them to resolve the dispute including making of enquiry as may be necessary;
  - (v) to exercise such other functions as are conferred on a conciliator under this Act.

## 7. Arbitrators

'Central Labour Relations Commission' or as the case may be the State Labour Relations Commission shall maintain a panel of persons who have distinguished themselves in the field of Trade Union, management, economics or have distinguished themselves as conciliators or being in the service of Central or State Government are dealing with the labour issues, to function as Arbitrators in individual disputes, industrial disputes and trade union disputes.

Provided that nothing shall prevent the parties to any individual, industrial or trade union dispute to accept or nominate by agreement other eminent persons in the community to arbitrate in their disputes.



**8. Labour Courts**

- (1) The appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission shall by notification establish such number of Labour Courts as it thinks fit and define local limits of their jurisdiction and appoint Presiding Officers of such Labour Courts.

The Labour Court shall have its headquarters at such place as the appropriate Government in consultation with the Central Labour Relations Commission or as the case may be the State Labour Relations Commission may by notification specify.

- (2) Provided that the Labour Court may hold its sittings at such other place or places within its local limits of jurisdiction, as it considers necessary.

Provided further that nothing shall prevent the appropriate Government from transferring a Presiding Officer of the Labour Court to another Labour Court set up by it.

- (3) No person shall be qualified as Presiding Officer of a Labour Court unless:
- a. he has for a period of not less than one year been a District Judge or an Additional District Judge or
  - b. he has held a judicial office in India for not less than 7 years or is a member of Indian Labour Judicial Service, or
  - c. he has practiced as an advocate or attorney for not less than 7 years in any court or
  - d. he has held the post of a Dy. Labour Commissioner or above under the State Government or held the post of Regional Labour Commissioner or above in the Central Government and has experience of dealing with Labour matter for not less than 10 years.
  - e. he has in the opinion of appropriate Government distinguished himself in the field of Industrial relations or human resource management.

- (4) The Labour Court shall subject to other provisions of this Act have powers to adjudicate in individual disputes; and Trade Union disputes and claims as prescribed under this Act and may be assigned such other functions such as settlement of disputes and claims, and trial of offences under this Act and other enactments as may be specified in this behalf by appropriate Government by notification.

9. **Central & State Labour Relations Commission**

- (1) The Central Government shall, by notification, establish a Labour Relations Commission to be known as the Central Labour Relations Commission.
- (2) The State Government shall, by notification establish a Labour Relations Commission to be known as the State Labour Relations Commission.
- (3) (a) The Central Labour Relations Commission and each of the State Labour Relations Commission shall consist of a president and such number of other members as are necessary provided that the number of members representing labour shall be equal to the number of members representing management.
- (b) Subject to the other provisions of this code, the jurisdiction, powers and authority of the Central Labour Relations Commission and the State Labour Commissions may be exercised by benches thereof.
- (c) (i) A bench shall consist of not less than three members of whom one shall be a judicial member.
- (ii) The President may discharge the functions of a judicial member of any bench.
- (iii) The President may for the purpose of securing that any case or cases which, having regard to the nature of the questions involved requires or require in his opinion or

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under the rules made by the Central Government or, as the case may be, by the State Government, in this behalf, to be decided by a bench composed of more than three members, issue such general or special orders as he may deem fit; provided that every bench constituted in pursuance of this clause shall include at least one judicial member, one non-judicial member representing employers and one member representing the workers.

- (iv) The benches of the Central or State Labour Relations Commission shall sit at such place or places as the Central or as the case may be the State Government may by notification specify.
- (4) (a) The President of the Central Labour Relations Commission or State Labour Relations Commission shall be a sitting or retired judge of a High Court or is eligible to be appointed as a judge of the High Court.
- (b) The Members of the Central and State Labour Relations Commission shall be persons who have distinguished themselves in the field of economics, labour or labour relations, trade union movement and management.
- (5) Central and State Labour Relations Commission will be deemed to be set up under Article 332-B of the Constitution.

