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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 11th December, 2019:—

BILL NO. 372 OF 2019

A Bill to establish and incorporate Universities for teaching and research in Sanskrit, to develop all-inclusive Sanskrit promotional activities and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Central Sanskrit Universities Act, 2019.

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

Definitions.

2. In this Act, and in all Statutes made hereunder, unless the context otherwise requires,—

(*a*) "Academic Council" means the Academic Council of the University;

(*b*) "academic staff" means such categories of staff as are designated as academic staff by the Statutes and Ordinances made thereunder;

(*c*) "Board of Studies" means the Board of Studies of a Department of the University;

(*d*) "Campus" means any unit established or constituted by the University at any place within or outside India for making arrangements for instruction, research, education and training in Sanskrit and includes an existing Campus established by the University prior to the commencement of this Act;

(*e*) "Chancellor" and "Vice-Chancellor" mean, respectively, the Chancellor and the Vice-Chancellor of the University;

(*f*) "College" means a College recognised or affiliated or maintained by the University;

(*g*) "corresponding University" and "deemed to be University", in relation to the society known as—

(*i*) the Rashtriya Sanskrit Sansthan, New Delhi, mean the Rashtriya Sanskrit Sansthan, New Delhi established in the year 1970 which has been conferred the status of deemed to be University in the year 2002;

(*ii*) Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi, mean Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi established in the year 1962 which has been conferred the status of deemed to be University in the year 1987;

(*iii*) the Rashtriya Sanskrit Vidyapeeth, Tirupati, mean the Rashtriya Sanskrit Vidyapeeth, Tirupati established in the year 1961 which has been conferred the status of deemed to be University in the year 1987;

(*h*) "Court" means the Court of the University;

(*i*) "Department" means a Department of Studies and includes a Centre of Studies;

(*j*) "Director" means the Head of a Campus or of a distance education system of the University or of any other academic branch of studies as approved by the Executive Council and prescribed by the Statutes;

(*k*) "distance education system" means the system of imparting education through any means of communication, such as broadcasting, telecasting, internet, correspondence course, seminar, contact programme, non-formal pattern or a combination of any two or more such means, except the regular system of education;

(*l*) "employee" means any person appointed by the University on regular basis and includes teaching and non-teaching staff, but does not include an employee of any institution or college or school getting grant-in-aid to any extent whatsoever, or affiliated or recognised, by the University;

(*m*) "Executive Council" means the Executive Council of the University;

(*n*) "Faculty" means a faculty of the University;

(*o*) "Hall" means a unit of residence or of corporate life, being hostel or otherwise, for the students, authorities, officers and employees of the University, or of a Campus or College or Institution or Centre or Department, maintained or authorised by the University;

(*p*) "Institution" means an academic institution, not being a Campus or College established or maintained or affiliated or recognised by the University;

(*q*) "Principal" means the Head of a College or School or an Institution established or maintained by the University;

(*r*) "Regulations" means the Regulations made by any authority of the University under this Act for the time being in force;

(*s*) "Sanskrit" means the Sanskrit language, in modern, classical or ancient form, and the knowledge available therein or related thereto, in addition to Sanskrit language;

(*t*) "Schedule" means a Schedule appended to this Act;

(*u*) "School" means a School recognised or affiliated or maintained by the University for secondary, primary and elementary levels or equivalent thereto;

(*v*) "School of Studies" means a School of Studies of the University;

(*w*) "Society" means any of the following societies registered under the Societies Registration Act, 1860, namely:—

21 of 1860.

(*i*) the Rashtriya Sanskrit Sansthan, New Delhi (Registration No. S/4694 of 1970-71);

(*ii*) Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi (Registration No. S17454 of 1987);

(*iii*) the Rashtriya Sanskrit Vidyapeeth, Tirupati (Registration No. 345 of 1986);

(*x*) "Statutes" and "Ordinances" mean, respectively, the Statutes and the Ordinances of the University for the time being in force;

(*y*) "teachers of the University" means Professors, Associate Professors, Assistant Professors and such other persons as may be appointed for imparting instructions or conducting research in the University or in any College or Institution maintained by the University and are designated as teachers by the Ordinances, but does not include the teaching staff of an institution or a college or school getting grant-in-aid to any extent whatsoever, or affiliated or recognised, by the University;

(*z*) "University" means a University established and incorporated as a University under this Act.

Establishment of Universities.

3. (*1*) The following deemed to be Universities shall be established as three separate Central Universities as under:—

(*a*) the Rashtriya Sanskrit Sansthan, New Delhi, along with its campuses as specified in the First Schedule, shall be established as a body corporate under this Act by the name of "the Central Sanskrit University", which shall have its headquarters in New Delhi;

(*b*) Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi shall be established as a body corporate under this Act by the name of "Shri Lal Bahadur Shastri National Sanskrit University", which shall have its headquarters in New Delhi;

(*c*) the Rashtriya Sanskrit Vidyapeeth, Tirupati shall be established as a body corporate under this Act by the name of "the National Sanskrit University", which shall have its headquarters in Tirupati.

(*2*) The Chancellor, the Vice-Chancellor and the members of the Executive Council and of the Academic Council of each University, and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the University.

(*3*) The University shall have perpetual succession and a common seal, and shall sue and be sued by the said name.

Effect of establishment of University.

4. On and from the date of commencement of this Act,—

(*a*) the societies, namely, the Rashtriya Sanskrit Sansthan, New Delhi, Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi and the Rashtriya Sanskrit Vidyapeeth, Tirupati shall stand dissolved;

(*b*) any reference to a society or to a deemed to be University in any law (other than this Act) or in any contract or other instrument shall be deemed as a reference to the corresponding University established and incorporated under this Act;

(*c*) all properties, movable and immovable, of or belonging to a society or to a deemed to be University shall vest in the corresponding University established and incorporated under this Act;

(*d*) all rights and liabilities of a society or of a deemed to be University shall be transferred to, and be the rights and liabilities of, the corresponding University established and incorporated under this Act;

(*e*) every person employed by a society or a deemed to be University immediately before such commencement shall hold his office or service in the corresponding University established and incorporated under this Act, by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as they would have held the same if this Act had not been enacted and shall continue to do so unless and until their employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Executive Council or the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the term of the contract with the employee or, if no provision is made therein in this behalf, on payment to him by the University of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees:

Provided further that every person employed before the commencement of this Act, pending the execution of a contract under section 34, shall be deemed to have been appointed in accordance with the provisions of a contract consistent with the provisions of this Act and the Statutes:

Provided also that any reference, by whatever form of words, to the Vice-Chancellor of a deemed to be University in any law for the time being in force, or in any contract or other document, shall be construed as a reference to the Vice-Chancellor of the corresponding University established and incorporated under this Act;

(*f*) the Vice-Chancellor of a deemed to be University appointed prior to the commencement of this Act and holding office as such, shall be deemed to have been appointed as the Vice-Chancellor of the corresponding University under this Act;

(*g*) all Colleges, Institutions, Schools of Studies, and Departments affiliated to, or admitted to the privileges of, or maintained by, the deemed to be University shall stand affiliated to, or admitted to the privilege of, or maintained by, the corresponding University established and incorporated under this Act.

Objects of University.

5. The objects of the University shall be to disseminate and advance knowledge by providing instructional, research and extension facilities to the promotion of Sanskrit Language and such other branches of learning as it may deem fit; to make special provisions for integrated courses in humanities, social sciences and science in its educational programmes; to take appropriate measures for promoting innovations in teaching-learning process and inter-disciplinary studies and research; to educate and train manpower for the overall development, promotion, preservation and research in the field of Sanskrit and Sanskrit traditional subjects.

Powers of University.

6. (*1*) The University shall have the following powers, namely:—

(*i*) to provide for instructions in such branches of learning including Sanskrit and Sanskrit traditional subjects, as may be specified in the Statute or as may be determined by the University, from time to time, and to make provisions for research and advancement and dissemination of knowledge;

(*ii*) to grant, subject to such condition as the University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on, persons on the basis of examination, evaluation or any other method of testing, and to withdraw any such diplomas, certificate, degrees or other academic distinctions for good and sufficient cause;

(*iii*) to organise and undertake extramural studies, training, extension services and such other measures for the promotion of Sanskrit education;

(*iv*) to confer honorary degrees or other distinctions in the manner prescribed by the Statutes;

(*v*) to provide facilities of teaching and learning through the distance education system or online mode, as it may determine;

(*vi*) to provide for education not only at University or College level leading to excellence and innovations in various branches of knowledge as may be deemed fit, but continue to provide education to schools already affiliated to the University;

(*vii*) to provide facilities for imparting higher education in such branches of learning, including Indian Philosophy, Pali-Prakrit, Sanskrit literature, Yoga, Ayurveda and Naturopathy, as the University may determine;

(*viii*) to institute Principalships, Professorships, Associate Professorships, Assistant Professorships and other teaching or academic positions, required by the University and to appoint persons for such Principalships, Professorships, Associate Professorships, Assistant Professorships or other teaching or academic positions;

(*ix*) to recognise an institution of higher learning for such purposes as the University may determine and to withdraw such recognition;

(*x*) to appoint persons working in any other University or academic institution as teachers of the University in accordance with the Statutes;

(*xi*) to create administrative, ministerial and other posts and to make appointments thereto, on regular basis as well as engagement on short-term basis in accordance with the Statutes;

(*xii*) to co-operate, collaborate or associate with any other University or authority or institution of higher learning, including those located outside the country, in such manner and for such purposes, as the University may determine;

(*xiii*) to establish, maintain, affiliate, recognise Colleges, Institutions and such Centres and specialised laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;

(*xiv*) to institute and award fellowships, scholarships, studentships, medals and prizes;

(*xv*) to make provision for research and consultancy or advisory services, and for that purpose, to enter into such arrangements with other Universities, Institutions or bodies, as the University may deem necessary;

(*xvi*) to organise and conduct refresher courses, workshops, seminars and other programmes for teachers, evaluators and other academic and non-academic staff;

(*xvii*) to appoint on contract or otherwise Visiting Professors, Emeritus Professors, Consultants, Professionals, Advocates, Counsels, Specialists and such other persons who may contribute to the advancement of the objects of the University;

(*xviii*) to confer autonomous status on a College or an Institution or a Department, as the case may be, in accordance with the Statutes;

(*xix*) to determine standards and eligibilities for admission to the University, which may include examination, evaluation or any other method of testing;

(*xx*) to demand and receive payment of fees and other charges in accordance with the Statutes;

(*xxi*) to supervise or cause to supervise the residences of the staff, faculty and students of the University and to make arrangements for promoting their health and general welfare;

(*xxii*) to lay down conditions of service of all categories of employees, including their code of conduct;

(*xxiii*) to regulate and enforce discipline among the students and employees of the University, and to take such disciplinary measures in this regard as may be deemed by the University to be necessary;

(*xxiv*) to make special arrangements in respect of women, children and persons with disability, as the University may consider desirable;

(*xxv*) to accept benefactions, donations, gifts in cash or kind for furtherance of the objects of the University, and to acquire, hold and manage and to dispose of with the previous approval of the Central Government, any property, movable or immovable, including trust and endowment properties for the purposes of the University;

(*xxvi*) to borrow, with the prior approval of the Central Government, on the security of the property of the University, money for the purpose of the University;

(*xxvii*) to establish new Campuses in India and also off-shore campus or Centre of the University with the prior permission of the Central Government as per the procedure established thereof;

(*xxviii*) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University.

(*2*) In exercising its powers referred to in sub-section (*1*), it shall be the endeavor of the University to maintain an all-India character and high standards of teaching and research, and the University shall, among other measures which may be necessary for the said purpose, take, in particular, the following measures, namely:—

(*i*) admission of students and recruitment of faculty shall be made on all-India basis;

(*ii*) admissions of students shall be made on merit, either through Common Entrance Tests conducted individually by the University or in combination with other Universities, or on the basis of marks obtained in the qualifying examination in such courses where the intake of students is small;

(*iii*) inter-University mobility of faculty, with portable pensions and protection of seniority, shall be encouraged;

(*iv*) semester system, continuous evaluation, choice-based credit system or any other ancient, traditional or modern appropriate system as may be deemed to be fit and proper shall be introduced and the University shall enter into agreements with other Universities and academic institutions for credit transfer and joint degree programmes;

(*v*) ancient traditional teaching system including Gurukulas and Vedashalas shall be adopted in such areas and conditions as may be determined by the Executive Council.

University to be open to all caste, creed, race or class.

7. The University shall be open to all persons of either sex and whatever caste, creed, race or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be appointed as a teacher of the University or to hold any other office therein or be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for the employment or admission of women, persons with disabilities or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes of citizens, economically weaker section of the unreserved class and other special categories as stipulated by the Central Government from time to time.

Visitor of University.

8. (*1*) The President of India shall be the Visitor of the University.

(*2*) The Visitor may, from time to time, appoint one or more persons to review the work and progress of the University, Colleges, Schools and Institutions maintained by it, and to submit a report thereon; and upon receipt of that report, the Visitor may, after obtaining the views of the Executive Council thereon through the Vice-Chancellor, take such action and issue such directions, as he considers necessary, in respect of any of the matters dealt with in the report and the University shall abide by such action and be bound to comply with such directions.

(*3*) The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, libraries, laboratories and equipment, and of any Centre, Department, School, College or Institution maintained by the University and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration or finances of the University, Centre, Department or Institution or affiliated or recognised College or School.

(*4*) The Visitor shall, in every matter referred to in sub-section (*3*), give notice of his intention to cause an inspection or inquiry to be made, to the University, and the University shall have the right to make such representations to the Visitor, as it may consider necessary.

(*5*) After considering the representations, if any, made by the University, the Visitor may cause to be made such inspection or inquiry as is referred to in sub-section (*3*).

(*6*) Where any inspection or inquiry has been caused to be made by the Visitor, the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(*7*) The Visitor may, if the inspection or inquiry is made in respect of the University or any College or School or Institution maintained by it, address the Vice-Chancellor with reference to the result of such inspection or inquiry together with the such views and advice with regard to the action to be taken thereon, as the Visitor may be pleased to offer and on receipt of address made by the Visitor, the Vice-Chancellor shall communicate, to the Executive Council, the views of the Visitor with such advice as the Visitor may offer upon the action to be taken thereon.

(*8*) The Executive Council shall communicate through the Vice-Chancellor to the Visitor such action, if any, as it proposes to take or has been taken upon the result of such inspection or inquiry.

(*9*) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council issue such directions as he may think fit and the Executive Council shall comply with such directions.

(*10*) Without prejudice to the foregoing provisions of this section, the visitor may, by order in writing, annul any proceeding of the University which is not in conformity with the Act, the Statutes or the Ordinances:

Provided that before making any such order, the Visitor shall call upon the Registrar to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, he shall consider the same.

(*11*) The Visitor shall have such other powers as may be prescribed by the Statutes.

Officers of University.

9. The following shall be the officers of the University, namely:—

(*1*) the Chancellor;

(*2*) the Vice-Chancellor;

(*3*) the Deans of School of Studies;

(*4*) the Registrar;

(*5*) the Finance Officer;

(*6*) the Controller of Examinations;

(*7*) the Librarian; and

(*8*) such other officers as may be declared by the Statutes to be the officers of the University.

Chancellor.

10. (*1*) The Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(*2*) The Chancellor shall, by virtue of his office, be the Head of the University and shall, if present, preside at the Convocations of the University held for conferring degrees and meetings of the Court.

(*3*) The Chancellor shall act as an appellate authority in the cases where the Executive Council is the disciplinary authority.

Vice-Chancellor.

11. (*1*) The Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(*2*) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University.

(*3*) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority at its next meeting the action taken by him on such matter:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.

(*4*) The Vice-Chancellor, if he is of the opinion that any decision of any authority of the University is beyond the powers of the authority conferred by the provisions of this Act, the Statutes or the Ordinances or that any decision taken is not in the interest of the University, may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixty days, the matter shall be referred to the Visitor whose decision thereon shall be final.

(*5*) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances.

Deans of Schools of Studies.

12. Every Dean of School of Studies shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

Registrar.

13. (*1*) The Registrar shall be appointed in such manner, and on such terms and conditions of service, as may be prescribed by the Statutes.

(*2*) The Registrar shall have the power to enter into agreements, sign documents and authenticate records on behalf of the University, and shall exercise such other powers and perform such other duties, as may be prescribed by the Statutes.

Director of Campus.

14. Every Director of the Campus shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

Finance Officer.

15. The Finance Officer shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

Controller of Examinations.

16. The Controller of Examinations shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

Librarian.

17. The Librarian shall be appointed in such manner and on such terms and conditions of service and shall exercise such powers and perform such duties as may be prescribed by the Statutes.

Other officers.

18. The manner of appointment and powers and duties of other officers of the University shall be as prescribed by the Statutes.

Authorities of University.

19. The following shall be the authorities of the University, namely:—

(*i*) the Court;

(*ii*) the Executive Council;

(*iii*) the Academic Council;

(*iv*) the Board of Studies;

(*v*) the Finance Committee;

(*vi*) the Planning and Monitoring Board; and

(*vii*) such other authorities as may be declared by the Statutes to be authorities of the University.

The Court.

20. (*1*) The Constitution of the Court and the term of office of its members shall be as prescribed by the Statutes:

Provided that such number of members, as may be prescribed by the Statutes, shall be elected from among the teachers, employees and students of the University.

(*2*) Subject to the provisions of this Act, the Court shall have the following powers and functions, namely:—

(*a*) to review, from time to time, the broad policies and programmes of the University, and to suggest measures for the improvement and development of the University;

(*b*) to consider and pass resolutions on the annual report and the annual accounts of the University and the audit report on such accounts;

(*c*) to advise the Visitor in respect of any matter which may be referred to it for advice; and

(*d*) to perform such other functions as may be prescribed by the Statutes.

Executive Council.

21. (*1*) The Executive Council shall be the principal executive body of the University.

(*2*) The constitution of the Executive Council, the term of office of its members and its powers and functions shall be as prescribed by the Statutes.

Academic Council.

22. (*1*) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the University.

(*2*) The constitution of the Academic Council, the term of office of its members and its powers and functions shall be as prescribed by the Statutes.

Board of Studies.

23. The constitution, powers and functions of the Board of Studies shall be as prescribed by the Statutes.

Finance Committee.

24. The constitutions, powers and functions of the Finance Committee shall be as prescribed by the Statutes.

Planning and Monitoring Board.

25. The constitution, powers and functions of the Planning and Monitoring Board shall be as prescribed by the Statutes.

Other authorities of University.

26. The constitution, powers and functions of other authorities, as may be declared by the Statutes to be the authorities of the University, shall be as prescribed by the Statutes.

Power to make Statutes.

27. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

(*a*) the constitution, powers and functions of the authorities and other bodies of the University, as may be constituted from time to time;

(*b*) the appointment and continuance in office of the members of the said authorities and bodies, the filling of vacancies of members and all other matters relating to those authorities and other bodies for which it may be necessary or desirable to provide;

(*c*) the appointment, powers and duties of the officers of the University and their emoluments;

(*d*) the appointment of teachers, academic staff and other employees of the University, their emoluments and conditions of service;

(*e*) the appointment of teachers and academic staff working in any other University or organisation or institution for a specific period for undertaking a joint project;

(*f*) the conditions of service of employees including provisions for pension, insurance, provident fund, the manner of termination of service and disciplinary actions;

(*g*) the principles governing seniority of service of the employees of the University;

(*h*) the procedure for arbitration in cases of dispute between employees or students and the University;

(*i*) the procedure for appeal to the Executive Council by any employee or student against the action of any officer or authority of the University;

(*j*) the conferment of autonomous status on a College or an Institution or a Department or a School or a Centre;

(*k*) the establishment or abolition of Campuses, Colleges, Institutions, Schools, Centres or Halls;

(*l*) the conferment of honorary degrees;

(*m*) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(*n*) the management of Colleges and Institutions established by the University;

(*o*) the delegation of powers vested in the authorities or officers of the University;

(*p*) the maintenance of discipline among the employees and students; and

(*q*) all other matters which by this Act are to be, or may be, provided for by the Statutes.

Statutes, how to be made.

28. (*1*) The First Statutes are those set out in the Second Schedule.

(*2*) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (*1*):

Provided that the Executive Council shall not make, amend or repeal any Statutes affecting the status, power or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council.

(*3*) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the assent of the Visitor who may assent thereto or withhold assent or remit to the Executive Council for reconsideration.

(*4*) A new Statute or a Statute amending or repealing existing Statutes shall have no validity unless it has been assented to by the Visitor.

(*5*) Notwithstanding anything contained in the foregoing sub-sections, the Visitor may make new or additional Statutes or amend or repeal the Statutes referred to in sub-section (*1*) during the period of three years immediately after the commencement of this Act:

Provided that the Visitor may, on the expiry of the said period of three years, make within one year from the date of such expiry, such detailed Statutes as he may consider necessary and such detailed Statutes shall be laid before both Houses of Parliament.

(*6*) Notwithstanding anything contained in this section, the Visitor may direct the University to make provisions in the Statutes in respect of any matter specified by him and if the Executive Council is unable to implement such direction within sixty days of its receipt, the Visitor may, after considering the reasons, if any, communicated by the Executive Council for its inability to comply with such direction, make or amend the Statutes suitably.

Power to make Ordinances.

29. (*1*) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

(*a*) the admission of students to the University and their enrolment as such;

(*b*) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(*c*) the medium of instruction and examination;

(*d*) the award of degrees (including Honorary degrees), diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same;

(*e*) the fees to be charged for courses of study in the University and for admission to the examinations, degrees, diplomas and certificates of the University;

(*f*) the conditions for the award of fellowship, scholarships, studentships, medals and prizes;

(*g*) the conduct of examinations, including the term of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(*h*) the conditions of residence of the students, classrooms, laboratories, libraries, auditoriums, playgrounds and other amenities of the University;

(*i*) the special arrangements, if any, which may be made for the residence and teaching of women students and the prescribing of special courses of studies for them;

(*j*) the establishment of Centres of Studies, Boards of Studies, Inter-disciplinary Studies, Special Centres, Specialised Laboratories and other Committees;

(*k*) the manner of co-operation and collaboration with other Universities, institutions, and other agencies including learned bodies or associations;

(*l*) the creation, composition and functions of any other body which is considered necessary for improving the academic life of the University;

(*m*) the institution of fellowships, scholarships, studentships, medals and prizes;

(*n*) the setting up of machinery for redressal of grievances of employees and students;

(*o*) all other matters which by this Act, or the Statutes, are to be, or may be, provided for by the Ordinances.

(*2*) The first Ordinances shall be made by the Vice-Chancellor with the previous approval of the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes.

Regulations.

30. The authorities of the University may make Regulations, consistent with this Act, the Statutes and the Ordinances, for the conduct of their own business and that of the Committees, if any, appointed by them and not provided for by this Act, the Statutes or the Ordinances, in the manner prescribed by the Statutes.

Annual report.

31. (*1*) The annual report of the University shall be prepared under the direction of the Executive Council, which shall include, among other matters, the steps taken by the University towards the fulfilment of its objects and shall be submitted to the Court on or before such date as may be prescribed by the Statutes and the Court shall consider the report in its annual meeting.

(*2*) The Court shall submit the annual report, along with its comments, if any, to the Visitor.

(*3*) A copy of the annual report, as prepared under sub-section (*1*), shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both the Houses of Parliament.

Annual accounts.

32. (*1*) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India or by such persons as he may authorise in this behalf.

(*2*) A copy of the annual accounts, together with the audit report thereon, shall be submitted to the Court and the Visitor along with the observations of the Executive Council.

(*3*) Any observations made by the Visitor on the annual accounts shall be brought to the notice of the Court and the observations of the Court, if any, shall, after being considered by the Executive Council, be submitted to the Visitor.

(*4*) A copy of the annual accounts, together with the audit report as submitted to the Visitor, shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both the Houses of Parliament.

(*5*) The audited annual accounts after having been laid before both the Houses of Parliament shall be published in the Gazette of India.

Returns and information.

33. The University shall furnish to the Central Government such returns or other information with respect to its property or activities as the Central Government may, from time to time, require, within such period as may be specified by the Central Government.

Conditions of service of employees, etc.

34. (*1*) Every employee of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(*2*) Any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the employee concerned and an umpire appointed by the Visitor.

(*3*) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by the Tribunal:

Provided that nothing in this sub-section shall preclude the employee from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

(*4*) Every request made by the employee under sub-section (*2*) shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996.

26 of 1996.

(*5*) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

Procedure of appeal and arbitration in disciplinary cases against students.

35. (*1*) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.

(*2*) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub-sections (*2*), (*3*), (*4*) and (*5*) of section 34 shall, as far as may be, apply to a reference made under this sub-section.

Right to appeal.

36. Every employee or student of the University or of a College or Institution maintained by the University shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University, or, the Principal or the management of any College or an Institution, as the case may be, and thereupon the Executive Council may confirm, modify or reverse the decision appealed against.

Provident and pension funds.

37. (*1*) The University shall constitute for the benefits of its employees such provident or pension fund or provide such insurance schemes and other welfare and social security measures, as it may deem fit, in such manner and subject to such conditions as may be prescribed by the Statutes.

(*2*) Where such provident fund or pension fund has been so constituted, the Central Government may declare that the provision of the Provident Funds Act, 1925, shall apply to such fund as if it were a Government provident fund.

19 of 1925.

Disputes as to constitution of authorities and bodies.

38. If any question arises as to whether any person has been duly elected or nominated or appointed, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Visitor whose decision thereupon shall be final.

Filling of casual vacancies.

39. All casual vacancies among the members (other than *ex officio* members) of any authority or other body of the University shall be filled, as soon as may be, by the person or body who elects, nominates, appoints or co-opts the member whose place has become vacant and the person appointed, elected, nominated or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

Proceedings of authorities or bodies not invalidated by vacancies.

40. No act or proceeding of any authority or other body of the University shall be invalid merely by reason of the existence of a vacancy or vacancies among its members.

Protection of action taken in good faith.

41. No suit or other legal proceedings shall lie against any officer or any other employee of the University for anything which is in good faith, done or intended to be done, in pursuance of any of the provisions of this Act, the Statutes or the Ordinances.

Mode of proof of University record.

42. Notwithstanding anything contained in the Indian Evidence Act,1872 or in any other law for the time being in force, a copy of any receipt, application, notice, order, proceeding or resolution of any authority or other body of the University, or any other document in possession of the University or any entry in any register duly maintained by the University if certified by the Registrar, shall be received as *prima facie* evidence of such receipt, application, notice, order, proceeding, resolution or document or the existence of entry in the register and shall be admitted as evidence of the matters and transactions therein where the original thereof would, if produced, have been admissible in evidence.

1 of 1872.

Power to remove difficulties.

43. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(*2*) Every order made under sub-section (*1*) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

Statutes, Ordinances and Regulations to be published in Official Gazette and to be laid before Parliament.

44. (*1*) Every Statute, Ordinances or Regulation made under this Act shall be published in the Official Gazette.

