



Study Notes

# The Industrial Employment (Standing Orders) Act, 1946

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**The Industrial Employment (Standing Orders) Act, 1946 (Summary Sheet)**

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**Introduction**

- In an earlier era, India didn't really have as many laws connected with suitable employment and labour practices, as it does now.
- As a result, workers **did not have uniformity in their service conditions** as enforced by the standing orders act.
- This led to a lot of **disruptions, friction and productivity loss** between these workers and their bosses – and this was seen mostly in the industrial undertakings involving heavy workloads and multiple employees.

### Historical Context

- The **Labour Committee 1944- 1946** was created and they immediately spotted the key cause of issues.
- There was a lack of understanding, on part of the employees, about employment conditions.
- This committee maintained that the **workers had a right** to know all terms and conditions related to their work and employment.
- They even wanted a **distinct central law** that made it obligatory for employers to frame and approve employment conditions and get them enforceable by law.
- The **Industrial Employment (Standing Order) Act 1946** and this order act lists out laws governing the contract as devised, duly signed and eventually terminated by either party

### Objectives of the Act

- To **provide regular standing orders** for factories, workers and the main professional or working relationship
- To ensure that **all employees recognize their employment terms** and conditions they are expected to follow or adhere to. This is to help **minimize the exploitation** of workers against their will and knowledge.
- To support the promotion of **industrial peace and harmony** by supporting fair industrial practices
- To provide for **redressal of grievances** arising out of employment or relating to unfair treatment

### Applicability of the Act (Section 1)

- The Act **extends to whole of India**.
- It applies to every industrial establishment wherein **one hundred or more workmen** are employed, or were employed on any day of the **preceding twelve months**
- **Appropriate Government** may extend this Act to any establishment employing less than 100 persons. For this purpose, it has to give at least **2 months notice** by a notification in the Official Gazette
- Certain industrial establishments **have been excluded** from its application via various statutory provisions enlisted in this Act:
  - ✓ Section 1(4) excludes those establishments to which Chapter VII of the BIRA or MPIESOA applies unless controlled by the Central Government.
  - ✓ Section 13-B excludes those establishments whose workmen are subject to the Fundamental & Supplementary Rules; various Civil Services Rules; Industrial

Railway Establishment Code; or any other rules provided by the 'appropriate Government'.

- ✓ The provisions of Sections 10 and 12-A(1) do not apply to the establishments under the control of the States of Gujarat/Maharashtra
- **Section 14** empowers the **appropriate Government** to **exempt any industrial establishment** from being subject to all or any of the provisions of this Act, either conditionally/unconditionally

### Interpretation (Section 2)

- **Appellate Authority** : It refers to an authority which is appointed by the appropriate government to exercise functions of an appellate authority.
- If an appeal is pending before an Industrial Court or other authority before 1963 Amendment, that court or authority shall be appellate authority.
- **Appropriate Government** means
  - ✓ in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil-field, the Central Government, and
  - ✓ in all other cases, the State Government
- **Certifying Officer** means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, to perform all or any of the functions of a Certifying Officer under this Act
- **Employer** means the **owner of an industrial establishment** to which this Act for the time being applies, and includes
  - ✓ in a **factory- manager**
  - ✓ in any **industrial establishment** under the **control of any department of any Government in India**- the authority appointed by such Government in this behalf, or where no authority is so appointed, **the head of the department**
  - ✓ in any **other industrial establishment**, any person responsible to the owner for the **supervision and control** of the industrial establishment

### Submission of Draft Standing Orders (Section 3)

- **Within 6 months** from the date on which this Act is applicable to an industrial establishment, **the employer** is required to submit to the certifying officer **five copies** of the **draft standing orders** proposed to be adopted by him in his industrial establishment
- These draft standing orders shall **refer** to every matter set out in the **Schedule or model standing orders**, if any.

- A statement giving **prescribed particulars of the workmen** employed in the industrial establishment and the **name of the trade union** shall be annexed to draft standing orders.
- **Section 4** of the Act declares the **conditions** upon the fulfilment of which, a standing order can be certified. It thereby requires a standing order to provide for **all the matters set out in the Schedule of the Act** and be in **conformity with the provisions of this Act**
- **Certifying Officer or appellate authority** to **adjudicate** upon the fairness or reasonableness of the provisions of any standing orders
- The **procedure for certification** of Standing Order, as prescribed under **Section 5 of the Act**, is threefold:
  - ✓ The Certifying Officer to **send a copy** of the Draft Standing Order to the **workmen or trade union**, along with a notice **calling for objections**, that shall be submitted to him **within 15 days of receiving such notice**.
  - ✓ Upon **receipt of such objections**, the employer and workmen to be given an opportunity of being heard, after which the Certifying Officer shall decide and pass an **order for modification** of the Standing Order.
  - ✓ Finally, the Certifying Officer **shall certify** such Standing Order, and thereby, within **seven days**, send a copy of it annexed with his order for modification passed under Section 5(2)