#### 10. **National Labour Relations Commission**

- (1) The Central Government may by notification establish a National Labour Relations Commission to
- (i) hear appeals against any order or award of the Central Labour Relations Commission or a State Labour Relations Commission involving substantial question of law.
  - (ii) adjudicate in an industrial dispute of national importance.
  - (iii) adjudicate in an industrial dispute in which establishments situated in more than one States are likely to be interested.

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- (iv) adjudicate in a trade union disputes of a Trade Union having offices in more than one State.
- (2) The National Labour Relations Commission shall consist of President who shall be a sitting judge of the Supreme Court or a person who is eligible to be appointed as a judge of the Supreme Court and such other number of members as may be prescribed one of whom shall be from judiciary or from Indian Labour Judicial Service and other members shall be distinguished persons from the field of Labour, trade union, economics or management.
- (3) The National Labour Relations Commission may issue any direction to any Labour Court, Labour Relations Commission or an official of the Government for carrying out purposes of this Act.
- (4) The National Labour Relations Commission may have benches or have sittings at such places as may be decided by the Commission and where a bench is set up it shall have not less than 3 members presided over by a judicial member.
- (5) National Labour Relations Commission shall have the powers exercisable by the Supreme Court under Clause 3 of Article 32 of the Constitution in pursuance thereof.

**11. Tenure of Office of the President and members of the Commission, Procedure of removal, staff of the Commission, and other related matters**

- (1) In the event of the occurrence of any vacancy in the office of the President of a Labour Relations Commission, the senior most member of the Labour Relations Commission shall act as the president until the date on which a new president is appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

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- (2) When the president of a Labour Relations Commission is unable to discharge his functions owing to absence, illness or any other cause the senior most member shall discharge the function of the president until the date on which the president resumes office.
- (3) The president and members of a Labour Relations Commission shall hold office until they attain the age of sixty-five years.
- (4) The president or any other member of the Labour Relations Commission may, by notice in writing under his hand addressed to the Central Government or the State Government, as the case may be, resign his office;

Provided that the president or other member of the Commission shall, unless he is permitted to relinquish his office sooner by the Central Government or the State Government, as the case may be, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office whichever is the earliest.

- (5) (a) The president, or any other member of the Central Labour Commission and a member of the National Labour Relations Commission may be removed from office by an order made by the president of India on the grounds of proved misbehaviour or incapacity on the recommendation of the National Judicial Commission or a Committee set up in this behalf under chairmanship of Chief Justice of India after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- (b) The president or any other member of a State Labour Relations Commission may be removed from office by an order made by the Governor of the State on the ground of proved misbehaviour or

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- incapacity by the National Judicial Commission or a Committee appointed under the Chairmanship of the Chief Justice of the High Court, after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- (c) The Central Government shall by rules, lay down the procedure for the investigation of misbehaviour or incapacity of the president or member referred to in sub-section (a) and (b).
- (6) (a) The salaries and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the President and other members of the National Labour Relations Commission and the Central Labour Relations Commission shall be such as may be prescribed by the Central Government and those of the President and members of the State Labour Relations Commission shall be such as may be prescribed by the State Government.
- (b) Neither the salary and allowances nor the other terms and conditions of service of the President or any other member shall be varied to his disadvantage after his appointment.
- (7) (a) No High Court shall have any power of superintendence over the Labour Relations Commissions.
- (b) No Court shall exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction, power or authority of or in relation to the Labour Relations Commission.
- (8) (a) The president of a Labour Relations Commission shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the Central Government or, as the case may be, the State Government.