(*2*) Every Statute, Ordinances or Regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Statute, Ordinances or Regulation or both Houses agree that the Statute, Ordinances or Regulation should not be made, the Statute, Ordinances or Regulation shall thereafter have effect only in such modified form, or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Statute, Ordinances or Regulation.

(*3*) The power to make Statutes, Ordinances or Regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the Statutes, Ordinances or Regulations or any of them but no retrospective effect shall be given to any Statutes, Ordinances or Regulations so as to prejudicially affect the interests of any person to whom such Statutes, Ordinances or Regulations may be applicable.

Transitional provisions.

45. (*1*) Notwithstanding anything contained in this Act and the Statutes,—

(*a*) the Chancellor, Vice-Chancellor and other officers of each of the deemed to be Universities holding office immediately before the commencement of this Act, shall, on and from such commencement, continue to hold their respective offices by the same tenure and upon the same terms and conditions as they held it immediately before such commencement for the remaining period of their term;

(*b*) the members of the Executive Council, the Academic Council, the Finance Committee, the Planning and Monitoring Board and Faculties of each of the deemed to be Universities appointed as such prior to the commencement of this Act shall, on and from such commencement, be deemed to have been appointed in the same capacity under this Act for the remaining period of their term and shall continue to exercise all the powers and perform all the functions of such authority under this Act;

(*c*) the first Court shall consist of not more than thirty-one members who shall be nominated by the Central Government and shall hold office for a term of three years:

Provided that if any vacancy occurs in the offices or authorities referred to in clauses (*a*) and (*b*) the same shall be filled by appointment by the Visitor or nomination by the Central Government, as the case may be, and the person so appointed or nominated shall hold office for so long as the officer or member in whose place he is appointed or nominated would have held office, if such vacancy had not occurred:

Provided further that any *ex officio* member appointed to any of the authorities referred to in clauses (*a*) and (*b*) prior to the commencement of this Act shall, if such appointment is not in conformity with the provisions of this Act, cease to be a member of such authority.

(*2*) All other officers and employees of the deemed to be Universities holding office immediately before the commencement of this Act, shall, on and from such commencement, continue to hold their respective offices by the same tenure and upon the same terms and conditions as they held immediately before such commencement of this Act.

(*3*) All students admitted in any programme or course in a deemed to be University immediately before the commencement of this Act, shall be deemed to have been migrated under same programme or course to corresponding University under the same terms and conditions as they held immediately before such commencement.

(*4*) Anything done or any action taken or any degree or other academic distinction conferred by a deemed to be University before the commencement of this Act shall, notwithstanding any change made by this Act in the constitution of the Court, the Executive Council, the Academic Council, the Finance Committee, the Planning and Monitoring Board, Faculties and other officers be valid, as if such thing was done, action taken, or degree or academic distinction conferred under this Act.

(*5*) The Regulations, Bye-laws or Orders, if any, made prior to the commencement of this Act, shall, in so far as they pertain to matters mentioned in section 30, continue to be applicable till the Regulations, Bye-laws or Orders are made under this Act.

(*6*) The Central Government may, without prejudice to the provisions of this Act, and if it considers it necessary and expedient so to do, by notification, take such measures, as may be necessary, for the smooth transfer of the deemed to be University to the corresponding University.

Councils, Boards, Standing Committees and Cells of University.

46. The University may constitute such Councils, Boards, Standing Committees and Cells, in furtherance of its functions, as it may deem necessary.

Constitution of Committees.

47. Where any authority of the University is given power by this Act or the Statutes to appoint Committees, such Committees shall, save as otherwise provided, consist of the members of the authority concerned and of such other person, if any, as the authority in each case may think fit.

THE FIRST SCHEDULE

[*See* section 3(*1*)(*a*)]

Sl. No.	Name of the State	Name of the Campus
1.	Jammu and Kashmir	Shri Ranbir Campus
2.	Uttar Pradesh	(a) Lucknow Campus
		(b) Ganganath Jha Campus
3.	Karnataka	Shri Rajiv Gandhi Campus
4.	Rajasthan	Jaipur Campus
5.	Odisha	Shri Sadashive Campus
6.	Kerala	Guruvayoor Campus
7.	Madhya Pradesh	Bhopal Campus
8.	Maharashtra	K.J. Somaiya Campus
9.	Himachal Pradesh	Veda Vyas Campus
10.	Tripura	Eklavya Campus
11.	Uttarakhand	Shri Raghunath Kirti Campus.

THE SECOND SCHEDULE

(*See* section 28)

The Statutes of the University

1. Chancellor.—(*1*) The Minister in-Charge of the Ministry of Human Resource Development shall be the *ex officio* Chancellor of the Central Sanskrit University, Delhi.

(*2*) The Chancellors of Shri Lal Bahadur Shastri National Sanskrit University, New Delhi and the National Sanskrit University, Tirupati shall be appointed by the Visitor from a panel of not less than three persons recommended by the Executive Council from amongst persons of eminence in the academic or in public life of the country:

Provided that, if the Visitor does not approve of any of the persons so recommended, he may, call for fresh recommendations of different names, from the Executive Council.

(*3*) The Chancellors of Shri Lal Bahadur Shastri National Sanskrit University, New Delhi and of the National Sanskrit University, Tirupati shall hold office for a term of five years and shall not be eligible for re-appointment:

Provided that notwithstanding the expiry of his term of office, the Chancellor shall continue to hold office until his successor enters upon his office.

(*4*) The age of the Chancellors of Shri Lal Bahadur Shastri National Sanskrit University, New Delhi and of the National Sanskrit University, Tirupati shall not be more than seventy years as on the 1st day of January in the year during which the vacancy has arisen.

2. Vice-Chancellor.—(*1*) The Vice-Chancellor shall be appointed by the Visitor from out of a panel of three names recommended by a Committee constituted under clause (*3*):

Provided that if the Visitor does not approve any of the persons included in the panel, he may call for a fresh panel of new names.

(*2*) The Vice-Chancellor shall be an eminent scholar in the field of Sanskrit and allied subjects and his qualifications shall be as specified in the regulations made under the University Grants Commission Act, 1956 (3 of 1956) in this behalf.

(*3*) The Committee referred to in clause (*1*) shall consist of five persons, out of whom two shall be nominated by the Executive Council and two by the Visitor, and one by the Central Government and the nominee of the Visitor shall be the convener of the Committee:

Provided that none of the members of the Committee shall be an employee of the University or a College or an Institution maintained by the University or a member of any authority of the University.

(*4*) The Vice-Chancellor shall be a whole-time salaried employee of the University.

(*5*) The Vice-Chancellor shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of seventy years:

Provided that the Visitor may direct any Vice-Chancellor, after his term has expired, to continue in office for such period, not exceeding a total period of one year, as may be specified by him, subject to him not exceeding seventy years of age.

(*6*) Notwithstanding anything contained in clause (*5*), the Visitor may, at any time after the Vice-Chancellor has entered upon his office, by order in writing, remove the Vice-Chancellor from office on grounds of incapacity, misconduct or violation of statutory provisions:

Provided that no such order shall be made by the Visitor unless the Vice-Chancellor has been given a reasonable opportunity of showing cause against the action proposed to be taken against him:

Provided further that the Visitor shall consult the Chancellor also before making such order:

Provided also that the Visitor may, at any time, before making such order, place the Vice-Chancellor under suspension, pending enquiry.

(*7*) The emoluments and other conditions of service of the Vice-Chancellor shall be as follows:—

(*i*) the Vice-Chancellor shall be paid a monthly salary and allowances, other than house rent allowance, at the rates fixed by the Central Government from time to time and he shall be entitled, without payment of rent, to use a furnished residence throughout his term of office and no charge shall fall on the Vice-Chancellor in respect of the maintenance of such residence;

(*ii*) the Vice-Chancellor shall be entitled to such terminal benefits and allowances as may be fixed by the Central Government from time to time:

Provided that where an employee of the University, or a College or an Institution maintained by the University, or of any other University or any college or institution maintained by or admitted to the privileges of, such other University, is appointed as the Vice-Chancellor, he may be allowed to continue to contribute to any provident fund of which he is a member and the University shall contribute to the account of such person in that provident fund at the same rate at which the person had been contributing immediately before his appointment as the Vice-Chancellor:

Provided further that where such employee had been a member of any pension scheme, the University shall make necessary contribution to such scheme;

(*iii*) the Vice-Chancellor shall be entitled to travelling allowance at such rates as may be fixed by the Central Government from time to time;

(*iv*) the Vice-Chancellor shall be entitled to leave on full pay at the rate of thirty days in a calendar year and the leave shall be credited to his account in advance in two half-yearly instalments of fifteen days each on the first day of January and July every year:

Provided that if the Vice-Chancellor assumes or relinquishes charge of the office of the Vice-Chancellor during the currency of a half year, the leave shall be credited proportionately at the rate of two and-a-half days for each completed month of service;

(*v*) in addition to the leave referred to in sub-clause (*iv*), the Vice-Chancellor shall also be entitled to half-pay leave at the rate of twenty days for each completed year of service, and half-pay leave may also be availed of as commuted leave on full pay on medical certificate:

Provided that when such commuted leave is availed of, twice the amount of half-pay leave shall be debited against half-pay leave due.

(*8*) If the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or if he is unable to perform his duties due to ill-health or any other cause, the senior-most Professor shall perform the duties of the Vice-Chancellor.

3. Powers and duties of Vice-Chancellor.—(*1*) The Vice-Chancellor shall be *ex officio* Chairman of the Executive Council, the Academic Council, the Finance Committee and Planning and Monitoring Board, and shall, in the absence of the Chancellor, preside at the Convocations held for conferring degrees and at meetings of the Court.

(*2*) The Vice-Chancellor shall be entitled to be present at, and address, any meeting of any authority or other body of the University, but shall not be entitled to vote thereat unless he is a member of such authority or body.

(*3*) It shall be the duty of the Vice-Chancellor to see that this Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all the powers necessary to ensure such observance.

(*4*) The Vice-Chancellor shall have all the powers necessary for the proper maintenance of discipline in the University and he may delegate any such powers to such person or persons as he deems fit.

(*5*) The Vice-Chancellor shall have all the powers to convene or cause to be convened the meetings of the Executive Council, the Academic Council, the Finance Committee and the Planning and Monitoring Board.

4. Deans of School of Studies.— (*1*) Every Dean of School of Studies shall be appointed by the Vice-Chancellor from amongst the Professors in the School of Studies by rotation in the order of seniority for a period of three years:

Provided that in case there is only one Professor or no Professor in a School of Studies, the Dean shall be appointed, for the time being, from amongst the Professors, if any, and the Associate Professors in the School of Studies by rotation in the order of seniority:

Provided further that a Dean on attaining the age of sixty-five years shall cease to hold office as such.

(*2*) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform duties of his office, the duties of the office shall be performed by the senior-most Professor, as the case may be, in the School of Studies.

(*3*) The Dean shall be the Head of the School of Studies and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School of Studies and shall have such other functions as may be prescribed by the Ordinances.

(*4*) The Dean shall have the right to be present and to speak at any meeting of the Boards of Studies or Committees of the School of Studies, as the case may be, but shall not have the right to vote thereat unless he is a member thereof.

5. Registrar.—(*1*) The Registrar shall be appointed by the Executive Council on the recommendation of a Selection Committee constituted for the purpose and shall be whole-time salaried officer of the University.

(*2*) The Registrar shall be appointed for a term of five years and shall be eligible for re-appointment after following such procedure as may be laid down for such appointment.

(*3*) The emoluments and other terms and conditions of service of the Registrar shall be such as may be prescribed by the Central Government from time to time:

Provided that the Registrar shall retire on attaining the age of sixty-two years.

(*4*) When the office of the Registrar is vacant or when the Registrar is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(*5*) (*a*) The Registrar shall have power to take disciplinary action against such of the employees, excluding teachers and other academic staff, as may be specified in the order of the Executive Council and to suspend them pending inquiry, to administer warnings to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him;

(*b*) an appeal shall lie to the Vice-Chancellor against any order of the Registrar imposing any of the penalties specified in sub-clause (*a*);

(*c*) in a case where the inquiry discloses that a punishment beyond the power of the Registrar is called for, the Registrar shall, upon the conclusion of the inquiry, make a report to the Vice-Chancellor along with his recommendations:

Provided that an appeal shall lie to the Executive Council against an order of the Vice-Chancellor imposing any penalty.

(*6*) The Registrar shall be *ex officio* Secretary of the Executive Council and the Academic Council, but shall not be deemed to be member of either of these authorities and he shall be *ex officio* Member-Secretary of the Court and of the Planning and Monitoring Board.

(*7*) It shall be the duty of the Registrar—

(*a*) to be the custodian of the records, the common seal and such other property of the University as the Executive Council shall commit to his charge;

(*b*) to issue all notices, convening meetings of the Court, the Executives Council, the Academic Council, the Planning and Monitoring Board, and of any Committees appointed by those authorities;

(*c*) to keep the minutes of all the meetings of the Court, the Executive Council, the Academic Council, the Planning and Monitoring Board and of any Committees appointed by those authorities;

(*d*) to conduct the official correspondence of the Court, the Executive Council, the Academic Council and the Planning and Monitoring Board;

(*e*) to supply to Visitor, copies of the agenda of the meetings of the authorities of the University as soon as they are issued and of the minutes of such meetings;

(*f*) to represent the University in suits or proceedings by or against the University, sign powers of attorney and verify pleadings or depute his representative for the purpose; and

(*g*) to perform such other duties as may be specified in the Statutes, the Ordinances, the Regulations or as may be required from time to time by the Executive Council or the Vice-Chancellor.

6. Finance Officer.—(*1*) The Finance Officer shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(*2*) The Finance Officer shall be appointed for a term of five years and shall be eligible for re-appointment after following such procedure as may be laid down for such appointment.

(*3*) The emoluments and other terms and conditions of service of the Finance Officer shall be such as may be prescribed by the Central Government from time to time:

Provided that, the Finance Officer shall retire on attaining the age of sixty-two years.

(*4*) When the office of the Finance Officer is vacant or when the Finance Officer is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(*5*) The Finance Officer shall be *ex officio* Member—Secretary of the Finance Committee.

(*6*) The Finance Officer shall—

(*a*) exercise general supervision over the funds of the University and shall advise it as regards its financial policy; and

(*b*) perform such other financial functions as may be assigned to him by the Executive Council or as may be prescribed by the Statutes or the Ordinances.

(*7*) Subject to the control of the Executive Council, the Finance Officer shall—

(*a*) hold and manage the property and investments of the University including trust and endowed property;

(*b*) ensure that the limits fixed by the Executive Council for recurring and non-recurring expenditure for a year are not exceeded and that all moneys are expended on the purpose for which they are granted or allotted;

(*c*) be responsible for the preparation of annual accounts and the budget of the University and for their presentation to the Executive Council;

(*d*) keep a constant watch on the state of the cash and bank balances and on the state of investments;

(*e*) watch the progress of the collection of revenues and advise on the methods of collection employed;

(*f*) ensure that the registers of buildings, land, furniture and equipment are maintained up-to-date and that stock-checking is conducted, of equipment and other consumable materials in all offices, Departments, Centres and Specialised Laboratories;

(*g*) bring to the notice of the Vice-Chancellor un-authorised expenditure and other financial irregularities and suggest disciplinary action against persons at fault; and

(*h*) call for, from any office, Department, Centre, Laboratory, College, School of Studies or Institution maintained by the University, any information or returns that he may consider necessary for the performance of his duties.

(*8*) Any receipt given by the Finance Officer or the person or persons duly authorised in this behalf by the Executive Council for any money payable to the University shall be sufficient discharge for payment of such money.

7. Controller of Examinations.—(*1*) The Controller of Examinations shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(*2*) The Controller of Examinations shall be appointed for a term of five years and shall be eligible for re-appointment after following such procedure as may be laid down for such appointment.

(*3*) The emoluments and other terms and conditions of service of the Controller of Examinations shall be such as may be prescribed by the Central Government from time to time:

Provided that the Controller of Examinations shall retire on attaining the age of sixty-two years.

(*4*) When the office of the Controller of Examinations is vacant or when the Controller of Examinations is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(*5*) The Controller of Examinations shall arrange for and superintend the examinations of the University in the manner prescribed by the Ordinances.

8. Librarian.—(*1*) The Librarian shall be appointed by the Executive Council on the recommendations of the Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University.

(*2*) The Librarian shall exercise such powers and perform such duties as may be assigned to him by the Executive Council.

9. Director of the Campus.—(*1*) The Director of a Campus shall be the senior-most Professor and appointed by the Vice-Chancellor of the University on such terms and conditions as may be prescribed by the Ordinances.

(*2*) The Director of the Campus shall exercise such powers and perform duties as may be assigned to him by the Vice-Chancellor.

10. Meetings of Court.—(*1*) An annual meeting of the Court shall be held on a date to be fixed by the Executive Council unless some other date has been fixed by the Court in respect of any year.

(*2*) At an annual meeting of the Court, a report on the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance-sheet as audited, and financial estimates for the next year shall be presented.

(*3*) A copy of the statement of receipts and expenditure, the balance-sheet and the financial estimates referred to in clause (*2*) shall be sent to every member of the Court at least seven days before the date of the annual meeting.

(*4*) Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor or if there is no Vice-Chancellor, by the Registrar.

(*5*) Eleven members of the Court shall form a quorum for a meeting of the Court.

11. Executive Council.—(*1*) The Executive Council shall consist of the following persons, namely:—

(*a*) Vice-Chancellor shall be the Chairperson;

(*b*) two Deans of the School of Studies by rotation according to the seniority;

(*c*) one Professor, other than a Dean by rotation according to seniority;

(*d*) one Associate Professor by rotation according to seniority;

(*e*) two members of the Court, none of whom shall be an employee of the University or a college or an institution affiliated to or recognised by the University;

(*f*) one representative from the University Grants Commission;

(*g*) three eminent academics nominated by the Visitor;

(*h*) two eminent academics in the field of Sanskrit and allied subjects to be nominated by the Central Government on the recommendations of the Vice-Chancellor;

(*i*) Joint Secretary in the Ministry of Human Resources Development looking after the University;

(*j*) the Registrar of the University shall be the Secretary of the Executive Council.

(*2*) All the members of the Executive Council, other than *ex officio* members shall hold office for a term of three years.

(*3*) Seven members of the Executive Council shall form a quorum for a meeting of the Executive Council and it shall meet at least thrice in a year.

12. Powers and functions of Executive Council.—(*1*) The Executive Council shall have power of management and administration of the revenues and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(*2*) Subject to the provisions of this Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:—

(*i*) to create teaching and other academic posts including Chairs, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Associate Professors, Assistant Professors and other academic staff:

Provided that no action shall be taken by the Executive Council in respect of the number and qualifications of teachers and other academic staff otherwise than after consideration of the recommendations of the Academic Council;

(*ii*) to appoint such Professors, Associate Professors, Assistant Professors and other academic staff including Chairs, as may be necessary, on the recommendation of the Selection Committee constituted for the purpose and to fill up temporary vacancies therein;

(*iii*) to promote inter-facial research by making joint appointments of teaching staff in different Schools, Departments and Centres;

(*iv*) to create administrative, ministerial and other necessary posts and to define their duties and conditions of their service and to make appointments thereto in the manner prescribed by the Ordinances;

(*v*) to grant leave of absence to any officer of the University other than the Chancellor and the Vice-Chancellor, and to make necessary arrangements for the discharge of the functions of such officer during his absence;

(*vi*) to regulate and enforce discipline among employees in accordance with the Statutes and the Ordinances;

(*vii*) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and for that purpose to appoint such agents as it may think fit;

(*viii*) to fix limits on the total recurring and the total non-recurring expenditure for a year on the recommendation of the Finance Committee;

(*ix*) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, shares or securities, from time to time, as it may think fit or in the purchase of immovable property in India, with the like powers of varying such investment from time to time;

(*x*) to transfer or accept transfers of any movable or immovable property on behalf of the University;

(*xi*) to provide buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University;

(*xii*) to enter into, vary, carry out and cancel contracts on behalf of the University;

(*xiii*) to entertain, adjudicate upon, and if thought fit, to redress any grievances of the employees and students of the University who may, for any reason, feel aggrieved;

(*xiv*) to appoint examiners and moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council;

(*xv*) to select a common seal for the University and provide for the use of such seal;

(*xvi*) to make such special arrangements as may be necessary for the residence of women students;

(*xvii*) to institute fellowships, scholarships, studentships, medals and prizes;

(*xviii*) to provide for the appointment of Visiting Professors, Emeritus Professors, Consultants and Scholars and determine the terms and conditions of such appointments;

(*xix*) to approve the award of degrees and diplomas based on the results of the examinations and tests to confer, grant of award of degrees, diplomas, certificates and other academic titles and distinctions;

(*xx*) to raise and borrow money on bonds, mortgages, promissory notes or other obligations or securities funded or based on any of the properties and assets of the University or without any securities and upon such terms and conditions as it may think fit and pay out of the funds of the University, all expenses, incidental to the raising of money and to repay and redeem any money borrowed;

(*xxi*) to enter into partnership with industry and non-government agencies for the advancement of knowledge and establish a corpus of funds out of the profits of such partnership; and

(*xxii*) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes.

13. Academic Council.—(*1*) The Academic Council shall consist of the following persons, namely:—

(*a*) the Vice-Chancellor shall be the Chairperson;

(*b*) Deans of School of Studies;

(*c*) Head of Departments and Director of Centres;

(*d*) two Professors other than Heads of Departments; according to seniority to be nominated by the Vice-Chancellor;

(*e*) two Teachers of the University, at least one of whom shall be an Associate Professor, by rotation according to seniority, to be nominated by the Vice-Chancellor;

(*f*) one member, other than those referred to in items (*b*), (*c*), (*d*) and (*e*) from each Schools of studies and centres;

(*g*) three persons, not being employees of the University to be nominated by the Vice-Chancellor on the recommendations of the Academic Council for their special knowledge;

(*h*) two members of the Court, none of whom shall be an employee of the University or a College or an Institution affiliated to or recognised by the University.

(*2*) The Registrar of the University shall be the Secretary of the Academic Council.

(*3*) All the members of the Academic Council, other than *ex officio* members shall hold office for a term of three years and they shall be eligible for re-appointment after a cooling off period of at least two years.

(*4*) Half of the sanctioned strength of the Academic Council shall form a quorum for a meeting of the Academic Council.

14. Powers and functions of Academic Council.—Subject to the provisions of this Act, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:—

(*a*) to exercise general supervision over the academic policies of the University and to give directions regarding methods of instruction, co-ordination of teaching among the Colleges and the Institutions, evaluation of research and improvement of academic standards;

(*b*) to bring about and promote inter-School co-ordination and to establish or appoint such Committees or Boards as may be deemed necessary for the purpose;

(*c*) to consider matters of general academic interest either on its own initiative, or on a reference by a School or the Executive Council, and to take appropriate action thereon;

(*d*) to frame such Regulations and rules consistent with the Statutes and the Ordinances regarding the academic functioning of the University, discipline, residence, admissions, award of fellowships and studentships, fees, concessions, corporate life and attendance;

(*e*) to prescribe courses of study leading to degrees and diplomas of the University; and

(*f*) to make recommendations to the Executive Council on the following matters:

(*i*) measures for improvement of standards of teaching, training and research;

(*ii*) institution of Fellowships, Travelling Fellowships, Scholarships, Medals and Prizes;

(*iii*) to recommend about the establishment or abolition of Centres or Departments.

15. Planning and Monitoring Board.—(*1*) The Planning and Monitoring Board shall consist of the following persons, namely:—

(*i*) the Vice-Chancellor shall be the Chairperson;

(*ii*) three internal members, to be nominated by the Executive Council;

(*iii*) three eminent educationists having special knowledge of the University planning, to be appointed by the Executive Council;

(*iv*) the Finance Officer;

(*v*) the Registrar who shall be Member-Secretary.

(*2*) The term of the members of the Planning and Monitoring Board, excluding *ex officio* members, shall be three years and they shall be eligible for re-appointment.

(*3*) The quorum for the meeting of the Planning and Monitoring Board shall be five.

(*4*) The Planning and Monitoring Board shall meet at least twice a year.

16. Powers and functions of the Planning and Monitoring Board.—(*1*) The Planning and Monitoring Board, subject to the supervision of the Executive Council, shall—

(*i*) be responsible for overall perspective planning and development of the University in consonance with its objective;

(*ii*) determine the area of excellence of the University and identify the thrust areas for research;

(*iii*) examine, rationalise, coordinate the proposals of development received from various Faculties and Departments to be submitted to the Executive Council and the Academic Council for their consideration and approval;

(*iv*) monitor the implementation of the approved plan of the University;

(*v*) submit to the Academic Council and the Executive Council plans for disciplines and courses of study;

(*vi*) propose to the Academic Council and the Faculty, measures regarding the restructuring of courses and introduction of inter-disciplinary interaction amongst the Departments of Studies;

(*vii*) perform such other functions and exercise such other powers as may be assigned or delegated to it by the Executive Council.

(*2*) In case of difference of opinion between the Planning and Monitoring Board and the Academic Council in regard to the academic planning, the matter shall be referred to the Executive Council whose decision thereon shall be final.

(*3*) The Planning and Monitoring Board shall, under its overall supervision, establish a planning cell to achieve its objectives and appoint as many Committees as it deems necessary for such purpose:

Provided that two-third members of such Committee shall be from amongst the teachers of the University.

17. Schools of Studies and Departments.—(*1*) The University shall have such Schools of Studies as may be specified in the Statutes.

(*2*) Every School of studies shall have a School Board and the members of the first School Board shall be nominated by the Executive Council for a period of three years.

(*3*) The composition, powers and functions of a School Board shall be prescribed by the Ordinances.

(*4*) The conduct of the meetings of a School Board and the quorum required for such meetings shall be prescribed by the Ordinances.

(*5*) (*a*) Every School shall consist of such Departments as may be assigned to it by the Ordinances:

Provided that the Executive Council may, on the recommendation of the Academic Council, establish Centres of Studies to which may be assigned such teachers of the University as the Executive Council may consider necessary.

(*b*) Each Department shall consist of the following members, namely:—

(*i*) teachers of the Department;

(*ii*) persons conducting research in the Department;

(*iii*) Dean of the School;

(*iv*) Honorary Professors, if any, attached to the Department; and

(*v*) such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

18. Board of Studies.—(*1*) Each Department shall have a Board of Studies.

(*2*) The constitution of the Board of Studies and the term of office of its members shall be prescribed by the Ordinances.

(*3*) Subject to the overall control and supervision of the Academic Council, the functions of a Board of Studies shall be to approve subjects for research for various degrees and other requirements of research degrees and to recommend to the concerned School Board in the manner prescribed by the Ordinances—

(*a*) courses of studies and appointment of examiners for courses, but excluding research degrees;

(*b*) appointment of supervisors for research; and

(*c*) measures for the improvement of the standard of teaching and research:

Provided that the above functions of a Board of Studies shall, during the period of three years immediately after the commencement of this Act, be performed by the Department.