### Appeals (Section 6)

- Any related party aggrieved by the order of the Certifying Officer may **appeal** to the appellate authority **within 30 days**, provided that its decision, of confirming such Standing Order or amending it, shall be final.
- The appellate authority shall thereafter **send copies** of the Standing Order, if amended, to the related parties within **seven days**.
- The appellate authority has **no power to set aside** the order of the Certifying Authority. It can confirm or amend the Standing Orders.

### Date of Operation of Standing Orders (Section 7)

- Standing orders shall, unless an appeal is preferred, come into operation **on the expiry of thirty days** from the date on which authenticated copies thereof are sent, or where an **appeal as aforesaid is preferred**, on the **expiry of seven days** from the date on which copies of the order of the appellate authority are sent
- **Register of standing orders (Section 8)** -A copy of all standing orders as finally certified under this Act **shall be filed** by the Certifying Officer in a **register** in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a **copy** thereof to any person applying therefore on payment of the prescribed fee.

- **Posting of standing orders (Section 9).**—The text of the standing orders as finally certified under this Act shall be **prominently posted by the employer** in English and in the language understood by the majority of his workmen on **special boards** to be maintained for the purpose **at or near the entrance** through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed

### Duration and Modification of Standing Orders (Section 10)

- A Certified Standing Order **cannot be modified**, except on agreement between the related parties, **until six months** from the last modification or operation of such standing order under Section 7.
- Further, subject to Section 10(1) and other provisions of this Act, the parties may apply to the Certifying Officer for modifications in the standing order **by annexing five copies** of the proposal or a certified copy of the agreement for modifications.
- **Section 10-A** of the Act stipulates for the **payment of subsistence allowance** by the employer to a workman who is suspended, pending the investigation/ inquiry of his misconduct,
  - ✓ at the rate of 50% for the first 90 days,
  - ✓ and 75% for the remaining period if the delay is not attributable to the workman.
- The Act also allows **an appeal** to the **Labour Court** constituted under Industrial Disputes Act-1947 in case of a dispute relating to such subsistence allowance, whose decision shall be final.
- Moreover, it declares that the provisions applicable to a particular State, if more beneficial, shall prevail over this Section
- **Section 12-A** provides that in spite of the provisions under Section 3 – 12, in the period between the applicability of this Act and operation of the Certified Standing Orders, **Model Standing Orders is to be adopted**, with Sections 9, 13(2), and 13-A applying in the same way as would apply to a Certified Standing Order

### Penalties and Procedure (Section 13)

Description	Penalty
An employer who <ul style="list-style-type: none"> <li>• Fails to submit draft standing orders as per Section 3</li> <li>• Modifies standing orders otherwise than in accordance with Section 10</li> </ul>	Fine which may extend to Rs 5000
Continuing Offence	Further Fine upto Rs 200 per day
Penalty for contravention of standing orders finally certified	Fine which may extend to Rs 100
Continuing Offence	Further Fine upto Rs 25 per day

- No prosecution for an offence punishable under this section shall be instituted except with the **previous sanction of the appropriate Government**
- No Court inferior to that of a **Metropolitan Magistrate** or **Judicial Magistrate of the second class** shall try any offence under this section

**Delegation of Powers (Section 14A)**

- The appropriate Government may **delegate its powers** under the Act to an Officer/Subordinate Authority to the Central or the State Government, as the case may be, and subject to such directions as may be provided under the notification

**Power to make rules (Section 15)**

- The Act empowers the appropriate Government **to make rules** for the purpose of this Act, in consultation with representatives of related parties, relating to:
  - ✓ Additional matters to be included in the Schedule & the procedure for modification;
  - ✓ Set out Model Standing Orders;
  - ✓ Procedure to be followed by Certifying Officers & appellate authorities;
  - ✓ The fee to be charged for the copies of registered standing orders, and any other matter so prescribed.

**The Schedule- Matters to be provided in Standing Orders**

Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or <i>badlis</i>	Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
Shift working	Attendance and late coming
Conditions of, procedure in applying for, and the authority which may grant, leave and holidays	Requirement to enter premises by certain gates, and liability to search
Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom	Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants
Termination of employment, and the notice thereof to be given by employer and workmen	Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct
Any other matter which may be prescribed	