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- (b) The president of a Labour Relations Commission shall have authority to delegate such of his financial and administrative powers as he may think fit, to any other member or officer of the Commission subject to the condition that such member or officer shall while exercising such delegated powers, continue to act under the direction, control and supervision of the president.
- (9) (a) The Central Government or, as the case may be, the State Government shall determine the nature and categories of the officers and other employees required to assist the Labour Relations Commission in the discharge of their functions and provide the Commission with such officers and other employees as it may think fit.
- (b) The salaries, allowances and conditions of service of the officers and other employees of the Central Labour Relations Commission or the State Labour Relations Commission shall be such as may be specified by rules made by the Central Government or as the case may be, the State Government.
- (c) The officers and other employees of the Labour Relations Commission shall discharge their functions under the general superintendence of the president.
- (10) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely :-
- (a) Hearing of appeals against the award of a Labour Court.
- (b) adjudication of disputes as provided under this Act which are not settled by collective bargaining and there is no agreement to refer the same to arbitration.

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provided that in cases where the parties agree to arbitration of a dispute but are not able to agree upon an Arbitrator the appropriate Labour Relations Commission may, on a motion by either party or of the appropriate Government, get the dispute arbitrated by any member of the Commission or by an Arbitrator from out of a panel of Arbitrators maintained by the Commission for the purpose.

### CHAPTER III

#### Trade Unions

##### 12. Trade Unions to be Formed

- (1) A Trade Union may be formed by workers or employers and in case of a federation or central organisation by Trade Unions of workers or employers.
- (2) Every Trade Union shall carry on its activities in accordance with the provisions of this Act and the constitution and rules framed by it and approved by the Registrar.
- (3) A Trade Union, which is not registered under this Act, shall not be entitled to any rights and privileges under this Act.

##### 13. Requirement for Registration

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

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



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

- (b) In the case of unions or association of workers in unorganised sector where there is no employer-employee relationship or such relationship is not clear, the requirement of 10% membership in an establishment or undertaking or industry shall not apply.
- (2) In the case of a Trade Union of employers not less than 7 employers shall be required for making an application for registration.

#### 14. Application for Registration

- (1) Every application for registration of a Trade Union shall be accompanied by —
  - (a). A statement showing —
    - (i) The names, occupations and addresses of the persons making the application, the name and address of the establishment, undertaking or industry, and where the establishment has two or more units, branches or offices, the name and address of the unit, branch or office, wherein such persons are employed;
    - (ii) The name of the Trade Union and the address of its head office;
    - (iii) The title, name, age, residential address and occupation of each of the office bearers of the Trade Union;
    - (iv) In the case of a Trade Union, being a federation or central organisation of trade unions, the names, addresses of registered offices and registration numbers of the member Trade Unions;

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- (b). Three copies of the rules of the Trade Union together with a copy of the resolution by the members of the Trade Union adopting such rules;
- (c). A copy of the resolution adopted by the members of the Trade Union authorising the applicants to make an application for registration; and
- (d). In the case of a Trade Union, being a federation or a central organisation of Trade Unions, a copy of the resolution adopted by the members of each of the member Trade Unions, meeting separately, agreeing to constitute a federation or a central organisation of Trade Unions.

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

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

#### 15. **Prohibition of Craft, category or caste based unions**

A union which comprises workers of a craft or category or a union which is based on caste shall not be registered under this Act.

#### 16. **Power to call for further information or alternation of name**

- (1) The Registrar may call for further information from the persons making application for registration with a view to satisfy himself that the

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application made for registration of the Trade Union complies with the provisions of this Act and it is otherwise entitled for registration under this Act and may refuse to register the Trade Union until such information is furnished.

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

17. Provisions to be contained in the Constitution & Rules of the Trade Union

- (1) A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules of the Trade Union provide for the following matters, namely: -
  - (a). the name of the trade union;
  - (b). the whole of the objects for which the trade union has been established;
  - (c). the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this Act;
  - (d). the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office bearers and members of the trade union;
  - (e). the admission of ordinary members (irrespective of their craft or category) who shall be persons actually engaged or employed in the establishment, undertaking or industry, or units, branches or offices, of an establishment as the case may be, with which the