19. Finance Committee.—(*1*) The Finance Committee shall consist of the following members, namely:—

(*i*) the Vice-Chancellor;

(*ii*) one person to be nominated by the Court;

(*iii*) three persons to be nominated by the Executive Council, out of whom at least one shall be a member of the Executive Council;

(*iv*) one representative of the Ministry of Human Resource Development;

(*v*) Finance Officer shall be the Member—Secretary.

(*2*) Five members of the Finance Committee shall form a quorum for a meeting of the Finance Committee.

(*3*) All the members of the Finance Committee, other than *ex officio* members, shall hold office for a term of three years.

(*4*) A member of the Finance Committee shall have the right to record a minute of dissent if he does not agree with any decision of the Finance Committee.

(*5*) The Finance Committee shall meet at least twice every year to examine the accounts and to scrutinise proposals for expenditure.

(*6*) All proposals relating to creation of posts, and those items which have not been included in the budget, shall be examined by the Finance Committee before they are considered by the Executive Council.

(*7*) The annual accounts and the financial estimates of the University prepared by Finance Officer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(*8*) The Finance Committee shall recommend limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans).

20. Selection Committees.—(*1*) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the posts of Professor, Associate Professor, Assistant Professor, Registrar, Finance Officer, Controller of Examinations, Librarian and Principals of Colleges and Institutions maintained by the University.

(*2*) (*a*) The Selection Committee for appointment to the posts specified in column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Central Government and the persons specified in the corresponding entry in column 2 of the said Table:

TABLE

1	2
Professor	(*i*) The Dean of the School of Studies. (*ii*) The Head of the Department, if he is a Professor. (*iii*) Three persons not in the service of the University, nominated by the Vice-Chancellor, out of a panel of names approved by the Executive Council and recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.

1	2
Associate Professor/ Assistant Professor	(*i*) The Dean of the School of Studies. (*ii*) Head of the Department, if he is a Professor. (*iii*) One Professor nominated by the Vice-Chancellor. (*iv*) Two persons not in the service of the University, nominated by the Vice-Chancellor, out of a panel of names approved by the Executive Council and recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Associate Professor or Assistant Professor will be concerned.
Registrar/Finance Officer/ Controller of Examinations	(*i*) Two members of the Executive Council nominated by it. (*ii*) One person not in the service of the University nominated by the Executive Council.
Librarian	(*i*) Two persons not in the service of the University who have special knowledge of the subject of the Library Science or Library Administration nominated by the Executive Council. (*ii*) One person not in the service of the University nominated by the Executive Council.

(*b*) There shall be a Selection Committee for making recommendations to the Vice-Chancellor for appointments of employees, consultants, retainers and other non-academic posts; and the Selection Committee for appointment to the post specified in column 1 of the Table below shall consist of the persons mentioned in column 2, namely:—

TABLE

1	2
Group A, B and C non-teaching staff	A Committee of three to five members comprising of one to three senior officers and teachers of the University to be nominated by the Vice-Chancellor and two external members with expertise in the relevant field to be nominated by the Executive Council.

Note 1.—Where the appointment is being made for an inter-disciplinary project, the head of the project shall be deemed to be the Head of the Department concerned.

Note 2.—The Professor to be nominated by the Vice-Chancellor shall be a Professor concerned with the speciality for which the selection is being made and the Vice-Chancellor shall consult the Head of the Department and the Dean of School of Studies before nominating the Professor.

(*3*) The Vice-Chancellor, or in his absence, the senior-most Professor, shall convene and preside at the meeting of the Selection Committee:

Provided that the proceedings of the Selection Committee shall not be valid unless,—

(*a*) where the number of Central Government nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and (*b*) where the number of Central Government nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(*4*) The procedure to be followed by the Selection Committee shall be laid down in the Ordinances.

(*5*) If the Executive Council is unable to accept the recommendations made by the Selection Committee, it shall record its reasons and submit the case to the Visitor for final orders.

(*6*) Appointments to temporary posts shall be made in the manner indicated below:—

(*i*) if the temporary vacancy is for duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing clauses:

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis on the advice of a local Selection Committee referred to in sub-clause (*ii*) for a period not exceeding six months;

(*ii*) if the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Director of Campuses or Dean of School of Studies concerned, the Head of the Department and a nominee of the Vice-Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor:

Provided further that in the case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment;

(*iii*) no teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under the Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be.

21. Special mode of appointment.—(*1*) Notwithstanding anything contained in Statute 20, the Executive Council may invite a person of high academic distinction and professional to accept a post of Professor or Associate Professor or any other equivalent academic post in the University on such terms and conditions as it deems fit and on the person agreeing to do so appoint him to the post:

Provided that the Executive Council may also create supernumerary post for a specified period for appointment of such persons:

Provided further that, the number of supernumerary posts so created, shall not exceed five per cent. of the total posts in the University.

(*2*) The Executive Council may appoint a teacher or any other academic staff working in any other University or organisation for undertaking a joint project in accordance with the manner laid down in the Ordinances.

22. Appointment for tenure fixed.—The Executive Council may appoint a person selected in accordance with the procedure laid down in Statute 20 for a fixed tenure on such terms and conditions as it deems fit.

23. Committees.—(*1*) An authority of the University may appoint as many standing Committees, as it may deem fit, and may appoint to such Committees persons who are not members of such authority.

(*2*) A Committee appointed under clause (*1*) may deal with any subject delegated to it subject to subsequent confirmation by the authority appointing it.

24. Terms and conditions of service and code of conduct of teachers, etc.—(*1*) All the teachers and other academic staff of the University shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(*2*) The emoluments of members of the academic staff shall be such as may be prescribed by the Ordinances.

(*3*) Every teacher and member of the academic staff of the University shall be appointed on a written contract, the form of which shall be prescribed by the Ordinances.

(*4*) A copy of every contract referred to in clause (*3*) shall be deposited with the Registrar.

25. Terms and conditions of service and code of conduct of other employees.—(*1*) All the employees of the University, other than the teachers and other academic staff shall, in the absence of any contract to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(*2*) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

26. Seniority list.—(*1*) Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(*2*) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons to whom the provisions of these Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of clause (*1*).

(*3*) If two or more persons have equal length of continuous service in a particular grade or the relative seniority of any person or persons is otherwise in doubt, the Registrar may, on his own motion, and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

27. Removal of employees of University.—(*1*) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of teacher or a member of the academic staff and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(*2*) Notwithstanding anything contained in the terms of the contract of appointment or of any other provisions in the terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(*3*) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.

(*4*) No teacher, member of the academic staff or other employee shall be removed under clause (*2*) or clause (*3*) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(*5*) The removal of a teacher, member of the academic staff or any other regular appointed employee shall require a two-thirds majority of the members of the Executive Council present and voting and it shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(*6*) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or any other employee may resign—

(*a*) if he is permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(*b*) if he is not a permanent employee, only after given one month's notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof:

Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority, as the case may be.

28. Honorary degrees.—(*1*) The Executive Council may, on the recommendation of the Academic Council by a resolution passed by a majority of not less than two-thirds of the members to the Visitor for the conferment of honorary degrees:

Provided that in case of emergency, the Executive Council may, on its own motion, make such proposals.

(*2*) The Executive Council may, by a resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw, with the previous sanction of the Visitor, any honorary degree conferred by the University.

29. Withdrawal of degrees, etc.—The Executive Council may, by a special resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw a degree or academic distinction conferred on, or any certificate or diploma granted to, any person by the University for good and sufficient cause:

Provided that no such resolution shall be passed until a notice in writing has been given to that person calling upon him to show cause within such time as may be specified in the notice as to why such a resolution should not be passed and until his objections, if any, and any evidence he may produce in support of them, have been considered by the Executive Council.

30. Maintenance of discipline amongst students of University.—(*1*) All powers relating to the maintenance of discipline and disciplinary action in relation to the students of the University shall vest in the Vice-Chancellor.

(*2*) There shall be a Proctor of the University to assist the Vice-Chancellor in the exercise of the powers referred to in clause (*1*), who shall be appointed by Executive Council from amongst the Professors and Associate Professors in the manner prescribed by the Ordinances.

(*3*) The Vice-Chancellor may delegate all or any of the powers referred to in clause (*1*), as he deems proper, to the Proctor and to such other officers as he may specify in this behalf.

(*4*) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action, as may seem to him appropriate for the maintenance of discipline, the Vice-Chancellor may, in exercise of such powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a College, Institution or Department or a School of the University for a stated period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University, College, Institution or Department or a School for one or more years, or that the results of the student or students concerned in the examination or examinations in which he or they have appeared be withheld or cancelled.

(*5*) The Directors of Campuses, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University shall have the authority to exercise all such disciplinary powers over the students in their respective Colleges, Campuses, Institutions, Schools of Studies and teaching Departments in the University, as may be necessary, for the proper conduct of such Colleges, Campuses, Institutions, Schools of Studies and teaching Departments.

(*6*) Without prejudice to the powers of the Vice-Chancellor and the Principals and other persons specified in clause (*5*), detailed rules of discipline and proper conduct shall be made by the University and the Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University may also make such supplementary rules as they deem necessary for the purposes stated therein.

(*7*) At the time of admission, every student shall be required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice-Chancellor and other authorities of the University.

31. Convocations.—Convocations of the University for the conferring of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

32. Acting Chairman of meetings.—Where no provision is made for a President or Chairman to preside over a meeting of any authority of the University or any Committee of such authority or when the President or Chairman so provided for is absent, the members present shall elect one from among themselves to preside at such meeting.

33. Resignation.—Any member, other than an *ex officio* member of the Court, the Executive Council, the Academic Council or any other authority of the University or any Committee of such authority may resign by letter addressed to the Registrar and the resignation shall take effect as soon as such letter is received by the Registrar.

34. Disqualification.—(*1*) A person shall be disqualified for being chosen as, and for being, a member of any of the authorities, or for being appointed as, and for being, an officer, of the University if—

(*i*) he is of unsound mind; or

(*ii*) he is an undischarged insolvent; or

(*iii*) he has been convicted by a court of law of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.

(*2*) If any question arises as to whether a person is or had been subjected to any of the disqualifications mentioned in clause (*1*), the question shall be referred to the Visitor and his decision shall be final and no suit or other proceeding shall lie in any civil court against such decision.

35. Residence condition for membership and office.—Notwithstanding anything contained in the Statutes, a person who is not ordinarily resident in India shall not be eligible to be an officer of the University or a member of any authority of the University.

36. Membership of authorities by virtue of membership of other bodies.— Notwithstanding anything contained in the Statutes, a person who holds any post in the University or is a member of any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold such office or membership only for so long as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be.

37. Alumni Association.—(*1*) There shall be an Alumni Association for the University.

(*2*) The subscription for membership of the Alumni Association shall be prescribed by the Ordinances.

(*3*) No member of the Alumni Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of election and is a degree holder of the University of at least five years standing:

Provided that the condition relating to the completion of one year's membership shall not apply in the case of the first election.

38. Students' Council.—(*1*) There shall be constituted in the University, a Students' Council for every academic year, consisting of—

(*i*) the Dean of Students' Welfare who shall be the Chairman of the Students' Council;

(*ii*) twenty students to be nominated by the Academic Council on the basis of merit in studies, sports and extra-curricular activities; and

(*iii*) twenty students to be elected by the students as their representatives:

Provided that any student of the University shall have the right to bring up any matter concerning the University before the Students' Council, if so permitted by the Chairman, and he shall have the right to participate in the discussions at any meeting when the matter is taken up for consideration.

(*2*) The functions of the Students' Council shall be to make suggestions to the appropriate authorities of the University in regard to the programmes of studies, students' welfare and other matters of importance, in regard to the working of the University in general and such suggestions shall be made on the basis of consensus of opinion.

(*3*) The Students' Council shall meet at least twice in every academic year and the first meeting of the Council be held in the beginning of the academic session.

39. Ordinances how to be made.—(*1*) The first Ordinances made under sub-section (*2*) of section 29 may be amended, repealed or added to at any time by the Executive Council in the manner specified in the following clauses.

(*2*) No Ordinance in respect of the matters enumerated in sub-section (*1*) of section 29 shall be made by the Executive Council unless a draft of such Ordinance has been proposed by the Academic Council.

(*3*) The Executive Council shall not have power to amend any draft of any Ordinance proposed by the Academic Council under clause (*2*), but may reject the proposal or return the draft to the Academic Council for re-consideration, either in whole or in part, together with any amendment which the Executive Council may suggest.

(*4*) Where the Executive Council has rejected or returned the draft of an Ordinances proposed by the Academic Council, the Academic Council may consider the question afresh and in case the original draft is reaffirmed by a majority of not less than two-thirds of the members present and voting and more than half the total number of members of the Academic Council, the draft may be sent back to the Executive Council which shall either adopt it or refer it to the Visitor whose decision shall be final.

(*5*) Every Ordinances made by the Executive Council shall come into effect immediately.

(*6*) Every Ordinances made by the Executive Council shall be submitted to the Visitor within two weeks from the date of its adoption.

(*7*) The Visitor shall have the power to direct the University to suspend the operation of any Ordinances.

(*8*) The Visitor shall inform the Executive Council about his objection to the Ordinances referred to in clause (*7*) and may, after receiving the comments of the University, either withdraw the order suspending the Ordinances or disallow the Ordinances, and his decision shall be final.

40. Regulations.—(*1*) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances for the following matters, namely:—

(*i*) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(*ii*) providing for all matters which are required by this Act, the Statutes or the Ordinances to be prescribed by Regulations; and

(*iii*) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes or the Ordinances.

(*2*) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meeting and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(*3*) The Executive Council may direct the amendment in such manner as it may specify of any Regulation made under the Statutes or the annulment of any such Regulation.

41. Establishment of campuses in India and outside India.—(*1*) The establishment of Campuses and the abolition thereof shall be governed by the Statutes provided the same have received the assent of the Visitor.

(*2*) The procedures to be followed for establishment and abolition of Campuses shall be as prescribed in the Ordinances.

42. Distance education system.—(*1*) Subject to the provisions of the Act and the Statutes, the University shall have a distance education system as prescribed in the Ordinance.

(*2*) The composition, powers and functions of the Distance Education System shall be as prescribed in the Ordinances.

43. Delegation of Powers.—Subject to the provisions of this Act and the Statutes, any officer or authority of the University may delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for the exercise of the power so delegated shall continue to vest in the officer or authority delegating such powers.

44. Correspondence with the Visitor.—All the correspondences with the Visitor by the University or its authorities or officers shall be routed through the Central Government.

STATEMENT OF OBJECTS AND REASONS

The upgradation of three Deemed to be Universities in Sanskrit, namely, Rashtriya Sanskrit Sansthan, Delhi, Sri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth, New Delhi and Rashtriya Sanskrit Vidyapeeth, Tirupati into Central Universities through the Central Sanskrit Universities Bill, 2019 would enhance the status of these Universities and will give a boost to Post Graduate, Doctoral and Post Doctoral education and Research in the field of Sanskrit and Shastraic education. It would help in getting better faculty, attract foreign students, Sanskrit scholars, foreign faculty of international repute and help in international collaborations with global Universities across the world. This will also help in enhancing the opportunities for imparting education in the field of Indian Philosophy, Yoga, Ayurveda and Naturopathy.

2. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 5*th December,* 2019.

RAMESH POKHRIYAL 'NISHANK'.

FINANCIAL MEMORANDUM

The Central Sanskrit Universities Bill, 2019 proposes to convert the existing three Deemed to be Universities in Sanskrit as Central Universities. These three institutions are at present given budgetary support for their establishment and also for all developmental activities. The same would continue even after they are declared as Central Universities under this Act. Therefore, there is no additional financial implication on account of the Bill.

BILL NO. 373 OF 2019

A Bill to provide for protection of the privacy of individuals relating to their personal data, specify the flow and usage of personal data, create a relationship of trust between persons and entities processing the personal data, protect the rights of individuals whose personal data are processed, to create a framework for organisational and technical measures in processing of data, laying down norms for social media intermediary, cross-border transfer, accountability of entities processing personal data, remedies for unauthorised and harmful processing, and to establish a Data Protection Authority of India for the said purposes and for matters connected therewith or incidental thereto.

WHEREAS the right to privacy is a fundamental right and it is necessary to protect personal data as an essential facet of informational privacy;

AND WHEREAS the growth of the digital economy has expanded the use of data as a critical means of communication between persons;

AND WHEREAS it is necessary to create a collective culture that fosters a free and fair digital economy, respecting the informational privacy of individuals, and ensuring empowerment, progress and innovation through digital governance and inclusion and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Personal Data Protection Act, 2019.

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

Application of Act to processing of personal data.

2. The provisions of this Act,—

(*A*) shall apply to—

(*a*) the processing of personal data where such data has been collected, disclosed, shared or otherwise processed within the territory of India;

(*b*) the processing of personal data by the State, any Indian company, any citizen of India or any person or body of persons incorporated or created under Indian law;

(*c*) the processing of personal data by data fiduciaries or data processors not present within the territory of India, if such processing is—

(*i*) in connection with any business carried on in India, or any systematic activity of offering goods or services to data principals within the territory of India; or

(*ii*) in connection with any activity which involves profiling of data principals within the territory of India.

(*B*) shall not apply to the processing of anonymised data, other than the anonymised data referred to in section 91.

Definitions.

3. In this Act, unless the context otherwise requires,—

(*1*) "Adjudicating Officer" means the Adjudicating Officer appointed as such under sub-section (*1*) of section 62;

(*2*) "anonymisation" in relation to personal data, means such irreversible process of transforming or converting personal data to a form in which a data principal cannot be identified, which meets the standards of irreversibility specified by the Authority;

(*3*) "anonymised data" means data which has undergone the process of anonymisation;

(*4*) "Appellate Tribunal" means the Tribunal established under sub-section (*1*) or notified under sub-section (*4*) of section 67;

(*5*) "Authority" means the Data Protection Authority of India established under sub-section (*1*) of section 41;

(*6*) "automated means" means any equipment capable of operating automatically in response to instructions given for the purpose of processing data;

(*7*) "biometric data" means facial images, fingerprints, iris scans, or any other similar personal data resulting from measurements or technical processing operations carried out on physical, physiological, or behavioural characteristics of a data principal, which allow or confirm the unique identification of that natural person;

(*8*) "child" means a person who has not completed eighteen years of age;

(*9*) "code of practice" means a code of practice issued by the Authority under section 50;

(*10*) "consent" means the consent referred to in section 11;

(*11*) "data" includes a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by humans or by automated means;

(*12*) "data auditor" means an independent data auditor referred to in section 29;

(*13*) "data fiduciary" means any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data;

(*14*) "data principal" means the natural person to whom the personal data relates;

(*15*) "data processor" means any person, including the State, a company, any juristic entity or any individual, who processes personal data on behalf of a data fiduciary;

(*16*) "de-identification" means the process by which a data fiduciary or data processor may remove, or mask identifiers from personal data, or replace them with such other fictitious name or code that is unique to an individual but does not, on its own, directly identify the data principal;

(*17*) "disaster" shall have the same meaning as assigned to it in clause (*d*) of section 2 of the Disaster Management Act, 2005; 53 of 2005.

(*18*) "financial data" means any number or other personal data used to identify an account opened by, or card or payment instrument issued by a financial institution to a data principal or any personal data regarding the relationship between a financial institution and a data principal including financial status and credit history;

(*19*) "genetic data" means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the behavioural characteristics, physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;

(*20*) "harm" includes—

(*i*) bodily or mental injury;

(*ii*) loss, distortion or theft of identity;

(*iii*) financial loss or loss of property;

(*iv*) loss of reputation or humiliation;

(*v*) loss of employment;

(*vi*) any discriminatory treatment;

(*vii*) any subjection to blackmail or extortion;

(*viii*) any denial or withdrawal of a service, benefit or good resulting from an evaluative decision about the data principal;

(*ix*) any restriction placed or suffered directly or indirectly on speech, movement or any other action arising out of a fear of being observed or surveilled; or (*x*) any observation or surveillance that is not reasonably expected by the data principal;

(*21*) "health data" means the data related to the state of physical or mental health of the data principal and includes records regarding the past, present or future state of the health of such data principal, data collected in the course of registration for, or provision of health services, data associating the data principal to the provision of specific health services;

(*22*) "intra-group schemes" means the schemes approved by the Authority under clause (*a*) of sub-section (*1*) of section 34;

(*23*) "in writing" includes any communication in electronic format as defined in clause *(r)* of sub-section *(1)* of section 2 of the Information Technology Act, 2000; 21 of 2000.

(*24*) "journalistic purpose" means any activity intended towards the dissemination through print, electronic or any other media of factual reports, analysis, opinions, views or documentaries regarding—

(*i*) news, recent or current events; or

(*ii*) any other information which the data fiduciary believes the public, or any significantly discernible class of the public, to have an interest in;

(*25*) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(*26*) "official identifier" means any number, code, or other identifier, assigned to a data principal under a law made by Parliament or any State Legislature which may be used for the purpose of verifying the identity of a data principal;

(*27*) "person" includes—

(*i*) an individual,

(*ii*) a Hindu undivided family,

(*iii*) a company,

(*iv*) a firm,

(*v*) an association of persons or a body of individuals, whether incorporated or not,

(*vi*) the State, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses;

(*28*) "personal data" means data about or relating to a natural person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person, whether online or offline, or any combination of such features with any other information, and shall include any inference drawn from such data for the purpose of profiling;

(*29*) "personal data breach" means any unauthorised or accidental disclosure, acquisition, sharing, use, alteration, destruction of or loss of access to, personal data that compromises the confidentiality, integrity or availability of personal data to a data principal;

(*30*) "prescribed" means prescribed by rules made under this Act;

(*31*) "processing" in relation to personal data, means an operation or set of operations performed on personal data, and may include operations such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, use, alignment or combination, indexing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;

(*32*) "profiling" means any form of processing of personal data that analyses or predicts aspects concerning the behaviour, attributes or interests of a data principal;

(*33*) "regulations" means the regulations made by the Authority under this Act;

(*34*) "re-identification" means the process by which a data fiduciary or data processor may reverse a process of de-identification;

(*35*) "Schedule" means the Schedule appended to this Act;

(*36*) "sensitive personal data" means such personal data, which may, reveal, be related to, or constitute—

(*i*) financial data;

(*ii*) health data;

(*iii*) official identifier;

(*iv*) sex life;

(*v*) sexual orientation;

(*vi*) biometric data;

(*vii*) genetic data;

(*viii*) transgender status;

(*ix*) intersex status;

(*x*) caste or tribe;

(*xi*) religious or political belief or affiliation; or

(*xii*) any other data categorised as sensitive personal data under section 15.

Explanation.— For the purposes of this clause, the expressions,—

(*a*) "intersex status" means the condition of a data principal who is—

(*i*) a combination of female or male;

(*ii*) neither wholly female nor wholly male; or

(*iii*) neither female nor male;

(*b*) "transgender status" means the condition of a data principal whose sense of gender does not match with the gender assigned to that data principal at birth, whether or not they have undergone sex reassignment surgery, hormone therapy, laser therapy, or any other similar medical procedure;

(*37*) "significant data fiduciary" means a data fiduciary classified as such under sub-section (*1*) of section 26;

(*38*) "significant harm" means harm that has an aggravated effect having regard to the nature of the personal data being processed, the impact, continuity, persistence or irreversibility of the harm;

(*39*) "State" means the State as defined under article 12 of the Constitution;

(*40*) "systematic activity" means any structured or organised activity that involves an element of planning, method, continuity or persistence.

CHAPTER II

OBLIGATIONS OF DATA FIDUCIARY

Prohibition of processing of personal data.

4. No personal data shall be processed by any person, except for any specific, clear and lawful purpose.

Limitation on purpose of processing of personal data.

5. Every person processing personal data of a data principal shall process such personal data—

(*a*) in a fair and reasonable manner and ensure the privacy of the data principal; and

(*b*) for the purpose consented to by the data principal or which is incidental to or connected with such purpose, and which the data principal would reasonably expect that such personal data shall be used for, having regard to the purpose, and in the context and circumstances in which the personal data was collected.

Limitation on collection of personal data.

6. The personal data shall be collected only to the extent that is necessary for the purposes of processing of such personal data.

Requirement of notice for collection or processing of personal data.

7. (*1*) Every data fiduciary shall give to the data principal a notice, at the time of collection of the personal data, or if the data is not collected from the data principal, as soon as reasonably practicable, containing the following information, namely:—

(*a*) the purposes for which the personal data is to be processed;

(*b*) the nature and categories of personal data being collected;

(*c*) the identity and contact details of the data fiduciary and the contact details of the data protection officer, if applicable;

(*d*) the right of the data principal to withdraw his consent, and the procedure for such withdrawal, if the personal data is intended to be processed on the basis of consent;

(*e*) the basis for such processing, and the consequences of the failure to provide such personal data, if the processing of the personal data is based on the grounds specified in sections 12 to 14;

(*f*) the source of such collection, if the personal data is not collected from the data principal;

(*g*) the individuals or entities including other data fiduciaries or data processors, with whom such personal data may be shared, if applicable;

(*h*) information regarding any cross-border transfer of the personal data that the data fiduciary intends to carry out, if applicable;

(*i*) the period for which the personal data shall be retained in terms of section 9 or where such period is not known, the criteria for determining such period;

(*j*) the existence of and procedure for the exercise of rights mentioned in Chapter V and any related contact details for the same;

(*k*) the procedure for grievance redressal under section 32;

(*l*) the existence of a right to file complaints to the Authority;

(*m*) where applicable, any rating in the form of a data trust score that may be assigned to the data fiduciary under sub-section (*5*) of section 29; and

(*n*) any other information as may be specified by the regulations.

(*2*) The notice referred to in sub-section (*1*) shall be clear, concise and easily comprehensible to a reasonable person and in multiple languages where necessary and practicable.

(*3*) The provisions of sub-section (*1*) shall not apply where such notice substantially prejudices the purpose of processing of personal data under section 12.

Quality of personal data processed.

8. (*1*) The data fiduciary shall take necessary steps to ensure that the personal data processed is complete, accurate, not misleading and updated, having regard to the purpose for which it is processed.

(*2*) While taking any steps under sub-section (*1*), the data fiduciary shall have regard to whether the personal data—

(*a*) is likely to be used to make a decision about the data principal;

(*b*) is likely to be disclosed to other individuals or entities including other data fiduciaries or processors; or

(*c*) is kept in a form that distinguishes personal data based on facts from personal data based on opinions or personal assessments.

(*3*) Where personal data is disclosed to any other individual or entity, including other data fiduciary or processor, and the data fiduciary finds that such data does not comply with the requirement of sub-section (*1*), the data fiduciary shall take reasonable steps to notify such individual or entity of this fact.

Restriction on retention of personal data.

9. (*1*) The data fiduciary shall not retain any personal data beyond the period necessary to satisfy the purpose for which it is processed and shall delete the personal data at the end of the processing.

(*2*) Notwithstanding anything contained in sub-section (*1*), the personal data may be retained for a longer period if explicitly consented to by the data principal, or necessary to comply with any obligation under any law for the time being in force.

(*3*) The data fiduciary shall undertake periodic review to determine whether it is necessary to retain the personal data in its possession.

(*4*) Where it is not necessary for personal data to be retained by the data fiduciary under sub-section (*1*) or sub-section (*2*), then, such personal data shall be deleted in such manner as may be specified by regulations.

Accountability of data fiduciary.

10. The data fiduciary shall be responsible for complying with the provisions of this Act in respect of any processing undertaken by it or on its behalf.

Consent necessary for processing of personal data.

11. (*1*) The personal data shall not be processed, except on the consent given by the data principal at the commencement of its processing.

(*2*) The consent of the data principal shall not be valid, unless such consent is—

9 of 1872. (*a*) free, having regard to whether it complies with the standard specified under section 14 of the Indian Contract Act, 1872;

(*b*) informed, having regard to whether the data principal has been provided with the information required under section 7;

(*c*) specific, having regard to whether the data principal can determine the scope of consent in respect of the purpose of processing;

(*d*) clear, having regard to whether it is indicated through an affirmative action that is meaningful in a given context; and

(*e*) capable of being withdrawn, having regard to whether the ease of such withdrawal is comparable to the ease with which consent may be given.

(*3*) In addition to the provisions contained in sub-section (*2*), the consent of the data principal in respect of processing of any sensitive personal data shall be explicitly obtained—

(*a*) after informing him the purpose of, or operation in, processing which is likely to cause significant harm to the data principal;

(*b*) in clear terms without recourse to inference from conduct in a context; and

(*c*) after giving him the choice of separately consenting to the purposes of, operations in, the use of different categories of, sensitive personal data relevant to processing.

(*4*) The provision of any goods or services or the quality thereof, or the performance of any contract, or the enjoyment of any legal right or claim, shall not be made conditional on the consent to the processing of any personal data not necessary for that purpose.

(*5*) The burden of proof that the consent has been given by the data principal for processing of the personal data under this section shall be on the data fiduciary.

(*6*) Where the data principal withdraws his consent from the processing of any personal data without any valid reason, all legal consequences for the effects of such withdrawal shall be borne by such data principal.

CHAPTER III

GROUNDS FOR PROCESSING OF PERSONAL DATA WITHOUT CONSENT

Grounds for processing of personal data without consent in certain cases.

12. Notwithstanding anything contained in section 11, the personal data may be processed if such processing is necessary,—

(*a*) for the performance of any function of the State authorised by law for—

(*i*) the provision of any service or benefit to the data principal from the State; or

(*ii*) the issuance of any certification, licence or permit for any action or activity of the data principal by the State;

(*b*) under any law for the time being in force made by the Parliament or any State Legislature; or

(*c*) for compliance with any order or judgment of any Court or Tribunal in India;

(*d*) to respond to any medical emergency involving a threat to the life or a severe threat to the health of the data principal or any other individual;

(*e*) to undertake any measure to provide medical treatment or health services to any individual during an epidemic, outbreak of disease or any other threat to public health; or

(*f*) to undertake any measure to ensure safety of, or provide assistance or services to, any individual during any disaster or any breakdown of public order.

Processing of personal data necessary for purposes related to employment, etc.

13. (*1*) Notwithstanding anything contained in section 11 and subject to sub-section (*2*), any personal data, not being any sensitive personal data, may be processed, if such processing is necessary for—

(*a*) recruitment or termination of employment of a data principal by the data fiduciary;

(*b*) provision of any service to, or benefit sought by, the data principal who is an employee of the data fiduciary;

(*c*) verifying the attendance of the data principal who is an employee of the data fiduciary; or

(*d*) any other activity relating to the assessment of the performance of the data principal who is an employee of the data fiduciary.

(*2*) Any personal data, not being sensitive personal data, may be processed under sub-section (*1*), where the consent of the data principal is not appropriate having regard to the employment relationship between the data fiduciary and the data principal, or would involve a disproportionate effort on the part of the data fiduciary due to the nature of the processing under the said sub-section.

Processing of personal data for other reasonable purposes.

14. (*1*) In addition to the grounds referred to under sections 12 and 13, the personal data may be processed without obtaining consent under section 11, if such processing is necessary for such reasonable purposes as may be specified by regulations, after taking into consideration—

(*a*) the interest of the data fiduciary in processing for that purpose;

(*b*) whether the data fiduciary can reasonably be expected to obtain the consent of the data principal;

(*c*) any public interest in processing for that purpose;

(*d*) the effect of the processing activity on the rights of the data principal; and

(*e*) the reasonable expectations of the data principal having regard to the context of the processing.

(*2*) For the purpose of sub-section (*1*), the expression "reasonable purposes" may include—

(*a*) prevention and detection of any unlawful activity including fraud;

(*b*) whistle blowing;

(*c*) mergers and acquisitions;

(*d*) network and information security;

(*e*) credit scoring;

(*f*) recovery of debt;

(*g*) processing of publicly available personal data; and

(*h*) the operation of search engines.

(*3*) Where the Authority specifies a reasonable purpose under sub-section (*1*), it shall—

(*a*) lay down, by regulations, such safeguards as may be appropriate to ensure the protection of the rights of data principals; and

(*b*) determine where the provision of notice under section 7 shall apply or not apply having regard to the fact whether such provision shall substantially prejudice the relevant reasonable purpose.

Categorisation of personal data as sensitive personal data.

15. (*1*) The Central Government shall, in consultation with the Authority and the sectoral regulator concerned, notify such categories of personal data as "sensitive personal data", having regard to—

(*a*) the risk of significant harm that may be caused to the data principal by the processing of such category of personal data;

(*b*) the expectation of confidentiality attached to such category of personal data;

(*c*) whether a significantly discernible class of data principals may suffer significant harm from the processing of such category of personal data; and

(*d*) the adequacy of protection afforded by ordinary provisions applicable to personal data.

(*2*) The Authority may specify, by regulations, the additional safeguards or restrictions for the purposes of repeated, continuous or systematic collection of sensitive personal data for profiling of such personal data.

CHAPTER IV

PERSONAL DATA AND SENSITIVE PERSONAL DATA OF CHILDREN

Processing of personal data and sensitive personal data of children.

16. (*1*) Every data fiduciary shall process personal data of a child in such manner that protects the rights of, and is in the best interests of, the child.

(*2*) The data fiduciary shall, before processing of any personal data of a child, verify his age and obtain the consent of his parent or guardian, in such manner as may be specified by regulations.

(*3*) The manner for verification of the age of child under sub-section (*2*) shall be specified by regulations, taking into consideration—

(*a*) the volume of personal data processed;

(*b*) the proportion of such personal data likely to be that of child;

(*c*) possibility of harm to child arising out of processing of personal data; and

(*d*) such other factors as may be prescribed.

(*4*) The Authority shall, by regulations, classify any data fiduciary, as guardian data fiduciary, who—

(*a*) operate commercial websites or online services directed at children; or

(*b*) process large volumes of personal data of children.

(*5*) The guardian data fiduciary shall be barred from profiling, tracking or behaviouraly monitoring of, or targeted advertising directed at, children and undertaking any other processing of personal data that can cause significant harm to the child.

(*6*) The provisions of sub-section (*5*) shall apply in such modified form to the data fiduciary offering counselling or child protection services to a child, as the Authority may by regulations specify.

(*7*) A guardian data fiduciary providing exclusive counselling or child protection services to a child shall not require to obtain the consent of parent or guardian of the child under sub-section (*2*).

Explanation.—For the purposes of this section, the expression "guardian data fiduciary" means any data fiduciary classified as a guardian data fiduciary under sub-section (*4*).

CHAPTER V

RIGHTS OF DATA PRINCIPAL

Right to confirmation and access.

17. (*1*) The data principal shall have the right to obtain from the data fiduciary—

(*a*) confirmation whether the data fiduciary is processing or has processed personal data of the data principal;

(*b*) the personal data of the data principal being processed or that has been processed by the data fiduciary, or any summary thereof;

(*c*) a brief summary of processing activities undertaken by the data fiduciary with respect to the personal data of the data principal, including any information provided in the notice under section 7 in relation to such processing.

(*2*) The data fiduciary shall provide the information under sub-section (*1*) to the data principal in a clear and concise manner that is easily comprehensible to a reasonable person.

(*3*) The data principal shall have the right to access in one place the identities of the data fiduciaries with whom his personal data has been shared by any data fiduciary together with the categories of personal data shared with them, in such manner as may be specified by regulations.

Right to correction and erasure.

18. (*1*) The data principal shall where necessary, having regard to the purposes for which personal data is being processed, subject to such conditions and in such manner as may be specified by regulations, have the right to—

(*a*) the correction of inaccurate or misleading personal data;

(*b*) the completion of incomplete personal data;

(*c*) the updating of personal data that is out-of-date; and

(*d*) the erasure of personal data which is no longer necessary for the purpose for which it was processed.

(*2*) Where the data fiduciary receives a request under sub-section (*1*), and the data fiduciary does not agree with such correction, completion, updation or erasure having regard to the purposes of processing, such data fiduciary shall provide the data principal with adequate justification in writing for rejecting the application.

(*3*) Where the data principal is not satisfied with the justification provided by the data fiduciary under sub-section (*2*), the data principal may require that the data fiduciary take reasonable steps to indicate, alongside the relevant personal data, that the same is disputed by the data principal.

(*4*) Where the data fiduciary corrects, completes, updates or erases any personal data in accordance with sub-section (*1*), such data fiduciary shall also take necessary steps to notify all relevant entities or individuals to whom such personal data may have been disclosed regarding the relevant correction, completion, updation or erasure, particularly where such action may have an impact on the rights and interests of the data principal or on decisions made regarding them.

Right to data portability.

19. (*1*) Where the processing has been carried out through automated means, the data principal shall have the right to—

(*a*) receive the following personal data in a structured, commonly used and machine-readable format—

(*i*) the personal data provided to the data fiduciary;

(*ii*) the data which has been generated in the course of provision of services or use of goods by the data fiduciary; or

(*iii*) the data which forms part of any profile on the data principal, or which the data fiduciary has otherwise obtained; and

(*b*) have the personal data referred to in clause (*a*) transferred to any other data fiduciary in the format referred to in that clause.

(*2*) The provisions of sub-section (*1*) shall not apply where—

(*a*) processing is necessary for functions of the State or in compliance of law or order of a court under section 12;

(*b*) compliance with the request in sub-section (*1*) would reveal a trade secret of any data fiduciary or would not be technically feasible.

Right to be forgotten.

20. (*1*) The data principal shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure—

(*a*) has served the purpose for which it was collected or is no longer necessary for the purpose;

(*b*) was made with the consent of the data principal under section 11 and such consent has since been withdrawn; or

(*c*) was made contrary to the provisions of this Act or any other law for the time being in force.

(*2*) The rights under sub-section (*1*) may be enforced only on an order of the Adjudicating Officer made on an application filed by the data principal, in such form and manner as may be prescribed, on any of the grounds specified under clauses (*a*), (*b*) or clause (*c*) of that sub-section:

Provided that no order shall be made under this sub-section unless it is shown by the data principal that his right or interest in preventing or restricting the continued disclosure of his personal data overrides the right to freedom of speech and expression and the right to information of any other citizen.

(*3*) The Adjudicating Officer shall, while making an order under sub-section (*2*), having regard to—

(*a*) the sensitivity of the personal data;

(*b*) the scale of disclosure and the degree of accessibility sought to be restricted or prevented;

(*c*) the role of the data principal in public life;

(*d*) the relevance of the personal data to the public; and

(*e*) the nature of the disclosure and of the activities of the data fiduciary, particularly whether the data fiduciary systematically facilitates access to personal data and whether the activities shall be significantly impeded if disclosures of the relevant nature were to be restricted or prevented.

(*4*) Where any person finds that personal data, the disclosure of which has been restricted or prevented by an order of the Adjudicating Officer under sub-section (*2*), does not satisfy the conditions referred to in that sub-section, he may apply for the review of that order to the Adjudicating Officer in such manner as may be prescribed, and the Adjudicating Officer shall review his order.

(*5*) Any person aggrieved by an order made under this section by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal.

General conditions for the exercise of rights in this Chapter.

21. (*1*) The data principal, for exercising any right under this Chapter, except the right under section 20, shall make a request in writing to the data fiduciary either directly or through a consent manager with the necessary information as regard to his identity, and the data fiduciary shall acknowledge the receipt of such request within such period as may be specified by regulations.

(*2*) For complying with the request made under sub-section (*1*), the data fiduciary may charge such fee as may be specified by regulations:

Provided that no fee shall be required for any request in respect of rights referred to in clause (*a*) or (*b*) of sub-section (*1*) of section 17 or section 18.

(*3*) The data fiduciary shall comply with the request under this Chapter and communicate the same to the data principal, within such period as may be specified by regulations.

(*4*) Where any request made under this Chapter is refused by the data fiduciary, it shall provide the data principal the reasons in writing for such refusal and shall inform the data principal regarding the right to file a complaint with the Authority against the refusal, within such period and in such manner as may be specified by regulations.

(*5*) The data fiduciary is not obliged to comply with any request under this Chapter where such compliance shall harm the rights of any other data principal under this Act.

CHAPTER VI

TRANSPARENCY AND ACCOUNTABILITY MEASURES

Privacy by design policy.

22. (*1*) Every data fiduciary shall prepare a privacy by design policy, containing—

(*a*) the managerial, organisational, business practices and technical systems designed to anticipate, identify and avoid harm to the data principal;

(*b*) the obligations of data fiduciaries;

(*c*) the technology used in the processing of personal data is in accordance with commercially accepted or certified standards;

(*d*) the legitimate interests of businesses including any innovation is achieved without compromising privacy interests;

(*e*) the protection of privacy throughout processing from the point of collection to deletion of personal data;

(*f*) the processing of personal data in a transparent manner; and

(*g*) the interest of the data principal is accounted for at every stage of processing of personal data.

(*2*) Subject to the regulations made by the Authority, the data fiduciary may submit its privacy by design policy prepared under sub-section (*1*) to the Authority for certification within such period and in such manner as may be specified by regulations.

(*3*) The Authority, or an officer authorised by it, shall certify the privacy by design policy on being satisfied that it complies with the requirements of sub-section (*1*).

(*4*) The privacy by design policy certified under sub-section (*3*) shall be published on the website of the data fiduciary and the Authority.

Transparency in processing of personal data.

23. (*1*) Every data fiduciary shall take necessary steps to maintain transparency in processing personal data and shall make the following information available in such form and manner as may be specified by regulations—

(*a*) the categories of personal data generally collected and the manner of such collection;

(*b*) the purposes for which personal data is generally processed;

(*c*) any categories of personal data processed in exceptional situations or any exceptional purposes of processing that create a risk of significant harm;

(*d*) the existence of and the procedure for exercise of rights of data principal under Chapter V and any related contact details for the same;

(*e*) the right of data principal to file complaint against the data fiduciary to the Authority;

(*f*) where applicable, any rating in the form of a data trust score that may be accorded to the data fiduciary under sub-section (*5*) of section 29;

(*g*) where applicable, information regarding cross-border transfers of personal data that the data fiduciary generally carries out; and

(*h*) any other information as may be specified by regulations.

(*2*) The data fiduciary shall notify, from time to time, the important operations in the processing of personal data related to the data principal in such manner as may be specified by regulations.

(*3*) The data principal may give or withdraw his consent to the data fiduciary through a consent manager.

(*4*) Where the data principal gives or withdraws consent to the data fiduciary through a consent manager, such consent or its withdrawal shall be deemed to have been communicated directly by the data principal.

(*5*) The consent manager under sub-section (*3*), shall be registered with the Authority in such manner and subject to such technical, operational, financial and other conditions as may be specified by regulations.

Explanation.—For the purposes of this section, a "consent manager" is a data fiduciary which enables a data principal to gain, withdraw, review and manage his consent through an accessible, transparent and interoperable platform.

Security safeguards.

24. (*1*) Every data fiduciary and the data processor shall, having regard to the nature, scope and purpose of processing personal data, the risks associated with such processing, and the likelihood and severity of the harm that may result from such processing, implement necessary security safeguards, including—

(*a*) use of methods such as de-identification and encryption;

(*b*) steps necessary to protect the integrity of personal data; and

(*c*) steps necessary to prevent misuse, unauthorised access to, modification, disclosure or destruction of personal data.

(*2*) Every data fiduciary and data processor shall undertake a review of its security safeguards periodically in such manner as may be specified by regulations and take appropriate measures accordingly.

Reporting of personal data breach.

25. (*1*) Every data fiduciary shall by notice inform the Authority about the breach of any personal data processed by the data fiduciary where such breach is likely to cause harm to any data principal.

(*2*) The notice referred to in sub-section (*1*) shall include the following particulars, namely:—

(*a*) nature of personal data which is the subject-matter of the breach;

(*b*) number of data principals affected by the breach;

(*c*) possible consequences of the breach; and

(*d*) action being taken by the data fiduciary to remedy the breach.

(*3*) The notice referred to in sub-section (*1*) shall be made by the data fiduciary to the Authority as soon as possible and within such period as may be specified by regulations, following the breach after accounting for any period that may be required to adopt any urgent measures to remedy the breach or mitigate any immediate harm.

(*4*) Where it is not possible to provide all the information specified in sub-section (*2*) at the same time, the data fiduciary shall provide such information to the Authority in phases without undue delay.

(*5*) Upon receipt of a notice, the Authority shall determine whether such breach should be reported by the data fiduciary to the data principal, taking into account the severity of the harm that may be caused to such data principal or whether some action is required on the part of the data principal to mitigate such harm.

(*6*) The Authority may, in addition to requiring the data fiduciary to report the personal data breach to the data principal under sub-section (*5*), direct the data fiduciary to take appropriate remedial action as soon as possible and to conspicuously post the details of the personal data breach on its website.

(*7*) The Authority may, in addition, also post the details of the personal data breach on its website.

Classification of data fiduciaries as significant data fiduciaries.

26. (*1*) The Authority shall, having regard to the following factors, notify any data fiduciary or class of data fiduciary as significant data fiduciary, namely:—

(*a*) volume of personal data processed;

(*b*) sensitivity of personal data processed;

(*c*) turnover of the data fiduciary;

(*d*) risk of harm by processing by the data fiduciary;

(*e*) use of new technologies for processing; and

(*f*) any other factor causing harm from such processing.

(*2*) The data fiduciary or class of data fiduciary referred to in sub-section (*1*) shall register itself with the Authority in such manner as may be specified by regulations.

(*3*) Notwithstanding anything in this Act, if the Authority is of the opinion that any processing by any data fiduciary or class of data fiduciary carries a risk of significant harm to any data principal, it may, by notification, apply all or any of the obligations specified in sections 27 to 30 to such data fiduciary or class of data fiduciary as if it is a significant data fiduciary.

(*4*) Notwithstanding anything contained in this section, any social media intermediary,—

(*i*) with users above such threshold as may be notified by the Central Government, in consultation with the Authority; and

(*ii*) whose actions have, or are likely to have a significant impact on electoral democracy, security of the State, public order or the sovereignty and integrity of India,

shall be notified by the Central Government, in consultation with the Authority, as a significant data fiduciary:

Provided that different thresholds may be notified for different classes of social media intermediaries.

Explanation.—For the purposes of this sub-section, a "social media intermediary" is an intermediary who primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services, but shall not include intermediaries which primarily,—

(*a*) enable commercial or business oriented transactions;

(*b*) provide access to the Internet;

(*c*) in the nature of search-engines, on-line encyclopedias, e-mail services or on-line storage services.

Data protection impact assessment.

27. (*1*) Where the significant data fiduciary intends to undertake any processing involving new technologies or large scale profiling or use of sensitive personal data such as genetic data or biometric data, or any other processing which carries a risk of significant harm to data principals, such processing shall not be commenced unless the data fiduciary has undertaken a data protection impact assessment in accordance with the provisions of this section.

(*2*) The Authority may, by regulations specify, such circumstances, or class of data fiduciary, or processing operation where such data protection impact assessment shall be mandatory, and also specify the instances where a data auditor under this Act shall be engaged by the data fiduciary to undertake a data protection impact assessment.

(*3*) A data protection impact assessment shall, *inter alia,* contain—

(*a*) detailed description of the proposed processing operation, the purpose of processing and the nature of personal data being processed;

(*b*) assessment of the potential harm that may be caused to the data principals whose personal data is proposed to be processed; and

(*c*) measures for managing, minimising, mitigating or removing such risk of harm.

(*4*) Upon completion of the data protection impact assessment, the data protection officer appointed under sub-section (*1*) of section 30, shall review the assessment and submit the assessment with his finding to the Authority in such manner as may be specified by regulations.

(*5*) On receipt of the assessment and its review, if the Authority has reason to believe that the processing is likely to cause harm to the data principals, the Authority may direct the data fiduciary to cease such processing or direct that such processing shall be subject to such conditions as the Authority may deem fit.

Maintenance of records.

28. (*1*) The significant data fiduciary shall maintain accurate and up-to-date records of the following, in such form and manner as may be specified by regulations, namely:—

(*a*) important operations in the data life-cycle including collection, transfers, and erasure of personal data to demonstrate compliance as required under section 10;

(*b*) periodic review of security safeguards under section 24;

(*c*) data protection impact assessments under section 27; and

(*d*) any other aspect of processing as may be specified by regulations.

(*2*) Notwithstanding anything contained in this Act, this section shall also apply to the State.

(*3*) Every social media intermediary which is notified as a significant data fiduciary under sub-section (*4*) of section 26 shall enable the users who register their service from India, or use their services in India, to voluntarily verify their accounts in such manner as may be prescribed.

(*4*) Any user who voluntarily verifies his account shall be provided with such demonstrable and visible mark of verification, which shall be visible to all users of the service, in such manner as may be prescribed.

Audit of policies and conduct of processing, etc.

29. (*1*) The significant data fiduciary shall have its policies and the conduct of its processing of personal data audited annually by an independent data auditor under this Act.

(*2*) The data auditor shall evaluate the compliance of the data fiduciary with the provisions of this Act, including—

(*a*) clarity and effectiveness of notices under section 7;

(*b*) effectiveness of measures adopted under section 22;

(*c*) transparency in relation to processing activities under section 23;

(*d*) security safeguards adopted pursuant to section 24;

(*e*) instances of personal data breach and response of the data fiduciary, including the promptness of notice to the Authority under section 25;

(*f*) timely implementation of processes and effective adherence to obligations under sub-section (*3*) of section 28; and

(*g*) any other matter as may be specified by regulations.

(*3*) The Authority shall specify, by regulations, the form and procedure for conducting audits under this section.

(*4*) The Authority shall register in such manner, the persons with expertise in the area of information technology, computer systems, data science, data protection or privacy, possessing such qualifications, experience and eligibility having regard to factors such as independence, integrity and ability, as it may be specified by regulations, as data auditors under this Act.

(*5*) A data auditor may assign a rating in the form of a data trust score to the data fiduciary pursuant to a data audit conducted under this section.

(*6*) The Authority shall, by regulations, specify the criteria for assigning a rating in the form of a data trust score having regard to the factors mentioned in sub-section (*2*).

(*7*) Notwithstanding anything contained in sub-section (*1*), where the Authority is of the view that the data fiduciary is processing personal data in such manner that is likely to cause harm to a data principal, the Authority may direct the data fiduciary to conduct an audit and shall appoint a data auditor for that purpose.

Data protection officer.

30. (*1*) Every significant data fiduciary shall appoint a data protection officer possessing such qualification and experience as may be specified by regulations for carrying out the following functions––

(*a*) providing information and advice to the data fiduciary on matters relating to fulfilling its obligations under this Act;

(*b*) monitoring personal data processing activities of the data fiduciary to ensure that such processing does not violate the provisions of this Act;

(*c*) providing advice to the data fiduciary on carrying out the data protection impact assessments, and carry out its review under sub-section (*4*) of section 27;

(*d*) providing advice to the data fiduciary on the development of internal mechanisms to satisfy the principles specified under section 22;

(*e*) providing assistance to and co-operating with the Authority on matters of compliance of the data fiduciary with the provisions under this Act;

(*f*) act as the point of contact for the data principal for the purpose of grievances redressal under section 32; and

(*g*) maintaining an inventory of records to be maintained by the data fiduciary under section 28.

(*2*) Nothing contained in sub-section (*1*) shall prevent the data fiduciary from assigning any other function to the data protection officer, which it may consider necessary.

(*3*) The data protection officer appointed under sub-section (*1*) shall be based in India and shall represent the data fiduciary under this Act.

Processing by entities other than data fiduciaries.

31. (*1*) The data fiduciary shall not engage, appoint, use or involve a data processor to process personal data on its behalf without a contract entered into by the data fiduciary and such data processor.

(*2*) The data processor referred to in sub-section (*1*) shall not engage, appoint, use, or involve another data processor in the processing on its behalf, except with the authorisation of the data fiduciary and unless permitted in the contract referred to in sub-section (*1*).

(*3*) The data processor, and any employee of the data fiduciary or the data processor, shall only process personal data in accordance with the instructions of the data fiduciary and treat it confidential.

Grievance redressal by data fiduciary.

32. (*1*) Every data fiduciary shall have in place the procedure and effective mechanisms to redress the grievances of data principals efficiently and in a speedy manner.

(*2*) A data principal may make a complaint of contravention of any of the provisions of this Act or the rules or regulations made thereunder, which has caused or is likely to cause harm to such data principal, to—

(*a*) the data protection officer, in case of a significant data fiduciary; or

(*b*) an officer designated for this purpose, in case of any other data fiduciary.

(*3*) A complaint made under sub-section (*2*) shall be resolved by the data fiduciary in an expeditious manner and not later than thirty days from the date of receipt of the complaint by such data fiduciary.

(*4*) Where a complaint is not resolved within the period specified under sub-section (*3*), or where the data principal is not satisfied with the manner in which the complaint is resolved, or the data fiduciary has rejected the complaint, the data principal may file a complaint to the Authority in such manner as may be prescribed.

CHAPTER VII

RESTRICTION ON TRANSFER OF PERSONAL DATA OUTSIDE INDIA

Prohibition on processing of sensitive personal data and critical personal data outside India

33. (*1*) Subject to the conditions in sub-section (*1*) of section 34, the sensitive personal data may be transferred outside India, but such sensitive personal data shall continue to be stored in India.

(*2*) The critical personal data shall only be processed in India.

Explanation.—For the purposes of sub-section (*2*), the expression "critical personal data" means such personal data as may be notified by the Central Government to be the critical personal data.

Conditions for transfer of sensitive personal data and critical personal data.

34. (*1*) The sensitive personal data may only be transferred outside India for the purpose of processing, when explicit consent is given by the data principal for such transfer, and where—

(*a*) the transfer is made pursuant to a contract or intra-group scheme approved by the Authority:

Provided that such contract or intra-group scheme shall not be approved, unless it makes the provisions for—

(*i*) effective protection of the rights of the data principal under this Act, including in relation to further transfer to any other person; and

(*ii*) liability of the data fiduciary for harm caused due to non-compliance of the provisions of such contract or intra-group scheme by such transfer; or

(*b*) the Central Government, after consultation with the Authority, has allowed the transfer to a country or, such entity or class of entity in a country or, an international organisation on the basis of its finding that—

(*i*) such sensitive personal data shall be subject to an adequate level of protection, having regard to the applicable laws and international agreements; and (*ii*) such transfer shall not prejudicially affect the enforcement of relevant laws by authorities with appropriate jurisdiction:

Provided that any finding under this clause shall be reviewed periodically in such manner as may be prescribed;

(*c*) the Authority has allowed transfer of any sensitive personal data or class of sensitive personal data necessary for any specific purpose.

(*2*) Notwithstanding anything contained in sub-section (*2*) of section 33, any critical personal data may be transferred outside India, only where such transfer is—

(*a*) to a person or entity engaged in the provision of health services or emergency services where such transfer is necessary for prompt action under section 12; or

(*b*) to a country or, any entity or class of entity in a country or, to an international organisation, where the Central Government has deemed such transfer to be permissible under clause (*b*) of sub-section (*1*) and where such transfer in the opinion of the Central Government does not prejudicially affect the security and strategic interest of the State.

(*3*) Any transfer under clause (*a*) of sub-section (*2*) shall be notified to the Authority within such period as may be specified by regulations.

CHAPTER VIII

EXEMPTIONS

35. Where the Central Government is satisfied that it is necessary or expedient,— Power of Central Government to exempt any agency of Government from application of Act.

(*i*) in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order; or

(*ii*) for preventing incitement to the commission of any cognizable offence relating to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order,

it may, by order, for reasons to be recorded in writing, direct that all or any of the provisions of this Act shall not apply to any agency of the Government in respect of processing of such personal data, as may be specified in the order subject to such procedure, safeguards and oversight mechanism to be followed by the agency, as may be prescribed.

Explanation.—For the purposes of this section,—

2 of 1974. (*i*) the term "cognizable offence" means the offence as defined in clause (*c*) of section 2 of the Code of Criminal Procedure, 1973;

(*ii*) the expression "processing of such personal data" includes sharing by or sharing with such agency of the Government by any data fiduciary, data processor or data principal.

36. The provisions of Chapter II except section 4, Chapters III to V, Chapter VI except section 24, and Chapter VII shall not apply where— Exemption of certain provisions for certain processing of personal data.

(*a*) personal data is processed in the interests of prevention, detection, investigation and prosecution of any offence or any other contravention of any law for the time being in force;

(*b*) disclosure of personal data is necessary for enforcing any legal right or claim, seeking any relief, defending any charge, opposing any claim, or obtaining any legal advice from an advocate in any impending legal proceeding;

(*c*) processing of personal data by any court or tribunal in India is necessary for the exercise of any judicial function;

(*d*) personal data is processed by a natural person for any personal or domestic purpose, except where such processing involves disclosure to the public, or is undertaken in connection with any professional or commercial activity; or

(*e*) processing of personal data is necessary for or relevant to a journalistic purpose, by any person and is in compliance with any code of ethics issued by the Press Council of India, or by any media self-regulatory organisation.

Power of Central Government to exempt certain data processors.

37. The Central Government may, by notification, exempt from the application of this Act, the processing of personal data of data principals not within the territory of India, pursuant to any contract entered into with any person outside the territory of India, including any company incorporated outside the territory of India, by any data processor or any class of data processors incorporated under Indian law.

Exemption for research, archiving or statistical purposes.

38. Where the processing of personal data is necessary for research, archiving, or statistical purposes, and the Authority is satisfied that—

(*a*) the compliance with the provisions of this Act shall disproportionately divert resources from such purpose;

(*b*) the purposes of processing cannot be achieved if the personal data is anonymised;

(*c*) the data fiduciary has carried out de-identification in accordance with the code of practice specified under section 50 and the purpose of processing can be achieved if the personal data is in de-identified form;

(*d*) the personal data shall not be used to take any decision specific to or action directed to the data principal; and

(*e*) the personal data shall not be processed in the manner that gives rise to a risk of significant harm to the data principal,

it may, by notification, exempt such class of research, archiving, or statistical purposes from the application of any of the provisions of this Act as may be specified by regulations.

Exemption for manual processing by small entities.

39. (*1*) The provisions of sections 7, 8, 9, clause (*c*) of sub-section (*1*) of section 17 and sections 19 to 32 shall not apply where the processing of personal data by a small entity is not automated.

(*2*) For the purposes of sub-section (*1*), a "small entity" means such data fiduciary as may be classified, by regulations, by Authority, having regard to—

(*a*) the turnover of data fiduciary in the preceding financial year;

(*b*) the purpose of collection of personal data for disclosure to any other individuals or entities; and

(*c*) the volume of personal data processed by such data fiduciary in any one day in the preceding twelve calendar months.

Sandbox for encouraging innovation, etc.

40. (*1*) The Authority shall, for the purposes of encouraging innovation in artificial intelligence, machine-learning or any other emerging technology in public interest, create a Sandbox.

(*2*) Any data fiduciary whose privacy by design policy is certified by the Authority under sub-section (*3*) of section 22 shall be eligible to apply, in such manner as may be specified by regulations, for inclusion in the Sandbox created under sub-section (*1*).

(*3*) Any data fiduciary applying for inclusion in the Sandbox under sub-section (*2*) shall furnish the following information, namely:—

(*a*) the term for which it seeks to utilise the benefits of Sandbox, provided that such term shall not exceed twelve months;

(*b*) the innovative use of technology and its beneficial uses;

(*c*) the data principals or categories of data principals participating under the proposed processing; and

(*d*) any other information as may be specified by regulations.

(*4*) The Authority shall, while including any data fiduciary in the Sandbox, specify—

(*a*) the term of the inclusion in the Sandbox, which may be renewed not more than twice, subject to a total period of thirty-six months;

(*b*) the safeguards including terms and conditions in view of the obligations under clause (*c*) including the requirement of consent of data principals participating under any licensed activity, compensation to such data principals and penalties in relation to such safeguards; and

(*c*) that the following obligations shall not apply or apply with modified form to such data fiduciary, namely:—

(*i*) the obligation to specify clear and specific purposes under sections 4 and 5;

(*ii*) limitation on collection of personal data under section 6; and

(*iii*) any other obligation to the extent, it is directly depending on the obligations under sections 5 and 6; and

(*iv*) the restriction on retention of personal data under section 9.

CHAPTER IX

DATA PROTECTION AUTHORITY OF INDIA

Establishment of Authority.

41. (*1*) The Central Government shall, by notification, establish, for the purposes of this Act, an Authority to be called the Data Protection Authority of India.

(*2*) The Authority referred to in sub-section (*1*) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(*3*) The head office of the Authority shall be at such place as may be prescribed.

(*4*) The Authority may, with the prior approval of the Central Government, establish its offices at other places in India.

Composition and qualifications for appointment of Members.

42. (*1*) The Authority shall consist of a Chairperson and not more than six whole-time Members, of which one shall be a person having qualification and experience in law.

(*2*) The Chairperson and the Members of the Authority shall be appointed by the Central Government on the recommendation made by a selection committee consisting of—

(*a*) the Cabinet Secretary, who shall be Chairperson of the selection committee;

(*b*) the Secretary to the Government of India in the Ministry or Department dealing with the Legal Affairs; and (*c*) the Secretary to the Government of India in the Ministry or Department dealing with the Electronics and Information Technology.

(*3*) The procedure to be followed by the Selection Committee for recommending the names under sub-section (*2*) shall be such as may be prescribed.

(*4*) The Chairperson and the Members of the Authority shall be persons of ability, integrity and standing, and shall have qualification and specialised knowledge and experience of, and not less than ten years in the field of data protection, information technology, data management, data science, data security, cyber and internet laws, public administration, national security or related subjects.

(*5*) A vacancy caused to the office of the Chairperson or any other member of the Authority shall be filled up within a period of three months from the date on which such vacancy occurs.

Terms and conditions of appointment.

43. (*1*) The Chairperson and the Members of the Authority shall be appointed for a term of five years or till they attain the age of sixty-five years, whichever is earlier, and they shall not be eligible for re-appointment.

(*2*) The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the Members of the Authority shall be such as may be prescribed.

(*3*) The Chairperson and the Members shall not, during their term and for a period of two years from the date on which they cease to hold office, accept—

(*a*) any employment either under the Central Government or under any State Government; or

(*b*) any appointment, in any capacity whatsoever, with a significant data fiduciary.

(*4*) Notwithstanding anything contained in sub-section (*1*), the Chairperson or a Member of the Authority may—

(*a*) relinquish his office by giving in writing to the Central Government a notice of not less than three months; or

(*b*) be removed from his office in accordance with the provisions of this Act.

Removal of Chairperson or other Members.

44. (*1*) The Central Government may remove from office, the Chairperson or any Member of the Authority who—

(*a*) has been adjudged as an insolvent;

(*b*) has become physically or mentally incapable of acting as a Chairperson or member;

(*c*) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude;

(*d*) has so abused their position as to render their continuation in office detrimental to the public interest; or

(*e*) has acquired such financial or other interest as is likely to affect prejudicially their functions as a Chairperson or a member.

(*2*) No Chairperson or any member of the Authority shall be removed under clause (*d*) or (*e*) of sub-section (*1*) unless he has been given a reasonable opportunity of being heard.

Powers of Chairperson.

45. The Chairperson of the Authority shall have powers of general superintendence and direction of the affairs of the Authority and shall also exercise all powers and do all such acts and things which may be exercised or done by the Authority under this Act.

Meetings of Authority.

46. (*1*) The Chairperson and Members of the Authority shall meet at such times and places and shall observe such rules and procedures in regard to transaction of business at its meetings including quorum at such meetings, as may be prescribed.

(*2*) If, for any reason, the Chairperson is unable to attend any meeting of the Authority, any other member chosen by the Members present at the meeting, shall preside the meeting.

(*3*) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the member presiding, shall have the right to exercise a second or casting vote.

(*4*) Any Member who has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Authority shall disclose the nature of his interest at such meeting, which shall be recorded in the proceedings of the Authority and such member shall not take part in any deliberation or decision of the Authority with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Authority.

47. No act or proceeding of the Authority shall be invalid merely by reason of—

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

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

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

Officers and other employees of Authority.

48. (*1*) The Authority may appoint such officers, other employees, consultants and experts as it may consider necessary for effectively discharging of its functions under this Act.

(*2*) Any remuneration, salary or allowances, and other terms and conditions of service of such officers, employees, consultants and experts shall be such as may be specified by regulations.

Powers and functions of Authority.

49. (*1*) It shall be the duty of the Authority to protect the interests of data principals, prevent any misuse of personal data, ensure compliance with the provisions of this Act, and promote awareness about data protection.

(*2*) Without prejudice to the generality of the foregoing and other functions under this Act, the functions of the Authority shall include—

(*a*) monitoring and enforcing application of the provisions of this Act;

(*b*) taking prompt and appropriate action in response to personal data breach in accordance with the provisions of this Act;

(*c*) maintaining a database on its website containing names of significant data fiduciaries along with a rating in the form of a data trust score indicating compliance with the obligations of this Act by such fiduciaries;

(*d*) examination of any data audit reports and taking any action pursuant thereto;

(*e*) issuance of a certificate of registration to data auditors and renewal, withdrawal, suspension or cancellation thereof and maintaining a database of registered data auditors and specifying the qualifications, code of conduct, practical training and functions to be performed by such data auditors;

(*f*) classification of data fiduciaries;

(*g*) monitoring cross-border transfer of personal data;

(*h*) specifying codes of practice;

(*i*) promoting awareness and understanding of the risks, rules, safeguards and rights in respect of protection of personal data amongst data fiduciaries and data principals;

(*j*) monitoring technological developments and commercial practices that may affect protection of personal data;

(*k*) promoting measures and undertaking research for innovation in the field of protection of personal data;

(*l*) advising Central Government, State Government and any other authority on measures required to be taken to promote protection of personal data and ensuring consistency of application and enforcement of this Act;

(*m*) specifying fees and other charges for carrying out the purposes of this Act;

(*n*) receiving and inquiring complaints under this Act; and

(*o*) performing such other functions as may be prescribed.

(*3*) Where, pursuant to the provisions of this Act, the Authority processes any personal data, it shall be construed as the data fiduciary or the data processor in relation to such personal data as applicable, and where the Authority comes into possession of any information that is treated as confidential by the data fiduciary or data processor, it shall not disclose such information unless required under any law to do so, or where it is required to carry out its function under this section.

Codes of practice.

50. (*1*) The Authority shall, by regulations, specify codes of practice to promote good practices of data protection and facilitate compliance with the obligations under this Act.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Authority may approve any code of practice submitted by an industry or trade association, an association representing the interest of data principals, any sectoral regulator or statutory Authority, or any departments or ministries of the Central or State Government.

(*3*) The Authority shall ensure transparency and compliance with the obligations of data fiduciary and the rights of the data principal under this Act while specifying or approving any code of practice under this section.

(*4*) A code of practice under sub-section (*1*) or sub-section (*2*), shall not be issued unless the Authority has made consultation with the sectoral regulators and other stakeholders including the public and has followed such procedure as may be prescribed.

(*5*) A code of practice issued under this section shall not derogate from the provisions of this Act or any other law for the time being in force.

(*6*) The code of practice under this Act may include the following matters, namely:—

(*a*) requirements for notice under section 7 including any model forms or guidance relating to notice;

(*b*) measures for ensuring quality of personal data processed under section 8;

(*c*) measures pertaining to the retention of personal data under section 9;

(*d*) manner for obtaining valid consent under section 11;

(*e*) processing of personal data under section 12;

(*f*) activities where processing of personal data may be undertaken under section 14;

(*g*) processing of sensitive personal data under Chapter III;

(*h*) processing of personal data under any other ground for processing, including processing of personal data of children and age-verification under this Act;

(*i*) exercise of any right by data principals under Chapter V;

(*j*) the standards and means by which a data principal may avail the right to data portability under section 19;

(*k*) transparency and accountability measures including the standards thereof to be maintained by data fiduciaries and data processors under Chapter VI;

(*l*) standards for security safeguards to be maintained by data fiduciaries and data processors under section 24;

(*m*) methods of de-identification and anonymisation;

(*n*) methods of destruction, deletion, or erasure of personal data where required under this Act;

(*o*) appropriate action to be taken by the data fiduciary or data processor in response to a personal data breach under section 25;

(*p*) manner in which data protection impact assessments may be carried out by the data fiduciary or a class thereof under section 27;

(*q*) transfer of personal data outside India pursuant to section 34;

(*r*) processing of any personal data or sensitive personal data to carry out any activity necessary for research, archiving or statistical purposes under section 38; and

(*s*) any other matter which, in the view of the Authority, may be necessary to be provided in the code of practice.

(*7*) The Authority may review, modify or revoke a code of practice issued under this section in such manner as may be prescribed.

Power of Authority to issue directions.

51. (*1*) The Authority may, for the discharge of its functions under this Act, issue such directions from time to time as it may consider necessary to any data fiduciary or data processor who shall be bound to comply with such directions.

(*2*) No direction shall be issued under sub-section (*1*) unless the Authority has given a reasonable opportunity of being heard to the data fiduciaries or data processor concerned.

(*3*) The Authority may, on a representation made to it or on its own motion, modify, suspend, withdraw or cancel any direction issued under sub-section (*1*) and in doing so, may impose such conditions as it deems fit, subject to which the modification, suspension, withdrawal or cancellation shall have effect.

Power of Authority to call for information.

52. (*1*) Without prejudice to the other provisions of this Act, the Authority may require a data fiduciary or data processor to provide such information as may be reasonably required by it for discharging its functions under this Act.

(*2*) If the Authority requires a data fiduciary or a data processor to provide any information under sub-section (*1*), it shall provide a notice in writing to the data fiduciary or the data processor stating the reasons for such requisition.

(*3*) The Authority shall, by regulations, specify the manner in which the data fiduciary or data processor shall provide the information sought in sub-section (*1*), including the designation of the officer or employee of the Authority who may seek such information, the period within which such information is to be furnished and the form in which such information may be provided.

Power of Authority to conduct inquiry.

53. (*1*) The Authority may, on its own or on a complaint received by it, inquire or cause to be inquired, if it has reasonable grounds to believe that—

(*a*) the activities of the data fiduciary or data processor are being conducted in a manner which is detrimental to the interest of data principals; or (*b*) any data fiduciary or data processor has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction of the Authority.

(*2*) For the purposes of sub-section (*1*), the Authority shall, by an order in writing, appoint one of its officers as an Inquiry Officer to inquire into the affairs of such data fiduciary or data processor and to report to the Authority on any inquiry made.

(*3*) For the purpose of any inquiry under this section, the Inquiry Officer may, wherever necessary, seek the assistance of any other person.

(*4*) The order referred to in sub-section (*2*) shall specify the reasons for the inquiry and the scope of the inquiry and may be modified from time to time.

(*5*) Every officer, employee or other person acting under the direct authority of the data fiduciary or the data processor, or a service provider, or a contractor, where services are being obtained by or provided to the data fiduciary or data processor, as the case may be, shall be bound to produce before the Inquiry Officer, all such books, registers, documents, records and any data in their custody or power and to furnish to the Inquiry Officer any statement and information relating to the affairs of the data fiduciary or data processor as the Inquiry Officer may require within such time as the said Inquiry Officer may specify.

(*6*) The Inquiry Officer shall provide a notice in writing to the persons referred to in sub-section (*5*) stating the reasons thereof and the relationship between the data fiduciary and the Inquiry Officer.

(*7*) The Inquiry Officer may keep in its custody any books, registers, documents, records and other data produced under sub-section (*5*) for six months and thereafter shall return the same to the person by whom or on whose behalf such books, registers, documents, record and data are produced, unless an approval to retain such books, registers, documents, record and data for an additional period not exceeding three months has been obtained from the Authority.

(*8*) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under this section, the Authority or the Inquiry Officer, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely— 5 of 1908.

(*a*) the discovery and production of books of account and other documents, at such place and at such time as may be specified;

(*b*) summoning and enforcing the attendance of persons and examining them on oath;

(*c*) inspection of any book, document, register or record of any data fiduciary;

(*d*) issuing commissions for the examination of witnesses or documents; and

(*e*) any other matter which may be prescribed.

Action to be taken by Authority pursuant to an inquiry.

54. (*1*) On receipt of a report under sub-section (*2*) of section 53, the Authority may, after giving such opportunity to the data fiduciary or data processor to make a representation in connection with the report as the Authority deems reasonable, by an order in writing—

(*a*) issue a warning to the data fiduciary or data processor where the business or activity is likely to violate the provisions of this Act;

(*b*) issue a reprimand to the data fiduciary or data processor where the business or activity has violated the provisions of this Act;

(*c*) require the data fiduciary or data processor to cease and desist from committing or causing any violation of the provisions of this Act;

(*d*) require the data fiduciary or data processor to modify its business or activity to bring it in compliance with the provisions of this Act;

(*e*) temporarily suspend or discontinue business or activity of the data fiduciary or data processor which is in contravention of the provisions of this Act;

(*f*) vary, suspend or cancel any registration granted by the Authority in case of a significant data fiduciary;

(*g*) suspend or discontinue any cross-border flow of personal data; or

(*h*) require the data fiduciary or data processor to take any such action in respect of any matter arising out of the report as the Authority may deems fit.

(*2*) A data fiduciary or data processor aggrieved by an order made under this section may prefer an appeal to the Appellate Tribunal.

Search and seizure.

55. (*1*) Where in the course of inquiry under section 53, the Inquiry Officer has reasonable ground to believe that any books, registers, documents, records or data belonging to any person as mentioned therein, are likely to be tampered with, altered, mutilated, manufactured, falsified or destroyed, the Inquiry Officer may make an application to such designated court, as may be notified by the Central Government, for an order for the seizure of such books, registers, documents and records.

(*2*) The Inquiry Officer may require the services of any police officer or any officer of the Central Government, or of both, to assist him for the purposes specified in sub-section (*1*) and it shall be the duty of every such officer to comply with such requisition.

(*3*) After considering the application and hearing the Inquiry Officer, if necessary, the designated court may, by order, authorise the Inquiry Officer—

(*a*) to enter, with such assistance, as may be required, the place or places where such books, registers, documents and records are kept;

(*b*) to search that place or those places in the manner specified in the order; and

(*c*) to seize books, registers, documents and records it considers necessary for the purposes of the inquiry.

(*4*)The Inquiry Officer shall keep in its custody the books, registers, documents and records seized under this section for such period not later than the conclusion of the inquiry as it considers necessary and thereafter shall return the same to the person, from whose custody or power they were seized and inform the designated court of such return.

(*5*) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal
2 of 1974. Procedure, 1973 relating to searches or seizures made under that Code.

Co-ordination between Authority and other regulators or authorities.

56. Where any action proposed to be taken by the Authority under this Act is such that any other regulator or authority constituted under a law made by Parliament or the State legislature may also have concurrent jurisdiction, the Authority shall consult such other regulator or authority before taking such action and may also enter into a memorandum of understanding with such other regulator or authority governing the coordination of such actions.

CHAPTER X

PENALTIES AND COMPENSATION

Penalties for contravening certain provisions of the Act.

57. (*1*) Where the data fiduciary contravenes any of the following provisions,—

(*a*) obligation to take prompt and appropriate action in response to a data security breach under section 25;

(*b*) failure to register with the Authority under sub-section (*2*) of section 26, (*c*) obligation to undertake a data protection impact assessment by a significant data fiduciary under section 27;

(*d*) obligation to conduct a data audit by a significant data fiduciary under section 29;

(*e*) appointment of a data protection officer by a significant data fiduciary under section 30,

it shall be liable to a penalty which may extend to five crore rupees or two per cent. of its total worldwide turnover of the preceding financial year, whichever is higher;

(*2*) Where a data fiduciary contravenes any of the following provisions,—

(*a*) processing of personal data in violation of the provisions of Chapter II or Chapter III;

(*b*) processing of personal data of children in violation of the provisions of Chapter IV;

(*c*) failure to adhere to security safeguards as per section 24; or

(*d*) transfer of personal data outside India in violation of the provisions of Chapter VII,

it shall be liable to a penalty which may extend to fifteen crore rupees or four per cent. of its total worldwide turnover of the preceding financial year, whichever is higher.

(*3*) For the purposes of this section,—

(*a*) the expression "total worldwide turnover" means the gross amount of revenue recognised in the profit and loss account or any other equivalent statement, as applicable, from the sale, supply or distribution of goods or services or on account of services rendered, or both, and where such revenue is generated within India and outside India.

(*b*) it is hereby clarified that total worldwide turnover in relation to a data fiduciary is the total worldwide turnover of the data fiduciary and the total worldwide turnover of any group entity of the data fiduciary where such turnover of a group entity arises as a result of the processing activities of the data fiduciary, having regard to factors, including—

(*i*) the alignment of the overall economic interests of the data fiduciary and the group entity;

(*ii*) the relationship between the data fiduciary and the group entity specifically in relation to the processing activity undertaken by the data fiduciary; and

(*iii*) the degree of control exercised by the group entity over the data fiduciary or *vice versa*, as the case may be.

(*c*) where of any provisions referred to in this section has been contravened by the State, the maximum penalty shall not exceed five crore rupees under sub-section (*1*), and fifteen crore rupees under sub-section (*2*), respectively.

Penalty for failure to comply with data principal requests under Chapter V.

58. Where, any data fiduciary, without any reasonable explanation, fails to comply with any request made by a data principal under Chapter V, such data fiduciary shall be liable to a penalty of five thousand rupees for each day during which such default continues, subject to a maximum of ten lakh rupees in case of significant data fiduciaries and five lakh rupees in other cases.

59. If any data fiduciary, who is required under this Act, or the rules or regulations made thereunder, to furnish any report, return or information to the Authority, fails to furnish the same, then such data fiduciary shall be liable to penalty which shall be ten thousand rupees for each day during which such default continues, subject to a maximum of twenty lakh rupees in case of significant data fiduciaries and five lakh rupees in other cases.

Penalty for failure to furnish report, returns, information, etc.

60. If any data fiduciary or data processor fails to comply with any direction issued by the Authority under section 51or order issued by the Authority under section 54, such data fiduciary or data processor shall be liable to a penalty which may extend to twenty thousand rupees for each day during which such default continues, subject to a maximum of two crores in case of a data processor it may extend to five thousand rupees for each day during which such default continues, subject to a maximum of fifty lakh rupees.

Penalty for failure to comply with direction or order issued by Authority.

61. Where any person fails to comply with any provision of this Act or the rules or regulations made thereunder applicable to such person, for which no separate penalty has been provided, then, such person shall be liable to a penalty which may extend to a maximum of one crore rupees in case of significant data fiduciaries, and a maximum of twenty five lakh rupees in other cases.

Penalty for contravention where no separate penalty has been provided.

62. (*1*) For the purpose of adjudging the penalties under sections 57 to 61or awarding compensation under section 64, the Authority shall appoint such Adjudicating Officer as may be prescribed.

Appointment of Adjudicating Officer.

(*2*) The Central Government shall, having regard to the need to ensure the operational segregation, independence, and neutrality of the adjudication under this Act, prescribe—

(*a*) number of Adjudicating Officers to be appointed under sub-section (*1*);

(*b*) manner and terms of appointment of Adjudicating Officers ensuring independence of such officers;

(*c*) jurisdiction of Adjudicating Officers;

(*d*) other such requirements as the Central Government may deem fit.

(*3*) The Adjudicating Officers shall be persons of ability, integrity and standing, and must have specialised knowledge of, and not less than seven years professional experience in the fields of law, cyber and internet laws, information technology law and policy, data protection and related subjects.

63. (*1*) No penalty shall be imposed under this Chapter, except after an inquiry made in such manner as may be prescribed, and the data fiduciary or data processor or any person, as the case may be, has been given a reasonable opportunity of being heard:

Procedure for adjudication by Adjudicating Officer.

Provided that no inquiry under this section shall be initiated except by a complaint made by the Authority.

(*2*) While holding an inquiry, the Adjudicating Officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry.

(*3*) If, on the conclusion of such inquiry, the Adjudicating Officer is satisfied that the person has failed to comply with the provisions of this Act or has caused harm to any data principal as a result of any contravention of the provisions of this Act, the Adjudicating Officer may impose such penalty specified under relevant section.

(*4*) While deciding whether to impose a penalty under sub-section (*3*) and in determining the quantum of penalty under sections 57 to 61, the Adjudicating Officer shall have due regard to the following factors, namely:—

(*a*) nature, gravity and duration of violation taking into account the nature, scope and purpose of processing concerned;

(*b*) number of data principals affected, and the level of harm suffered by them;

(*c*) intentional or negligent character of the violation;

(*d*) nature of personal data impacted by the violation;

(*e*) repetitive nature of the default;

(*f*) transparency and accountability measures implemented by the data fiduciary or data processor including adherence to any relevant code of practice relating to security safeguards;

(*g*) action taken by the data fiduciary or data processor to mitigate the harm suffered by data principals; and

(*h*) any other aggravating or mitigating factors relevant to the circumstances of the case, such as, the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.

(*5*) Any person aggrieved by an order under this section by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal.

Compensation.

64. (*1*) Any data principal who has suffered harm as a result of any violation of any provision under this Act or the rules or regulations made thereunder, by a data fiduciary or a data processor, shall have the right to seek compensation from the data fiduciary or the data processor, as the case may be.

Explanation.—For the removal of doubts, it is hereby clarified that a data processor shall be liable only where it has acted outside or contrary to the instructions of the data fiduciary pursuant to section 31, or where the data processor is found to have acted in a negligent manner, or where the data processor has not incorporated adequate security safeguards under section 24, or where it has violated any provisions of this Act expressly applicable to it.

(*2*) The data principal may seek compensation under this section by making a complaint to the Adjudicating Officer in such form and manner as may be prescribed.

(*3*) Where there are one or more data principals or any identifiable class of data principals who have suffered harm as a result of any contravention by the same data fiduciary or data processor, one complaint may be instituted on behalf of all such data principals seeking compensation for the harm suffered.

(*4*) While deciding to award compensation and the amount of compensation under this section, the Adjudicating Officer shall have regard to the following factors, namely:—

(*a*) nature, duration and extent of violation of the provisions of the Act, rules prescribed, or regulations specified thereunder;

(*b*) nature and extent of harm suffered by the data principal;

(*c*) intentional or negligent character of the violation;

(*d*) transparency and accountability measures implemented by the data fiduciary or the data processor, as the case may be, including adherence to any relevant code of practice relating to security safeguards;

(*e*) action taken by the data fiduciary or the data processor, as the case may be, to mitigate the damage suffered by the data principal;

(*f*) previous history of any, or such, violation by the data fiduciary or the data processor, as the case may be;

(*g*) whether the arrangement between the data fiduciary and data processor contains adequate transparency and accountability measures to safeguard the personal data being processed by the data processor on behalf of the data fiduciary;

(*h*) any other aggravating or mitigating factor relevant to the circumstances of the case, such as, the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.

(*5*) Where more than one data fiduciary or data processor, or both a data fiduciary and a data processor are involved in the same processing activity and are found to have caused harm to the data principal, then, each data fiduciary or data processor may be ordered to pay the entire compensation for the harm to ensure effective and speedy compensation to the data principal.

(*6*) Where a data fiduciary or a data processor has, in accordance with sub-section (*5*), paid the entire amount of compensation for the harm suffered by the data principal, such data fiduciary or data processor shall be entitled to claim from the other data fiduciaries or data processors, as the case may be, that amount of compensation corresponding to their part of responsibility for the harm caused.

(*7*) Any person aggrieved by an order made under this section by the Adjudicating Officer may prefer an appeal to the Appellate Tribunal.

(*8*) The Central Government may prescribe the procedure for hearing of a complaint under this section.

Compensation or penalties not to interfere with other punishment.

65. No compensation awarded, or penalty imposed, under this Act shall prevent the award of compensation or imposition of any other penalty or punishment under this Act or any other law for the time being in force.

Recovery of amounts.

66. (*1*) The amount of any penalty imposed or compensation awarded under this Act, if not paid, may be recovered as if it were an arrear of land revenue.

(*2*) All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

CHAPTER XI

APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

67. (*1*) The Central Government shall, by notification, establish an Appellate Tribunal to—

(*a*) hear and dispose of any appeal from an order of the Adjudicating Officer under sub-section (*5*) of section 20;

(*b*) hear and dispose of any appeal from an order of the Authority under sub-section (*2*) of section 54;

(*c*) hear and dispose of any appeal from an order of the Adjudicating Officer under sub-section (*5*) of section 63; and

(*d*) hear and dispose of any appeal from an order of an Adjudicating Officer under sub-section (*7*) of section 64.

(*2*) The Appellate Tribunal shall consist of a Chairperson and not more than three members to be appointed by the Central Government.

(*3*) The Appellate Tribunal shall be established at such place or places, as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify.

(*4*) Notwithstanding anything contained in sub-sections (*1*) to (*3*), where, in the opinion of the Central Government, any existing body is competent to discharge the functions of the Appellate Tribunal under this Act, then, the Central Government may notify such body to act as the Appellate Tribunal under this Act.

Qualifications, appointment, term, conditions of service of Members.

68. (*1*) A person shall not be qualified for appointment as the Chairperson or a member of the Appellate Tribunal unless he—

(*a*) in the case of Chairperson, is, or has been a Judge of the Supreme Court or Chief Justice of a High Court;

(*b*) in the case of a member, has held the post of Secretary to the Government of India or any equivalent post in the Central Government for a period of not less than two years or a person who is well versed in the field of data protection, information technology, data management, data science, data security, cyber and internet laws or any related subject.

(*2*) The Central Government may prescribe the manner of appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and any member of the Appellate Tribunal.

Vacancies.

69. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act and the rules prescribed to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Staff of Appellate Tribunal.

70. (*1*) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(*2*) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(*3*) The salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Distribution of business amongst Benches.

71. (*1*) Subject to the provisions of this Act, the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof, which shall be constituted by the Chairperson.

(*2*) Where Benches of the Appellate Tribunal are constituted under sub-section (*1*), the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches, transfer of Members between Benches, and also provide for the matters which may be dealt with by each bench.

(*3*) On the application of any of the parties and after notice to the parties, and after hearing such of them as the Chairperson may desire to be heard, or on the Chairperson's own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Appeals to Appellate Tribunal.

72. (*1*) Any person aggrieved by the decision of the Authority, may prefer an appeal to the Appellate Tribunal within a period of thirty days from the receipt of the order appealed against, in such form, verified in such manner and be accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(*2*) On receipt of an appeal under this section, the Appellate Tribunal may, after providing the parties to the dispute or appeal, an opportunity of being heard, pass such orders thereon as it deems fit.

(*3*) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(*4*) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any decision, or order of the Authority or Adjudicating Officer referred to in the appeal preferred under this section, on its own motion or otherwise, call for the records relevant to disposing of such appeal or application and make such orders as it thinks fit.

Procedure and powers of Appellate Tribunal.

73. (*1*) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

5 of 1908.

(*2*) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining his on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) subject to the provisions of section 123 and section 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

1 of 1872.

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

(*f*) reviewing its decisions;

(*g*) dismissing an application for default or deciding it, *ex parte*;

(*h*) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*; and

(*i*) any other matter which may be prescribed.

(*3*) Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.
2 of 1974.

Orders passed by Appellate Tribunal to be executable as a decree.

74. (*1*) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Appeal to Supreme Court.

5 of 1908.

75. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order of the Appellate Tribunal, not being an interlocutory order, to the Supreme Court on any substantial question of law.

(*2*) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(*3*) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Right to legal representation.

76. The applicant or appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this section, "legal practitioner" includes an advocate, or an attorney and includes a pleader in practice.

Civil court not to have jurisdiction.

77. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government.

78. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as it may think fit for the purposes of this Act.

Data Protection Authority of India Funds.

79. (*1*) There shall be constituted a Fund to be called the Data Protection Authority Fund to which the following shall be credited—

(*a*) all Government grants, fees and charges received by the Authority under this Act; and

(*b*) all sums received by the Authority from such other source as may be decided upon by the Central Government.

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

(*i*) the salaries, allowances and other remuneration of the Chairperson, Members, officers, employees, consultants and experts appointed by the Authority; and

(*ii*) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Accounts and Audit.

80. (*1*) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be prescribed and any expenditure incurred by him in connection with such audit shall be reimbursed to him by the Authority.

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

(*4*) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by the Comptroller and Auditor-General of India in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of the Parliament.

Furnishing of returns, etc., to Central Government.

81. (*1*) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements (including statement on enforcement action taken) and such particulars in regard to any proposed or existing programme for the promotion and development of protection of personal data, as the Central Government from time to time, require.

(*2*) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(*3*) A copy of the report prepared under sub-section (*2*) shall be laid, as soon as may be after it is received, before each House of the Parliament.

(*4*) A copy of the report prepared under sub-section (*2*) shall also be made publicly available by the Authority.

CHAPTER XIII

OFFENCES

Re-identification and processing of de-identified personal data.

82. (*1*) Any person who, knowingly or intentionally—

(*a*) re-identifies personal data which has been de-identified by a data fiduciary or a data processor, as the case may be; or

(*b*) re-identifies and processes such personal data as mentioned in clause (*a*),

without the consent of such data fiduciary or data processor, then, such person shall be punishable with imprisonment for a term not exceeding three years or with a fine which may extend to two lakh rupees or both.

(*2*) Nothing contained in sub-section (*1*) shall render any such person liable to any punishment under this section, if he proves that—

(*a*) the personal data belongs to the person charged with the offence under sub-section (*1*); or

(*b*) the data principal whose personal data is in question has explicitly consented to such re-identification or processing as per the provisions of this Act.

Offences to be cognizable and non-bailable.

2 of 1974. **83.** (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be cognizable and non-bailable.

(*2*) No court shall take cognizance of any offence under this Act, save on a complaint made by the Authority.

Offences by companies.

84. (*1*) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*2*) Nothing contained in sub-section (*1*) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purpose of this section—

(*a*) "company" means any body corporate, and includes—

(*i*) a firm; and

(*ii*) an association of persons or a body of individuals whether incorporated or not;

(*b*) "director" in relation to—

(*i*) a firm, means a partner in the firm;

(*ii*) an association of persons or a body of individuals, means any member controlling affairs thereof.

Offences by State.

85. (*1*) Where it has been proved that an offence under this Act has been committed by any department or authority or body of the State, by whatever name called, the head of such department or authority or body shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*2*) Nothing contained in sub-section (*1*) shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*3*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a department of the Central or State Government, or any authority of the State and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the department or authority, such officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*4*) Notwithstanding anything contained in this section, the provisions of the Code of Criminal Procedure, 1973 relating to public servants shall continue to apply. 2 of 1974.

CHAPTER XIV

MISCELLANEOUS

Power of Central Government to issue directions.

86. (*1*) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order.

(*2*) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(*3*) The decision of the Central Government whether a question is one of policy or not shall be final.

Members, etc., to be public servants.

87. The Chairperson, Members, officers and employees of the Authority and the Appellate Tribunal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

88. No suit, prosecution or other legal proceedings shall lie against the Authority or its Chairperson, member, employee or officer for anything which is done in good faith or intended to be done under this Act, or the rules prescribed, or the regulations specified thereunder.

Exemption from tax on income.

89. Notwithstanding anything contained in the Income Tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, as the case may be, the Authority shall not be liable to pay income-tax or any other tax in respect of its income, profits or gains derived. 43 of 1961.

Delegation.

90. The Authority may, by general or special order in writing delegate to any member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act, except the powers under section 94, as it may deem necessary.

Act to promote framing of policies for digital economy, etc..

91. (*1*) Nothing in this Act shall prevent the Central Government from framing of any policy for the digital economy, including measures for its growth, security, integrity, prevention of misuse, insofar as such policy do not govern personal data.

(*2*) The Central Government may, in consultation with the Authority, direct any data fiduciary or data processor to provide any personal data anonymised or other non-personal data to enable better targeting of delivery of services or formulation of evidence-based policies by the Central Government, in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, the expression "non-personal data" means the data other than personal data.

(*3*) The Central Government shall disclose annually the directions, made by it under sub-section (*2*), in such form as may be prescribed.

Bar on processing certain forms of biometric data.

92. No data fiduciary shall process such biometric data as may be notified by the Central Government, unless such processing is permitted by law.

Power to make rules.

93. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

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

(*a*) any other categories of sensitive personal data under section 15;

(*b*) other factors to be taken into consideration under clause (*d*) of sub-section (*3*) of section 16;

(*c*) the form and manner in which an application may be made to exercise the right under sub-section (*2*), and the manner of review of the order passed by the Adjudicating Officer under sub-section (*4*) of section 20;

(*d*) the methods of voluntary identification to identify users of social media under sub-section (*3*) and the identifying mark of verification of a voluntarily verified user under sub-section (*4*) of section 28;

(*e*) the manner in which a complaint may be filed under sub-section (*4*) of section 32;

(*f*) the entity or class of entity in a country, or international organisations to which transfers may be permitted under clause (*b*) of sub-section (*1*) of section 34;

(*g*) the place of head office of the Authority under sub-section (*3*) of section 41;

(*h*) procedure to be followed by the selection committee under sub-section (*3*) of section 42;

(*i*) the salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the Members of the Authority under sub-section (*2*) of section 43;

(*j*) the time and place for, and the rules and procedures in regard to, transaction of business at the meetings of the Authority under sub-section (*1*) of section 46;

(*k*) other functions of the Authority under clause (*o*) of sub-section (*2*) of section 49;

(*l*) the procedure of issuance of a code of practice under sub-section (*4*), the manner in which the Authority may review, modify or revoke a code of practice under sub-section (*7*), of section 50;

(*m*) other matters under clause (*e*) of sub-section (*8*) of section 53, in respect of which the Authority shall have powers;

(*n*) the number of Adjudicating Officers, manner and terms of their appointment, their jurisdiction and other requirements under sub-section (*2*) of section 62;

(*o*) the manner in which the Adjudicating Officer shall conduct an inquiry under sub-section (*1*) of section 63;

(*p*) the form and manner of making a complaint under sub-section (*2*), and the procedure for hearing of a complaint under sub-section (*8*) of section 64;

(*q*) the manner of appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and any member of the Appellate Tribunal under sub-section (*2*) of section 68;

(*r*) the procedure of filling of vacancies in the Appellate Tribunal under section 69;

(*s*) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (*3*) of section 70;

(*t*) the form, manner and fee for filing an appeal or application, as the case may be, with the Appellate Tribunal under sub-section (*1*) of section 72;

(*u*) other matters under clause (*i*) of sub-section (*2*) of section 73 in respect of powers of the Appellate Tribunal;

(*v*) the form of accounts, other relevant records and annual statement of accounts under sub-section (*1*), the intervals at which the accounts of the Authority shall be audited under sub-section (*2*) of section 80;

(*w*) the time in which and the form and manner in which the returns, statements, and particulars are to be furnished to the Central Government under sub-section (*1*), and annual report under sub-section (*2*) of section 81;

(*x*) the manner in which the Central Government may issue a direction, including the specific purposes for which data is sought under sub-section (*2*) and the form of disclosure of such directions under sub-section (*3*) of section 91; or

(*y*) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Power to make regulations.

94. (*1*) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

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

(*a*) information required to be provided by the data fiduciary to the data principal in its notice under clause (*n*) of sub-section (*1*) of section 7;

(*b*) manner in which the personal data retained by the data fiduciary must be deleted under sub-section (*4*) of section 9;

(*c*) the safeguards for protecting the rights of data principals under sub-section (*3*) of section 14;

(*d*) the additional safeguards or restrictions under sub-section (*2*) of section 15;

(*e*) the manner of obtaining consent of the parent or guardian of a child under sub-section (*2*), the manner of verification of age of a child under sub-section (*3*), application of provision in modified form to data fiduciaries offering counselling or child protection services under sub-section (*6*) of section 16;

(*f*) the period within which a data fiduciary must acknowledge the receipt of request under sub-section (*1*), the fee to be charged under sub-section (*2*), the period within which request is to be complied with under sub-section (*3*), and the manner and the period within which a data principal may file a complaint under sub-section (*4*) of section 21;

(*g*) the manner for submission of privacy by design policy under sub-section (*2*) of section 22;

(*h*) the manner and the technical, operation, financial and other conditions for registration of the consent manager and its compliance under sub-section (*5*) of section 23;

(*i*) the manner of registration of significant data fiduciaries under sub-section (*2*) of section 26;

(*j*) the circumstances or classes of data fiduciaries or processing operations where data protection impact assessments shall be mandatory and instances where data auditor shall be appointed under sub-section (*2*), and the manner in which data protection officer shall review the data protection impact assessment and submit to the Authority under sub-section (*4*) of section 27;

(*k*) the form and manner for maintaining the records, and any other aspect of processing for which records shall be maintained under sub-section (*1*) of section 28;

(*l*) the other factors to be taken into consideration under clause (*g*) of sub-section (*2*); the form and procedure for conducting audits under sub-section (*3*); the manner of registration of auditors under sub-section (*4*); criteria on the basis of which rating in the form of a data trust score may be assigned to a data fiduciary under sub-section (*6*) of section 29;

(*m*) the qualification and experience of a data protection officer under sub-section (*1*) of section 30;

(*n*) the period within which transfer of personal data shall be notified to the Authority under sub-section (*3*) of section 34;

(*o*) the provisions of the Act and the class of research, archival or statistical purposes which may be exempted under section 38;

(*p*) the remuneration, salary or allowances and other terms and conditions of service of such officers, employees, consultants and experts under sub-section (*2*) of section 48;

(*q*) the code of practice under sub-section (*1*) of section 50;

(*r*) the form and manner for providing information to the Authority by the data fiduciary under sub-section (*3*) of section 52;

(*s*) any other matter which is required to be, or may be specified, or in respect of which provision is to be or may be made by regulations.

Rules and regulations to be laid before Parliament.

95. Every rule and regulation made under this Act and notification issued under sub-section (*4*) of section 67 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or notification or both Houses agree that the rule or regulation or notification should not be made, the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

Overriding effect of this Act.

96. Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

Power to remove difficulties.

97. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of five years from the commencement of this Act.

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

Amendment of Act 21 of 2000.

98. The Information Technology Act, 2000 shall be amended in the manner specified in the Schedule to this Act.

THE SCHEDULE

(*See* section 98)

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000
(21 OF 2000)

Omission of section 43A.

1. Section 43A of the Information Technology Act, 2000 (hereafter in this Schedule referred to as the principal Act) shall be omitted.

Amendment of section 87.

2. In section 87 of the principal Act, in sub-section (*2*), clause (*ob*) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

In the matter of Justice K.S. Puttaswami and another *Vs*. Union of India [WP 494 of 2012], a nine Judge Constitutional Bench of the Supreme Court, while delivering its judgment on 24th August, 2017, declared "privacy" as a fundamental right under article 21 of the Constitution. Subsequently, on 26th September, 2018, a five Judge Constitutional Bench of the Supreme Court while delivering its final judgment in the above case impressed upon the Government to bring out a robust data protection regime.

2. The Government on 31st July, 2017 constituted a "Committee of Experts on Data Protection" chaired by Justice B.N. Srikrishna to examine the issues relating to data protection. The said Committee examined the issues on data protection and submitted its Report on 27th July, 2018. On the basis of the recommendations made in the said Report and the suggestions received from various stakeholders, it is proposed to enact a legislation, namely, the Personal Data Protection Bill, 2019.

3. The proposed Legislation seeks to bring a strong and robust data protection framework for India and to set up an Authority for protecting personal data and empowering the citizens' with rights relating to their personal data ensuring their fundamental right to "privacy and protection of personal data".

4. The salient features of the Data Protection Bill, 2019, *inter alia*, are as under—

(*i*) to promote the concepts such as consent framework, purpose limitation, storage limitation and the data minimisation;

(*ii*) to lay down obligations on entities collecting personal data (data fiduciary) to collect only that data which is required for a specific purpose and with the express consent of the individual (data principal);

(*iii*) to confer rights on the individual to obtain personal data, correct inaccurate data, erase data, update the data, port the data to other fiduciaries and the right to restrict or prevent the disclosure of personal data;

(*iv*) to establish an Authority to be called the "Data Protection Authority of India" (the Authority) which shall consist of a Chairperson and not more than six whole-time Members to be appointed by the Central Government;

(*v*) to provide that the Authority shall protect the interests of data principals, prevent any misuse of personal data, ensure compliance with the provisions of the proposed legislation and promote awareness about the data protection;

(*vi*) to specify a provision relating to "social media intermediary" whose actions have significant impact on electoral democracy, security of the State, public order or the sovereignty and integrity of India and to empower the Central Government, in consultation with the Authority, to notify the said intermediary as a significant data fiduciary;

(*vii*) to confer a "right of grievance" on data principal to make a complaint against the grievance to the data fiduciary and if aggrieved by the decision of such data fiduciary, he may approach the Authority;

(*viii*) to empower the Central Government to exempt any agency of Government from application of the proposed Legislation;

(*ix*) to empower the Authority to specify the "code of practice" to promote good practices of data protection and facilitate compliance with the obligations under this legislation;

(*x*) to appoint the "Adjudicating Officer" for the purpose of adjudging the penalties to be imposed and the compensation to be awarded under the provisions of this legislation;

(*xi*) to establish an "Appellate Tribunal" to hear and dispose of any appeal from an order of the Authority under clause 54 and the Adjudicating Officer under clauses 63 and 64; and

(*xii*) to impose "fines and penalties" for contravention of the provisions of the proposed legislation.

5. The Notes on Clauses explain in detail the various provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 5*th December*, 2019.

RAVI SHANKAR PRASAD.

Notes on Clauses

Clause 1.—This clause seeks to provide for short title and commencement of the Act.

Clause 2.—This clause seeks to clarify the application of the Act with regard to personal data of Indians and save for clause 91 would not be applicable to processing of anonymised data.

Clause 3.—This clause seeks to define certain expressions occurring in the Act.

Clause 4.—This clause seeks to prohibit processing of personal data without any specific, clear and lawful purpose.

Clause 5.—This clause seeks to limit the processing of personal data to the purpose consented to by the data principal or which is incidental or connected thereto.

Clause 6.—This clause seeks to lay down limitation on collection of personal data specifying that it should be only to the extent that is necessary.

Clause 7.—This clause seeks to lay down the requirement of notice for collection or processing of personal data and lists the various types of information that should be contained in the notice given to the data principal.

Clause 8.—This clause seeks to lay down that the data fiduciary should ensure the quality of the personal data processed.

Clause 9.—This clause seeks to lay down restriction on retention of personal data beyond what is necessary.

Clause 10.—This clause seeks to lay down the responsibility for complying with the provisions of this Act on the data fiduciary.

Clause 11.—This clause seeks to expound the various aspects of consent which are necessary for processing of personal data.

Clause 12.—This clause seeks to list out certain cases which provide for processing of personal data without consent.

Clause 13.—This clause seeks to provide for processing of personal data necessary for purposes related to employment.

Clause 14.—This clause seeks to provide for other reasonable purposes for which personal data may be processed.

Clause 15.—This clause seeks to provide for categorisation of personal data as sensitive personal data and lists out criteria for such categorisation.

Clause 16.—This clause seeks to provide for obligations on data fiduciaries who processed personal data of children.

Clause 17.—This clause seeks to provide the data principal with the right to confirmation and access to his personal data.

Clause 18.—This clause seeks to provide the data principal with a right to correct and erase his personal data.

Clause 19.—This clause seeks to provide the data principal the right to port personal data to any data fiduciary.

Clause 20.—This clause seeks to provide the data principal the right to be forgotten.

Clause 21.—This clause seeks to lay down the general conditions for the exercise of the rights in clauses 17 to 20.

Clause 22.—This clause seeks to list out the constituents of privacy by design policy.

Clause 23.—This clause seeks to require transparency in processing of personal data by requiring the fiduciary to inform the data principal and making information available.

Clause 24.—This clause seeks to require the data fiduciary to implement necessary security safeguards.

Clause 25.—This clause seeks to require the data fiduciary to report to the Authority about breach of any personal data.

Clause 26.—This clause seeks to provide for classification of certain data fiduciaries as significant data fiduciaries including certain social media intermediaries.

Clause 27.—This clause seeks to require significant data fiduciaries to undertake data protection impact assessment.

Clause 28.—This clause seeks to require significant data fiduciaries to maintain accurate and up-to-date records, including requiring significant social media intermediaries to provide for voluntary verification mechanism.

Clause 29.—This clause seeks to require significant data fiduciaries to have their policies and conduct audited by data auditors.

Clause 30.—This clause seeks to require significant data fiduciaries to appoint a Data Protection Officer.

Clause 31.—This clause seeks to require data fiduciaries to ensure a contract for processing by other data processors.

Clause 32.—This clause seeks to require every data fiduciary to have a grievance redressal mechanism.

Clause 33.—This clause seeks to prohibit processing of sensitive personal data and critical personal data outside India.

Clause 34.—This clause seeks to list out conditions under which sensitive personal data and critical personal data could be transferred outside India.

Clause 35.—This clause seeks to empower the Central Government to exempt any agency of the Government from application of the Act.

Clause 36.—This clause seeks to provide for exemption of certain provisions of the Act for certain processing of personal data.

Clause 37.—This clause seeks to clarify that the Government could exempt certain data processors who are processing data of foreigners, from the application of this Act.

Clause 38.—This clause seeks to provide for exemption when personal data is processed for research, archival or statistical purposes.

Clause 39.—This clause seeks to provide for exemption for small entities who are engaged in manual processing of personal data.

Clause 40.—This clause seeks to provide for a Sandbox which can facilitate new ideas and approaches without any regulatory violations.

Clause 41.—This clause seeks to establish a regulator namely the Data Protection Authority of India (the Authority).

Clause 42.—This clause seeks to lift the compositions and qualifications for appointment of Chairperson and Members of the Authority and their method of selection.

Clause 43.—This clause seeks to list the terms and conditions of appointment for the Chairperson and Members of the Authority.

Clause 44.—This clause seeks to list the conditions under which a Chairperson or other Members of the Authority can be removed.

Clause 45.—This clause seeks to lay down that the powers of the Authority rests with the Chairperson.

Clause 46.—This clause seeks to provide for the matters relating to meetings of the Authority.

Clause 47.—This clause seeks to provide that the proceedings of the Authority would not be invalidated due to vacancy, procedural irregularity, etc.

Clause 48.—This clause seeks to empower the Authority to appoint officers and other employees.

Clause 49.—This clause seeks to list the powers and functions of the Authority.

Clause 50.—This clause seeks to require the Authority to specify codes of practice to promote good practices of data protection.

Clause 51.—This clause seeks to empower the Authority to issue directions to any data fiduciary for the discharge of its functions.

Clause 52.—This clause seeks to empower the Authority to call for information from any data fiduciary.

Clause 53.—This clause seeks to empower the Authority to conduct an inquiry into the affairs of a data fiduciary.

Clause 54.— This clause seeks to list out various actions that can be taken by the Authority pursuant to an inquiry.

Clause 55.—This clause seeks to empower the Inquiry Officer of the Authority to order for search and seizure of documents, records, etc.

Clause 56.—This clause seeks to provide for coordination between the Authority and other regulators.

Clause 57.—This clause seeks to list out penalties for contravening certain provisions of the Act.

Clause 58.—This clause seeks to list out penalties for failure to comply with request made by data principal.

Clause 59.—This clause seeks to list out penalty for failure of the data fiduciary to furnish report, return, information to the Authority.

Clause 60.—This clause seeks to list out penalty for failure of the data fiduciary to comply with direction or order issued by the Authority.

Clause 61.—This clause seeks to list out penalty for contravention of any provision of this Act or rules or regulations made thereunder, for which no separate penalty has been provided.

Clause 62.—This clause seeks to provide for appointment of Adjudicating Officer for adjudging penalties.

Clause 63.—This clause seeks to lay down the procedure for adjudication by Adjudicating Officer.

Clause 64.—This clause seeks to provide for data principal's right to seek compensation from the data fiduciary in case of suffering harm.

Clause 65.—This clause seeks to ensure that compensation or penalties under this Act would not interfere with any other penalty or punishment.

Clause 66.—This clause seeks to lay down that penalties or compensation awarded under this Act may be recovered as arrear of land revenue.

Clause 67.—This clause seeks to lay down provisions relating to establishment of Appellate Tribunal.

Clause 68.—This clause seeks to list out qualifications, appointment, term, conditions of service of Chairperson and Members of Appellate Tribunal.

Clause 69.—This clause seeks to provide for filling up vacancies in the office of Chairperson and Members of Appellate Tribunal.

Clause 70.—This clause seeks to provide for staffing of Appellate Tribunal.

Clause 71.—This clause seeks to provide for distribution of business to different benches of the Appellate Tribunal.

Clause 72.—This clause seeks to provide for appeal to the Appellate Tribunal against any decision of the Authority.

Clause 73.—This clause seeks to lay down the procedure and powers of the Appellate Tribunal.

Clause 74.—This clause seeks to provide that the Appellate Tribunal shall have all the powers of a civil court.

Clause 75.—This clause seeks to provide for an appeal to the Supreme Court against any order of the Appellate Tribunal.

Clause 76.—This clause seeks to provide for the applicant or appellant to appear in person or authorise legal representative.

Clause 77.—This clause seeks to lay down that no civil court would have jurisdiction to entertain any suit on any matter which falls within the ambit of Appellate Tribunal.

Clause 78.—This clause seeks to provide for the Central Government to make grants to the Authority.

Clause 79. —This clause seeks to provide for constitution of the Data Protection Authority Fund.

Clause 80.—This clause seeks to require the Authority to maintain proper accounts which are to be audited by the Comptroller and Auditor-General of India.

Clause 81.—This clause seeks to require the Authority to furnish returns, statements, etc., to the Central Government.

Clause 82.—This clause seeks to list out punishment for the offence of reidentifying of deidentified personal data.

Clause 83.—This clause seeks to lays out that offence in clause 82 to be cognizable and non-bailable.

Clause 84.—This clause seeks to list out provisions relating to commission of offence by companies.

Clause 85.—This clause seeks to list out provisions relating to commission of offence by any State Government or Central Government Department or agency.

Clause 86.—This clause seeks to empower the Central Government to issue directions to the Authority.

Clause 87.—This clause seeks to deem Members, officers, etc., of the Authority to be public servants when acting pursuant to any provisions of the Act.

Clause 88.—This clause seeks to protect the Authority, Member, employee in case of action done under this Act in good faith.

Clause 89.—This clause seeks to exempts Authority from tax on income in respect of its income, profits.

Clause 90.—This clause seeks to empower the Authority to delegate its powers or functions to any Member or officer.

Clause 91.—This clause seeks to empower the Central Government to frame policies for digital economy in respect of non-personal data.

Clause 92.—This clause seeks to ban processing of certain forms of biometric data unless permitted by law.

Clause 93.—This clause seeks to empowers the Central Government to make rules to carry out the provisions of the Act.

Clause 94.—This clause seeks to empowers the Authority to make regulations consistent with the Act and rules made thereunder.

Clause 95.—This clause seeks to require that rules and regulations made under this Act are to be laid before the Parliament.

Clause 96.—This clause seeks to provide for the overriding effect of this Act notwithstanding anything inconsistent with any other law.

Clause 97.—This clause seeks to provide for power of Central Government to remove difficulties.

Clause 98.—This clause seeks to provide for related amendments to the Informations Technology Act, 2000.

FINANCIAL MEMORANDUM

Sub-clause (2) of clause 43 provides for the payment of salaries and allowances to the Chairperson, Members of the Authority.

2. Sub-clause (2) of clause 48 provides for the payment of salaries and allowances to the officers and employees of the Authority.

3. Sub-clause (2) of clause 68 provides for the payment of salaries and allowances to the Chairperson and Members of the Appellate Tribunal.

4. Sub-clause (3) of clause 70 provides for the payment of salaries and allowances to the officers and employees of the Appellate Tribunal.

5. For the aforesaid provisions, it would involve an expenditure of (recurring or non-recurring) one hundred crore rupees from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 93 of the Personal Data Protection Bill 2019 seeks to empower the Central Government to make rules for—(*a*) categorization of sensitive personal data under section 15; (*b*) verification of the age of child under sub-section (*3*) of section (*3*); (*c*) the form and manner in which an application to enforce the right to be forgotten can be exercised under sub-section (*2*) of section 20 and the manner of review of order passed by the Adjudicating Officer under sub-section (*4*) of section 20; (*d*) the methods of voluntary identification to identify users of social media under sub-section (*3*) and the identifying mark of verification of a voluntarily verified user under sub-section (*4*) of section 28; (*e*) the manner in which a complaint regarding grievance redressal may be filed under sub-section (*4*) of section 32 ; (*f*) the entity or class of entity in a country, or international organisations to which transfers may be permitted under clause (*b*) of sub-section (*1*) of section 34; (*g*) the place of head office of the Authority under sub-section (*3*) of section 41; (*h*) procedure to be followed by the Selection Committee under sub-section (*3*) of section 42; (*i*) the salaries and allowances payable to, and other terms and conditions of service of the Chairperson and the Members of the Authority under sub-section (*2*) of section 43; (*j*) the procedure for conducting any inquiry under sub-section (*2*) of section 44; (*k*) the time and place for, and the rules and procedures in regard to, transaction of business at the meetings of the Authority under sub-section (*1*) of section 46; (*l*) other functions of the Authority under clause (*o*) of sub-section (*2*) of section 49; (*m*) the procedure of issuance of a code of practice under sub-section (*4*), the manner in which the Authority may review, modify or revoke a code of practice under sub-section (*7*), of section 50; (*n*) other matters under clause (*e*) of sub-section (*8*) of section 53 in respect of which the Authority shall have powers; (*o*) the number of Adjudicating Officers, manner and terms of their appointment, their jurisdiction and other requirements under sub-section (*2*) of section 62; (*p*) the manner in which the Adjudicating Officer shall conduct an inquiry under sub-section (*1*) of section 63; (*q*) the form and manner of making a complaint under sub-section (*2*), and the procedure for hearing of a complaint under sub-section (*8*) of section 64; (*r*) the manner of appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and any member of the Appellate Tribunal under sub-section (*2*) of section 68; (*s*) the procedure of filling of vacancies in the Appellate Tribunal under section 69; (*t*) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (*3*) of section 70; (*u*) the form, manner and fee for filing an appeal or application, as the case may be, with the Appellate Tribunal under sub-section (*1*) of section 72; (*v*) other matters under clause (*i*) of sub-section (*2*) of section 73 in respect of powers of the Appellate Tribunal; (*w*) the form of accounts, other relevant records and annual statement of accounts under sub-section (*1*), the intervals at which the accounts of the Authority shall be audited under sub-section (*2*) of section 80; (*x*) the time in which and the form and manner in which the returns, statements, and particulars are to be furnished to the Central Government under sub-section (*1*) and annual report under sub-section (*2*) of section 81; (*y*) the manner in which the Central Government may issue a direction, including the specific purposes for which data is sought under sub-section (*2*) and the form of disclosure of such directions under sub-section (*3*) of section 91; (*z*) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

2. Clause 94 of the Bill empowers the Authority, with the previous approval of the Central Government, by notification, to make regulations consistent with the provisions of the Act and the rules made thereunder to provide for—(*a*) information required to be provided by the data fiduciary to the data principal in its notice under clause (*n*) of sub-section (*1*) of section 7; (*b*) manner in which the personal data retained by the data fiduciary must be deleted under sub-section (*4*) of section 9; (*c*) the safeguards for protecting the rights of data principals under sub-section (*3*) of section 14; (*d*) the additional safeguards or restrictions under sub-section (*2*) of section 15; (*e*) the manner of obtaining consent of the parent or guardian of a child under sub-section (*2*), the manner of verification of age of a child under sub-section (*3*), application of provision in modified form to data fiduciaries offering counselling or child protection services under sub-section (*6*) of section 16; (*f*) the period within which a data fiduciary must acknowledge the receipt of request under sub-section (*1*), the fee to be charged under sub-section (*2*), the period within which request is to be complied with under sub-section (*3*), and the manner and the period within which a data principal may file a complaint under sub-section (*4*) of section 21; (*g*) the manner for submission of privacy by design policy under sub-section (*2*) of section 22; (*h*) the manner and the technical, operation, financial and other conditions for registration of the consent manager and its compliance under sub-section (*5*) of section 23; (*i*) the manner of registration of significant data fiduciaries under sub-section (*2*) of section 26; (*j*) the circumstances or classes of data fiduciaries or processing operations where data protection impact assessments shall be mandatory and instances where data auditor shall be appointed under sub-section (*2*), and the manner in which data protection officer shall review the data protection impact assessment and submit to the Authority under sub-section (*4*) of section 27; (*k*) the form and manner for maintaining the records, and any other aspect of processing for which records shall be maintained under sub-section (*1*) of section 28; (*l*) the other factors to be taken into consideration under clause (*g*) of sub-section (*2*); the form and procedure for conducting audits under sub-section (*3*); the manner of registration of auditors under sub-section (*4*); criteria on the basis of which rating in the form of a data trust score may be assigned to a data fiduciary under sub-section (*6*) of section 29; (*m*) the qualification and experience of a data protection officer under sub-section (*1*) of section 30; (*n*) the period within which transfer of personal data shall be notified to the Authority under sub-section (*3*) of section 34; (*o*) the provisions of the Act and the class of research, archival or statistical purposes which may be exempted under section 38; (*p*) the remuneration, salary or allowances and other terms and conditions of service of such officers, employees, consultants and experts under sub-section (*2*) of section 48; (*q*) the code of practice under sub-section (*1*) of section 50; (*r*) the form and manner for providing information to the Authority by the data fiduciary under sub-section (*3*) of section 52; and (*s*) any other matter which is required to

be, or may be specified, or in respect of which provision is to be or may be made by regulations.

3. The matters in respect of which the aforementioned rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 375 OF 2019

A Bill to amend and consolidate the laws relating to social security of the employees and the matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent, commencement and application.

1. (*1*) This Act may be called the Code on Social Security, 2019.

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

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

(*4*) The applicability of the Chapters specified in columns (1) and (2) of the First Schedule shall, without prejudice to the applicability of the other provisions of this Code, be such as is specified in corresponding entry in column (3) of that Schedule.

(*5*) Notwithstanding anything contained in sub-section (*4*), where it appears to the Central Provident Fund Commissioner, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter III should be made applicable to that establishment, the Central Provident Fund Commissioner, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement.

(*6*) Notwithstanding anything contained in sub-section (*4*), where it appears to the Director General of the Corporation, whether on an application made to him by the employer of an establishment or otherwise, that the employer and majority of employees of that establishment have agreed that the provisions of Chapter IV should be made applicable to that establishment, the Director General of the Corporation, may, by notification, apply the provisions of the said Chapter to that establishment on and from the date of such agreement or from any subsequent date specified in the agreement.

(*7*) Notwithstanding anything contained in sub-section (*4*), an establishment to which any Chapter applies at the first instance shall continue to be applied thereafter even if the number of employees therein at any subsequent time falls below the threshold specified in the First Schedule in respect of that Chapter.

Definitions.

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

(*1*) "agent" when used in relation to an establishment, means every person, whether appointed as such or not, who acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of such establishment or part thereof;

(*2*) "aggregator" means a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider;

(*3*) "appropriate Government" means—

(*a*) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oilfield, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies or in relation to an establishment having departments or branches in more than one State, as the case may be, the Central Government; and

(*b*) in relation to any other establishment, the State Government;

(*4*) "audio-visual production" means audio-visual produced wholly or partly in India including animation, cartoon depiction and audio-visual advertisement including digital production or any of the activities in respect of making thereof;

(*5*) "Authorised Officer" means such officer of the Central Board, or as the case may be, of the Corporation notified by the Central Government;

(*6*) "building or other construction work" means the construction, alteration, repair, maintenance or demolition in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, internet towers, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqua-ducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the Central Government, by notification, but does not include any building or other construction work of any factory or mine or any building or other construction work employing less than ten workers or any building or other construction work related to own residential property not employing the workers more than such number as may be notified by the Central Government from time to time;

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

(*8*) "career centre" means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing such career services (including collection and furnishing of information, either by the keeping of registers or otherwise, manually, digitally, virtually or through any other mode) as may be prescribed by the Central Government, which may, *inter alia,* relate generally or specifically to—

(*i*) persons who seek to employ employees;

(*ii*) persons who seek employment;

(*iii*) occurrence of vacancies; and

(*iv*) persons who seek vocational guidance and career counseling or guidance to start self-employment;

(*9*) "Central Board" means the Board of Trustees of the Employees' Provident Fund constituted under section 4;

(*10*) "Central Provident Fund Commissioner" means the Central Provident Fund Commissioner of the Central Board appointed under sub-section (*1*) of section 14;

(*11*) "child", for the purposes of Chapter VI, includes a stillborn child;

(*12*) "Commissioning mother" means a biological mother who uses her egg to create an embryo implanted in any other woman;

(*13*) "company" means a company as defined in clause (*20*) of section 2 of the
18 of 2013. Companies Act, 2013;

(*14*) "compensation" means compensation as provided under Chapter VII;

(*15*) "competent authority" means any authority notified under this Code as competent authority for the purposes of Chapters V, VI and VII and the provisions of this Code relating to those Chapters;

(*16*) "completed year of service" means continuous service for twelve months;

(*17*) "confinement" means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

(*18*) "contract labour" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the employer and includes inter-State migrant worker but does not include an employee (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment;

(*19*) "contractor", in relation to an establishment means a person, who—

(*i*) 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

(*ii*) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor;

(*20*) "contribution" means the sum of money payable by the employer, under this Code, to the Central Board and to the Corporation, as the case may be, and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Code;

(*21*) "contribution period" in relation to an employee, means the period not exceeding one calendar month in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise;

(*22*) "Corporation" means the Employees' State Insurance Corporation constituted under section 5;

(*23*) "delivery" means the birth of a child;

(*24*) "dependant" means any of the following relatives of deceased employee, namely:—

(*a*) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother;

(*b*) if wholly dependant on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of eighteen years and who is infirm; except for the purposes of Chapter IV wherein the word "eighteen" occurring in this sub-clause shall be deemed to have been substituted by the word "twenty-five";

(*c*) if wholly or in part dependant on the earnings of the employee at the time of his death,—

(*i*) a widower;

(*ii*) a parent other than a widowed mother;

(*iii*) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor;

(*iv*) a minor brother or an unmarried sister or a widowed sister if a minor;

(*v*) a widowed daughter-in-law;

(*vi*) a minor child of a pre-deceased son;

(*vii*) a minor child of a pre-deceased daughter where no parent of the child is alive, or;

(*viii*) a grandparent if no parent of the employee is alive.

Explanation.—For the purposes of sub-clause (*b*) and items (*vii*) and (*viii*) of sub-clause (*c*), references to a son, daughter or child include an adopted son, daughter or child respectively;

(*25*) "dock work" means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading, unloading, movement or storage of cargoes into or from ship or other vessel, port, dock, storage place or landing place, and includes—

(*i*) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port;

(*ii*) all repairing and maintenance processes connected with any hold, tank structure or lifting machinery or any other storage area on board the ship or in the docks; and

(*iii*) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area in board the ship or in the docks;

(*26*) "employee" means any person (other than an apprentice engaged under the Apprentices Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union:

52 of 1961.

Provided that for the purposes for Chapter III and Chapter IV, the term "employee" shall mean only such employee drawing wages less than or equal to the wage ceiling notified by the Central Government, respectively, for said Chapters and such other persons or class of persons as the Central Government may, by notification specify to be employee for the purposes of either of such Chapters, or both:

Provided further that for the purposes of Chapter VII, the term "employee" shall mean only such persons as specified in the Second Schedule and such other persons or class of persons as the Central Government, or as the case may be, the State Government may add to the said Schedule, by notification, for the purposes of that Government;

(*27*) "employer" means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority is so specified, the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

(*a*) in relation to an establishment which is a factory, the occupier of the factory;

(*b*) in relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine as such;

(*c*) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director, such manager or managing director;

(*d*) contractor; and

(*e*) legal representative of a deceased employer;

(*28*) "employment injury" means a personal injury to an employee, caused by accident or an occupational disease, as the case may be, arising out of, and in the course of his employment, being an insurable employment only for the purposes of Chapter IV, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;

(*29*) "establishment" means—

(*a*) a place where any industry, trade, business, manufacture or occupation is carried on; or

(*b*) a factory, motor transport undertaking, newspaper establishment, audio-visual production, building and other construction work or plantation;

(*c*) a mine or dock work;

(*30*) "executive officer" means such officer of the appropriate Government as may be notified by that Government for the purposes of Chapter XIII or an officer authorised in writing by such executive officer to discharge his duties under that Chapter;

(*31*) "exempted employee" for the purpose of Chapter III, means an employee to whom any of the schemes, referred to in section 15, but for the exemption granted under this Code, would have applied;

(*32*) "factory" means any premises including the precincts thereof—

(*a*) whereon ten or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(*b*) whereon twenty or more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine, or a mobile unit belonging to the Armed Forces of the Union, railways running shed or a hotel, restaurant or eating place.

Explanation I.—For computing the number of employees for the purposes of this clause, all the employees in (different groups and relays) a day shall be taken into account;

Explanation II.—For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed as factory if no manufacturing process is being carried on in such premises or part thereof;

(*33*) "family" means all or any of the following relatives of an employee or an unorganised worker, as the case may be, namely:—

(*a*) a spouse;

(*b*) a minor legitimate or adopted child dependant upon the employee or an unorganised worker, as the case may be;

(*c*) a child who is wholly dependant on the earnings of the employee or an unorganised worker, as the case may be, and who is—

(*i*) receiving education, till he attains the age of twenty-one years; and

(*ii*) an unmarried daughter;

(*d*) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependant on the earnings of the employee or an unorganised worker, as the case may be, so long as the infirmity continues;

(*e*) dependant parents (including father-in-law and mother-in-law of a woman employee), whose income from all sources does not exceed such income as may be prescribed by the Central Government;

(*f*) in case the employee or an unorganised worker, as the case may be, is unmarried and his parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;

(*34*) "fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period:

Provided that—

(*a*) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent employee doing the same work or work of a similar nature; and

(*b*) he shall be eligible for all benefits under law available to a permanent employee proportionately according to the period of service rendered by him even if his period of employment does not extend to the required qualifying period of employment;

(*35*) "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;

(*36*) "home-based worker" means a person engaged in the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;

(*37*) "Inspector-cum-Facilitator" means an Inspector-cum-Facilitator appointed under section 122;

(*38*) "Inter-State migrant worker" means any person who is recruited by—

(*i*) an employer in one State for employment in his establishment situated in another State; or

(*ii*) through a contractor in one State for employment in an establishment in another State,

under an agreement or other arrangement for such employment and draws wages not exceeding the amount notified by the Central Government from time to time;

(*39*) "major port" has the meaning assigned to it in clause (*8*) of section 3 of the Indian Ports Act, 1908;

15 of 1908.

(*40*) "manufacturing process" means any process for—

(*i*) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, refining, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(*ii*) pumping oil, water, sewage or any other substance; or

(*iii*) generating, transforming or transmitting power; or

(*iv*) composing, offset, printing, printing by letter press, lithography, photogravure screen printing, three or four dimensional printing, prototyping, flexography or other types of printing process or book binding; or

(*v*) constructing, reconstructing, repairing, refitting, finishing or breaking upships or vessels; or

(*vi*) preserving or storing any article in cold storage; or

(*vii*) such other processes as the Central Government may notify;

(*41*) "medical practitioner" means a person registered under any law for the time being in force, or any person declared by the State Government, by notification, to be qualified as medical practitioner for the purposes of this Code:

Provided that different class or classes of medical practitioner having specific qualification may be notified by the Central Government for the purpose of Chapter IV and by the appropriate Government for other Chapters of this Code;

(*42*) "medical termination of pregnancy" means the termination of pregnancy permissible under the provisions of the Medical Termination of Pregnancy Act, 1971; 34 of 1971.

(*43*) "mine" has the meaning assigned to it in clause (*j*) of sub-section (*1*) of section 2 of the Mines Act, 1952; 35 of 1952.

(*44*) "minor" means a person who has not attained the age of eighteen years;

(*45*) "miscarriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy, but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code; 45 of 1860.

(*46*) "motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend the duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but does not include any such person—

(*i*) who is employed in a factory;

(*ii*) to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply;

(*47*) "notification" means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly;

(*48*) "occupational disease" means a disease specified in the Third Schedule as a disease peculiar to the employment of the employee;

(*49*) "occupier" in respect of a factory means the person who has ultimate control over the affairs of the factory:

Provided that—

(*a*) in the case of a firm or other association of individuals, any one of the individual partners or members thereof;

(*b*) in the case of a company, any one of the directors, except any independent director within the meaning of sub-section (*6*) of section 149 of the Companies Act, 2013; 18 of 2013.

(*c*) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority or such other authority as may be prescribed by the Central Government,

shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, the owner of the dock shall be deemed to be the occupier for all purposes except the matters as may be prescribed by the Central Government which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier;

(*50*) "oilfield" has the meaning assigned to it in clause (*e*) of section 3 of the Oilfields (Regulation and Development) Act, 1948; 53 of 1948.

(*51*) "organised sector" means an enterprise which is not an unorganised sector;

(*52*) "permanent partial disablement" means, where the disablement is of a permanent nature such disablement as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

Provided that every injury specified in Part II of the Fourth Schedule shall be deemed to result in permanent partial disablement;

(*53*) "permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of the Fourth Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent.;

(*54*) "plantation" means—

(*a*) any land used or intended to be used for—

(*i*) growing tea, coffee, rubber, cinchona or cardamom which admeasures five hectares or more;

(*ii*) growing any other plant, which admeasures five hectares or more and in which ten or more persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification, so directs.

Explanation.—Where any piece of land used for growing any plant referred to in this sub-clause admeasures less than five hectares and is contiguous to any other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this sub-clause, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures five hectares or more;

(*b*) any land which the State Government may, by notification, declare and which is used or intended to be used for growing any plant referred to in sub-clause (*a*), notwithstanding that it admeasures less than five hectares:

Provided that no such declaration shall be made in respect of such land which admeasures less than five hectares immediately before the commencement of this Code; and

(*c*) offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with any plantation within the meaning of sub-clause (*a*) and sub-clause (*b*); but does not include factory on the premises;

(*55*) "platform work" means a form of employment in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services in exchange for payment;

(*56*) "platform worker" means a person engaged in or undertaking platform work;

(*57*) "port" has the meaning assigned to it in clause (*4*) of section 3 of the Indian Ports Act, 1908;

15 of 1908.

(*58*) "prescribed" means prescribed by rules made under this Code;

(*59*)"railway" has the meaning assigned to it in clause (*31*) of section 2 of the Railways Act, 1989;

24 of 1989.

(*60*) "railway company" includes any persons whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway;

(*61*) "Recovery Officer" means any officer of the Central Government, State Government, Central Board or the Corporation, who may be authorised by the Central Government or the State Government, as the case may be, by notification, to discharge the functions and to exercise the powers of a Recovery Officer under this Code;

(*62*) "regulations" means regulations made by the Corporation under this Code;

(63) "retirement" means termination of the service of an employee otherwise than on superannuation;

(*64*) "sales promotion employees" means the sales promotion employees as defined in clause (*d*) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976; 11 of 1976.

(*65*) "Schedule" means a Schedule to this Code;

(*66*) "seamen" means any person forming part of the crew of any ship, but does not include the master of the ship;

(*67*) " seasonal factory " means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of ground-nuts, the manufacture of indigo, lac, sugar (including gur) or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year in a manufacturing process as the Central Government may, by notification, specify;

(*68*) self-employed worker" means any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government, as the case may be, from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;

(*69*) "shop", in respect of a State, means a shop as defined in any law for the time being in force dealing with the shop and for the time being in force in that State;

(*70*) "social security" means the measures of protection afforded to employees to ensure access to healthcare and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights enshrined and schemes framed under the Code;

(*71*) "Social Security Organisation" means any of the following organisations established under this Code, namely:—

(*a*) the Central Board of Trustees for Employees Provident Fund constituted under section 4;

(*b*) the Employees State Insurance Corporation constituted under section 5;

(*c*) the National Social Security Board for Unorganised Workers constituted under section 6;

(*d*) the State Unorganised Workers' Social Security Board constituted under section 6; and

(*e*) the State Building Workers' Welfare Boards constituted under section 7;

(*72*) "State" includes a Union territory;

(*73*) "State Government" includes—

(*a*) in relation to a Union territory with legislature, the Government of the Union territory; and (*b*) in relation to a Union territory without legislature, the administrator appointed under article 239 of the Constitution as an administrator thereof;

(*74*) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service, as the age on the attainment of which the employee shall vacate the employment;

(*75*) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury;

(*76*) "Tribunal" means the Industrial Tribunal constituted by the appropriate
14 of 1947. Government under section 7A of the Industrial Disputes Act, 1947;

(*77*) "unorganised sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

(*78*) "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised
14 of 1947. sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code;

(*79*) "vacancy", for the purposes of Chapter XIII, means an unoccupied post (including newly created post, post of trainee, post filled through apprentice or any unoccupied post created in an establishment by any other means) in a cadre or occupation for the purpose of employing a person in it and carrying remuneration;

(*80*) "wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

(*a*) basic pay;

(*b*) dearness allowance; and

(*c*) retaining allowance, if any,

but does not include—

(*a*) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

(*b*) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(*c*) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(*d*) any conveyance allowance or the value of any travelling concession;

(*e*) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(*f*) house rent allowance;

(*g*) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

(*h*) any overtime allowance;

(*i*) any commission payable to the employee;

(*j*) any gratuity payable on the termination of employment;

(*k*) any retrenchment compensation or other retirement benefit payable to the employee or any *ex gratia* payment made to him on the termination of employment:

Provided that for calculating the wages under this clause, if payments made by the employer to the employee under sub-clauses (*a*) to (*i*) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in sub-clauses (*d*), (*f*), (*g*) and (*h*) shall be taken for computation of wage.

Explanation.—Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee;

(*81*) "wage ceiling" means such amount of wages or income as may be notified by the Central Government, from time to time for the purposes of this Code;

(*82*) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be;

(*83*) "woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

Registration of establishment.

3. Every establishment to which this Code applies shall be registered within such time and in such manner as may be prescribed by the Central Government:

Provided that the establishment which is already registered under any other labour law for the time being in force shall not be required to obtain registration again under this Code and such registration shall be deemed to be registration for the purposes of this Code.

CHAPTER II

SOCIAL SECURITY ORGANISATIONS

Constitution of Central Board of Trustees.

4. (*1*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Board of Trustees for the purposes of Chapter III and the provisions of this Code relating to that Chapter, for the territories to which this Chapter extends for the administration of the funds vested in it in such manner as may be prescribed by the Central Government, consisting of the following members, namely:—

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

(*b*) not more than five persons appointed by the Central Government from amongst its officials;

(*c*) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, to be appointed by the Central Government;

(*d*) ten persons representing employers of the establishments to which the scheme referred to in sub-section (*1*) of section 15 applies, to be appointed by the

Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf;

(*e*) ten persons representing employees in the establishments to which scheme framed under Chapter III applies, who shall be appointed by the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf; and

(*f*) the Central Provident Fund Commissioner, *ex officio*.

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

(*3*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Executive Committee from amongst the members of the Central Board to assist the Central Board in performance of its functions in such manner as may be prescribed by the Central Government.

(*4*) The Central Board may, by order, constitute one or more committees of such composition as may be specified in the order to assist it in the discharge of its functions.

(*5*) The terms and conditions, including tenure of office, subject to which a member of the Central Board and Executive Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Central Board shall, notwithstanding the expiry of the tenure of his office, continue to hold office until his successor is appointed.

(*6*) The Central Board, apart from the functions specified in this Code, shall also perform such other functions in such manner as may be prescribed by the Central Government.

Constitution of Employees' State Insurance Corporation.

5. (*1*) The Central Government may, by notification, constitute with effect from such date as may be specified therein, a Corporation for the purposes of Chapter IV and the provisions of this Code relating to that Chapter, for the administration of Scheme of Employees State Insurance (hereinafter referred to as Employees' State Insurance Scheme) in such manner as may be prescribed by the Central Government, consisting of the following members, namely:—

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

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

(*c*) not more than five persons to be appointed by the Central Government from amongst its officials;

(*d*) one person representing each of such States in such manner, as may be prescribed by the Central Government;

(*e*) one person to be appointed by the Central Government to represent the Union territories;

(*f*) ten persons representing employers to be appointed by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;

(*g*) ten persons representing employees to be appointed by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government;

(*h*) two persons representing the medical profession to be appointed by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government;

(*i*) three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and

(*j*) the Director General of the Corporation, *ex officio*.

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

(*3*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Standing Committee from amongst the members of the Corporation in such manner, as may be prescribed by the Central Government.

(*4*) Subject to the general superintendence and control of the Corporation, the Standing Committee—

(*a*) shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation in such manner as may be prescribed by the Central Government;

(*b*) shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf; and

(*c*) may, in its discretion, submit any other case or matter for the decision of the Corporation.

(*5*) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, a Medical Benefit Committee of such composition as may be prescribed by it, to assist the Corporation in performance of its functions relating to administration of medical benefits.

(*6*) The Corporation may, by order, constitute one or more committees of such composition as may be specified in the regulations to assist it in the discharge of its functions.

(*7*) The terms and conditions, including tenure of office, subject to which a member of the Corporation and Standing Committee shall discharge their respective duties may be such as may be prescribed by the Central Government:

Provided that a member of the Corporation shall, notwithstanding the expiry of the tenure of his office, continue to hold office until his successor is appointed.

National Social Security Boards.

6. (*1*) The Central Government shall, by notification, constitute a National Social Security Board for unorganised workers (hereinafter referred to as National Social Security Board) to exercise the powers conferred on, and to perform the functions assigned to it under this Code, in such manner as may be prescribed by the Central Government.

(*2*) The National Social Security Board shall consist of the following members, namely:—

(*a*) Union Minister for Labour and Employment as Chairperson;

(*b*) Secretary, Ministry of Labour and Employment as Vice-Chairperson;

(*c*) thirty-five members to be nominated by the Central Government, out of whom—

(*i*) seven members representing unorganised sector workers;

(*ii*) seven members representing employers of unorganised sector;

(*iii*) seven members representing eminent persons from civil society;

(*iv*) two members representing the Lok Sabha and one from the Rajya Sabha;

(*v*) five members representing Central Government Ministries and Departments concerned;

(*vi*) five members representing State Governments; and (*vii*) one member representing the Union territories;

(*d*) Director General Labour Welfare—Member Secretary, *ex officio*.

(*3*) The Chairperson and other members of the National Social Security Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(*4*) The number of persons to be nominated as members from each of the categories specified in clause (*c*) of sub-section (*2*), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Social Security Board shall be such as may be prescribed by the Central Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(*5*) The term of the National Social Security Board shall be three years.

(*6*) The National Social Security Board shall meet at least thrice a year, at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

(*7*) The National Social Security Board shall perform the following functions, namely:—

(*a*) recommend to the Central Government suitable schemes for different sections of unorganised workers;

(*b*) advise the Central Government on such matters arising out of the administration of this Code as may be referred to it;

(*c*) monitor such social welfare schemes for unorganised workers as are administered by the Central Government;

(*d*) review the record keeping functions performed at the State level;

(*e*) review the expenditure from the funds under various schemes; and

(*f*) undertake such other functions as are assigned to it by the Central Government from time to time.

(*8*) The Central Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the Central Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the Central Government may refer to it for advice.

(*9*) Every State Government shall, by notification, constitute a State Board to be known as (name of the State) Unorganised Workers' Social Security Board (hereinafter referred to as the State Unorganised Workers' Board) to exercise the powers conferred on, and to perform the functions assigned to it under this Code, in such manner as may be prescribed by the State Government.

(*10*) Every State Unorganised Workers' Board shall consist of the following members, namely:—

(*a*) Minister of Labour and Employment of the concerned State-Chairperson, *ex officio*;

(*b*) Principal Secretary or Secretary (Labour) as Vice-Chairperson;

(*c*) twenty-eight members to be nominated by the State Government, out of whom—

(*i*) seven representing the unorganised workers;

(*ii*) seven representing employers of unorganised workers;

(*iii*) two members representing the Legislative Assembly of the concerned State;

(*iv*) five members representing eminent persons from civil society;

(*v*) seven members representing State Government Departments concerned; and

(*d*) Member-Secretary as notified by the State Government.

(*11*) The Chairperson and other members of the State Unorganised Workers' Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.

(*12*) The number of persons to be nominated as members from each of the categories specified in clause (*c*) of sub-section (*10*), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board shall be such as may be prescribed by the State Government:

Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.

(*13*) The term of the State Unorganised Workers' Board shall be three years.

(*14*) The State Unorganised Workers' Board shall meet at least once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed by the State Government.

(*15*) The State Board shall perform the following functions, namely:—

(*a*) recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;

(*b*) advise the State Government on such matters arising out of the administration of this Code as may be referred to it;

(*c*) monitor such social welfare schemes for unorganised workers as are administered by the State Government;

(*d*) review the record keeping functions performed at the district level;

(*e*) review the progress of registration and issue of cards to unorganised sector workers;

(*f*) review the expenditure from the funds under various schemes; and

(*g*) undertake such other functions as are assigned to it by the State Government from time to time.

(*16*) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to unorganised workers and such other matters as the State Government may refer to it for advice.

Constitution of State Building Workers Welfare Boards.

7. (*1*) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the................(name of the State) Building and Other Construction Workers' Welfare Board (hereinafter referred to as Building Workers' Welfare Board) to exercise the powers conferred on, and perform the functions assigned to, it under this Chapter.

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

(*3*) The Building Workers' Welfare Board shall consist of a chairperson to be nominated by the State Government, one member to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

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

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

(*5*) (*a*) The Building Workers' Welfare Board shall appoint a Secretary and such officers and employees as it considers necessary for the efficient discharge of its functions of the Building Workers' Welfare Board under this Code.

(*b*) The Secretary of the Building Workers' Welfare Board shall be its chief executive officer.

(*c*) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Building Workers' Welfare Board shall be such as may be prescribed by the State Government.

(*6*) The Building Workers' Welfare Board shall perform the following functions, namely:—

(*a*) provide death and disability benefits to a beneficiary or his dependants;

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

(*c*) pay such amount in connection with premium for Group Insurance Scheme of the beneficiaries as may be prescribed by the appropriate Government;

(*d*) frame educational schemes for the benefit of children of the beneficiaries as may be prescribed by the appropriate Government;

(*e*) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed by the appropriate Government;

(*f*) make payment of maternity benefit to the beneficiaries;

(*g*) frame skill development and awareness schemes for the beneficiaries;

(*h*) provide transit accommodation or hostel facility to the beneficiaries;

(*i*) formulation of any other welfare scheme for the building worker beneficiaries by State Government in concurrence with the Central Government; and

(*j*) make provision and improvement of such other welfare measures and facilities as may be prescribed by the Central Government.

(*7*) The State Government may, by notification, constitute with effect from such date as may be specified therein one or more advisory committee to advise the State Government upon such matters arising out of the administration of this Code relating to building workers and such other matters as the State Government may refer to it for advice.

8. (*1*) No person shall be chosen as, or continue to be, a member of a Social Security Organisation, or any Committee thereof who,— Disqualification and removal of a member of any Social Security Organisation.

(*a*) is or at any time has been adjudged an insolvent; or

(*b*) is found to be a lunatic or becomes of unsound mind; or (*c*) is or has been convicted of any offence involving moral turpitude; or

(*d*) is an employer in an establishment and has defaulted in the payment of any dues under this Code;

(*e*) is a member of a Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, when he ceases to be such member of the Parliament or State Legislative Assembly, as the case may be; or

(*f*) is a member of Social Security Organisation being a member of the Parliament or a member of a State Legislative Assembly, and he becomes a—

(*i*) Minister of Central or State Government; or

(*ii*) Speaker or Deputy Speaker of House of the People or a State Legislative Assembly; or

(*iii*) Deputy Chairman of the Council of States.

Explanation 1.—If any question arises whether any person is disqualified under clause (*d*), it shall be referred to the appropriate Government and the decision of the appropriate Government on any such question shall be final.

Explanation 2.—Clause (*f*) shall not apply in case of persons who are members of the Social Security Organisation *ex officio,* by virtue of being a Minister.

(*2*) The Central Government, in case of the Central Board, the Corporation and the National Social Security Board and the State Government in case of the State Unorganised Workers' Board and the Building Workers' Welfare Board, may remove any member of such Social Security Organisation from his office, who,—

(*a*) is or has become subject to any of the disqualifications mentioned in sub-section (*1*); or

(*b*) is absent without leave of the Social Security Organisation of which he is a member for more than three consecutive meetings of the Social Security Organisation or a Committee thereof;

(*c*) in the opinion of such Government, has so abused the position of his office as to render that member's continuation in the office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such member in the opinion of such Government:

Provided that, no person shall be removed under clauses (*b*) and (*c*), unless that person has been given an opportunity to show cause as to why he should not be removed:

Provided further that a member of the Executive Committee of the Central Board or the Standing Committee of the Corporation shall cease to hold office if he ceases to be a member of the Central Board or the Corporation, as the case may be.

(*3*) Any member of a Social Security Organisation or a Committee thereof may at any time resign from his office in writing under his hand addressed to the Central Government or the State Government, as the case may be, which had made his appointment and on acceptance of such resignation, his office shall become vacant.

(*4*) If in a Social Security Organisation or a Committee thereof, the Central Government or the State Government, as the case may be, is of the opinion that—

(*a*) any member thereof representing employers or the employees or the unorganised workers, as the case may be, ceases to adequately represent so; or

(*b*) any member thereof representing to be an expert in a specified area, is later on found not to possess sufficient expertise in that area; or (*c*) having regard to exigencies of circumstances or services in such Government, the member thereof representing such Government cannot continue to represent the Government;

then, such Government may, by order, remove such member from his office:

Provided that no person shall be removed under clause (*a*) or clause (*b*), unless that person has been given an opportunity to show cause as to why he should not be removed.

(*5*) If any member of a Social Security Organisation or a Committee thereof, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration of the Social Security Organisation or a Committee thereof, then, he shall, as soon as may be possible after such fact of interest has come to his knowledge, disclose the nature of the interest and such disclosure shall be recorded in the proceedings of the Social Security Organisation or the Committee thereof, as the case may be, and such member, thereafter, shall not take part in any proceeding or decision of the Social Security Organisation, or a Committee thereof relating to that matter.

Procedure for transaction of business of Social Security Organisation, etc.

9. (*1*) A Social Security Organisation or any committee thereof shall meet at such intervals and observe such procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed by the Central Government.

(*2*) All orders and decisions of the Social Security Organisation shall be authenticated by the signature of the Central Provident Fund Commissioner, Director General, Director General Labour Welfare, State Principal Secretary or Secretary (Labour) of the respective Social Security Organisations or such other member as may be prescribed by the appropriate Government and all other instruments issued by the Social Security Organisation shall be authenticated by the signature of such officer or member so prescribed.

(*3*) No act done or proceeding taken by a Social Security Organisation or any Committee thereof shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Social Security Organisation or the Committee thereof, as the case may be.

(*4*) Such members of a Social Security Organisation or any Committee thereof shall be entitled for such fee and allowances as may be prescribed by the Central Government.

Executive Heads of Central Board and Corporation.

10. The Central Provident Fund Commissioner and the Director General shall be the whole-time officer of the Central Board or the Corporation, as the case may be, and shall not undertake any work unconnected with his office without the prior approval of the Central Government.

Supersession of Corporation, Central Board of Trustees, Unorganised Workers National Social Security Board or State Unorganised Workers Social Security Board.

11. (*1*) If the Central Government in case of the Central Board, the Corporation or the National Social Security Board and the State Government, in case of the State Unorganised Workers' Board or the Building Workers' Welfare Board is of the opinion that the Corporation or the Central Board of Trustees or the National Social Security Board or the State Unorganised Workers Board or the Building Workers' Welfare Board or any of the Committee thereof, as the case may be, is unable to perform its functions, or, has persistently made delay in the discharge of its functions or has exceeded or abused its powers or jurisdiction, then such Government may, by notification, supersede the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers Board or the Building Workers' Welfare Board, or any of the Committees thereof, as the case may be, and re-constitute it in such manner as may be prescribed by the Central Government:

Provided that, before issuing a notification under this sub-section on any of the grounds specified herein, such Government shall give an opportunity to the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers Board or the Building Workers' Welfare Board or any Committee thereof, as the case may be, to show cause as to why it should not be superseded and shall consider the explanations and objections raised by it and take appropriate action thereon.

(*2*) After the supersession of the Corporation, or the Central Board or the National Social Security Board, the State Unorganised Workers Board or the Building Workers' Welfare Board, or any of the Committee thereof, as the case may be, and until it is reconstituted, the Central Government or the State Government, as the case may be, shall make such alternate arrangements for the purpose of administration of the relevant provisions of this Code, as may be prescribed by the Central Government.

(*3*) The Central Government or the State Government shall cause, a full report of any action taken by it under this section and the circumstances leading to such action, to be laid before each House of Parliament or the State Legislature, as the case may be, at the earliest opportunity and in any case not later than three months from the date of the notification of supersession issued under sub-section (*1*).

State Board, Regional Boards, local committees, etc.

12. The Central Government may, by notification,—

(*i*) and after consultation with the Government of any State, constitute for that State, a Board of Trustees (hereinafter in this Code referred to as a State Board) which shall exercise such powers and perform such functions as may be assigned by notification, to it by the Central Government from time to time;

(*ii*) specify the manner of constitution of a State Board, the terms and conditions of the appointment of its members and the procedure of its meeting and other proceedings relating thereto; and

(*iii*) after consultation with the Corporation, appoint Regional Boards and local committees in such area and in such manner to perform such functions and to exercise such powers as may be specified in the notification.

Entrustment of additional functions to Social Security Organisations.

13. Notwithstanding anything contained in this Code, the Central Government may, by notification,—

(*i*) assign additional functions to a Social Security Organisation including administration of any other Act or scheme relating to social security subject to such provisions as may be specified in this behalf in the notification:

Provided that while the additional function of administering the Act or scheme are assigned under this clause to a Social Security Organisation, then, the officer or authority of such organisation, to whom such function has been assigned, shall exercise the powers under the enactment or scheme required for discharging such function in the manner as may be specified in the notification:

Provided further that the Social Security Organisations may assign such additional functions to existing officers or appoint or engage new officers necessary for such purpose, if such functions may not be performed and completed with the assistance of its personnel as existing immediately before the assignment of the additional functions;

(*ii*) specify the terms and conditions of discharging the functions under clause (*i*) by the Social Security Organisation;

(*iii*) provide that the expenditure incurred in discharging the functions specified in clause (*i*) including appointment or engagement of personnel necessary for proper discharge of such functions shall be borne by the Central Government;

(*iv*) specify the powers which the Social Security Organisation shall exercise while discharging the functions specified in clause (*i*); and

(*iv*) provide that any expenditure referred to in clause (*iii*) shall be made by the Social Security Organisation after prior approval of the Central Government.

CHAPTER III

EMPLOYEES PROVIDENT FUND

Appointment of officers of Central Board.

14. (*1*) The Central Government may appoint a Central Provident Fund Commissioner of the Central Board who shall be subject to the general control and superintendence of that Board.

(*2*) The Central Government shall also appoint a Financial Advisor and Chief Accounts Officer to assist the Central Provident Fund Commissioner in the discharge of his duties.

(*3*) The Central Board may appoint, subject to the maximum scale of pay, as may be specified in the Scheme, as many Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and such other officers and employees as it may consider necessary for the efficient administration of the Provident Fund Scheme, the Pension Scheme and the Insurance Scheme, respectively, referred to in section 15 or other responsibilities assigned to the Central Board from time to time by the Central Government.

(*4*) No appointment to the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government shall be made except after consultation with the Union Public Service Commission:

Provided that no such consultation shall be necessary in regard to any such appointment—

(*a*) for a period not exceeding one year; or

(*b*) if the person to be appointed is at the time of his appointment—

(*i*) a member of the Indian Administrative Service, or

(*ii*) in the service of the Central Government or the Central Board in a Group 'A' or Group 'B' post.

(*5*) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner and the Financial Adviser and Chief Accounts Officer shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the fund referred to in clause (*a*) of sub-clause (*1*) of section 16.

(*6*) (*a*)The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioners, Deputy Provident Fund Commissioners, Regional Provident Fund Commissioners, Assistant Provident Fund Commissioners and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(*b*) In determining the corresponding scales of pay of officers and employees under clause (*a*), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.

Schemes.

15. (*1*) The Central Government may, by notification:—

(*a*) frame a scheme to be called the Employees' Provident Fund Scheme (hereinafter referred to as the Provident Fund Scheme) for which the provident funds shall be established under this Chapter for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply;

(*b*) frame a scheme to be called the Employees' Pension Scheme (hereinafter referred to as the Pension Scheme) for the purpose of providing for—

(*i*) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies; and

(*ii*) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees;

(*c*) frame a scheme to be called the Employees' Deposit Linked Insurance Scheme (hereinafter referred to as Insurance Scheme) for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Chapter applies; and

(*d*) modify any scheme referred to in clauses (*a*), (*b*) and (*c*) by adding thereto, amending or varying therein, either prospectively or retrospectively.

(*2*) Subject to the provisions of this Chapter, the schemes referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) may provide for all or any of the matters respectively specified in Part A, Part B and Part C of the Fifth Schedule.

(*3*) The schemes may provide that all or any of its provisions shall take effect either prospectively or retrospectively on and from such date as may be specified in that behalf in the scheme.

Funds.

16. (*1*) The Central Government may, for the purposes of—

(*a*) the Provident Fund Scheme, establish a Provident Fund where the contribution paid by the employer to the fund shall be ten per cent. of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent. of the wages, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words "ten per cent." at both the places where they occur, the words "twelve per cent". shall be substituted:

Provided further that the Central Government, after making such inquiry as it deems fit, may, by notification, specify rates of employees' contributions and the period for which such rates shall apply for any class of employee;

(*b*) the Pension Scheme, establish a pension fund (hereinafter referred to as the Pension Fund) in the manner prescribed by that Government into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(*i*) such sums from the employer's contribution under clause (*a*) not exceeding eight and one-third per cent. of the wages or such per cent. of wages as may be notified by the Central Government;

(*ii*) such sums payable as contribution to the pension fund, as may be specified in the Pension Scheme, by the employers of the exempted establishments under section 144 to which the pension scheme applies;

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

(*c*) the Insurance Scheme, establish a Deposit-Linked Insurance Fund (hereinafter referred to as the Insurance Fund) in the manner prescribed by that Government into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent. of the wages or such per cent. of wages as may be notified by the Central Government for the time being payable in relation to such employee:

Provided that the employer shall pay into the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under this clause, as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under the Insurance Scheme.

(*2*) The Provident Fund, the Pension Fund and the Insurance Fund shall vest in, and be administered by, the Central Board in such manner as may be specified in the respective Schemes.

Contribution in respect of employees and contractors.

17. (*1*) The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charge for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(*2*) A contractor from whom the amounts mentioned in sub-section (*1*) may be recovered in respect of any employee employed by or through him may recover from such employee the employee's contribution under any Scheme by deduction from the wages payable to such employee.

(*3*) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (*1*) from the wages payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Fund to be recognised under Act 43 of 1961.

18. For the purposes of the Income-tax Act, 1961, the Provident Fund shall be deemed to be a recognised provident fund within the meaning of clause (*38*) of section 2 of that Act:

Provided that nothing contained in the said Act shall operate to render ineffective any provision of the Provident Fund Scheme (under which the Provident Fund is established) which is repugnant to any of the provisions of that Act or of the rules made thereunder.

Priority of payment of contributions over other debts.

19. Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of section 53 of the Insolvency and Bankruptcy Code, 2016.

31 of 2016.

Chapter not to apply to certain establishment.

20. (*1*) This Chapter shall not apply—

2 of 1912.

(*a*) to any establishment registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to cooperative societies employing less than fifty persons and working without the aid of power; or

(*b*) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or (*c*) to any other establishment set up under any Central or State or any other law for the time being in force and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that law governing such benefits.

(*2*) If the Central Government is of the opinion that having regard to the financial position of any class of establishment or other circumstances of the case, it is necessary or expedient so to do, it may, by notification and subject to such conditions, as may be specified in the notification, exempt, whether prospectively or retrospectively, that class of establishments from the operation of this Chapter for such period as may be specified in the notification.

Authorising certain employers to maintain provident fund accounts.

21. (*1*) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer by an order in writing, to maintain a provident fund account in relation to the establishment, in such manner as may be prescribed by the Central Government and subject to such terms and conditions as may be specified in the Scheme:

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Code during the three years immediately preceding the date of such authorisation.

(*2*) Where an establishment is authorised to maintain a provident fund account under sub-section (*1*), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(*3*) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Code:

Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.

Transfer of accounts.

22. Where an employee,—

(*a*) employed in an establishment to which this Chapter applies, relinquishes his employment therefrom and obtains employment in any other establishment to which this Chapter applies or not; or

(*b*) employed in an establishment to which this Chapter does not apply, relinquishes his employment therefrom and obtains employment in an establishment to which this Chapter applies,

then, his accumulated amount in provident fund account or pension account, as the case may be, shall be transferred or dealt with in the manner as may be prescribed by the Central Government.

Appeal to Tribunal.

23. (*1*) Any person aggrieved by an order passed by the Central Government or any other authority in regard to the following matters may prefer an appeal to the Tribunal constituted by the Central Government, namely:—

(*a*) determination and assessment of dues under section 125;

(*b*) order of the appellate authority under section 127 in respect of Chapter III;

(*c*) determination of escaped amount under section 128 in respect of Chapter III; and

(*d*) levy of damages under section 130.

(*2*) Every appeal under sub-section (*1*) shall be filed in such form and manner, within such time and accompanied by such fees as may be prescribed by the Central Government.

CHAPTER IV

EMPLOYEES STATE INSURANCE CORPORATION

Principal Officers and other staff.

24. (*1*) The Central Government may, in consultation with the Corporation, appoint a Director General of the Corporation and a Financial Commissioner, who shall be the Principal Officers of the Corporation.

(*2*) The Director General or the Financial Commissioner shall hold office for such period, not exceeding five years, as may be specified in the order appointing him:

Provided that outgoing Director General or Financial Commissioner shall be eligible for reappointment if he is otherwise qualified.

(*3*) The Director General or the Financial Commissioner shall receive such salary and allowances as may be prescribed by the Central Government.

(*4*) A person shall be disqualified from being appointed as or for being the Director General of the Corporation or the Financial Commissioner if he is subject to any of the disqualifications specified in section 8.

(*5*) The Central Government may at any time remove the Director General of the Corporation or the Financial Commissioner from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-third of the total strength of the Corporation.

(*6*) The Corporation may employ such other officers and employees as may be necessary for the efficient transaction of its business and for discharge of any other responsibilities assigned to the Corporation from time to time by the Central Government:

Provided that the sanction of the Central Government shall be obtained for the creation of any post the maximum monthly salary of which exceeds such salary as may be prescribed by the Central Government.

(*7*) (*a*) The method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employees of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government:

Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis.

(*b*) In determining the corresponding scales of pay of the members of the staff under clause (*a*), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.

(*8*) Every appointment to posts (other than medical, nursing or para-medical posts) corresponding to group A and group B Gazetted posts under the Central Government shall be made in consultation with the Union Public Service Commission:

Provided that the provisions of this sub-section shall not apply to an officiating or temporary appointment for a period not exceeding one year:

Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.

(*9*) If any question arises whether a post corresponds to a group A and group B post under the Central Government, the question shall be referred to that Government whose decision thereon shall be final.

Employees' State Insurance Fund.

25. (*1*) All contributions paid under this Chapter and all other moneys received on behalf of the Corporation shall be paid into a fund (hereinafter referred as the Employees' State Insurance Fund) which shall be held and administered by the Corporation for the purposes of this Chapter.

(*2*) The Corporation may accept grants, donations, Corporate Social Responsibility Fund and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Chapter.

(*3*) Subject to the other provisions contained in this Code and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be deposited in such bank or banks as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(*4*) The Employees State Insurance Fund or any other money which is held by the Corporation shall be deposited or invested in the manner approved by the Central Government after consultation with the Corporation.

(*5*) Such account shall be operated by such officers as may be authorised by the Committee constituted under sub-section (*3*) of section 5 (hereinafter referred to as the Standing Committee) with the approval of the Corporation.

Purposes for which Employees' State Insurance Fund may be expanded.

26. Subject to the provisions of this Chapter and the rules and regulations relating thereto, made under this Code, the Employees' State Insurance Fund shall be expended only for the following purposes, namely:—

(*a*) payment of benefits and provision of medical treatment and attendance to insured persons referred to in section 28 and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Chapter and the rules and regulations relating thereto and defraying the charges and costs in connection therewith;

(*b*) payment of fees and allowances to members of the Corporation, the Standing Committee, the Medical Benefit Committee or other Committees thereof;

(*c*) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and staff of the Corporation and meeting the expenditure in respect of officers and staff and other services set up for the purpose of giving effect to the provisions of this Code relating to this Chapter;

(*d*) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons referred to in section 28 and, where the medical benefit is extended to their families, their families;

(*e*) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons referred to in section 28 and, where the medical benefit is extended to their families, their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

(*f*) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

(*g*) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Chapter;

(*h*) payment of any sums under any contract entered into for the purposes of this Code by Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;

(*i*) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or staff for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

(*j*) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Code relating to this Chapter;

(*k*) defraying expenditure, within the limits prescribed by the Central Government after consultation with the Corporation, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons referred to in section 28 who have been disabled or injured; and

(*l*) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

Holding of property, etc.

27. (*1*) The Corporation may, subject to such conditions as may be prescribed by the Central Government after consultation with the Corporation, acquire and hold property, both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.

(*2*) Subject to such conditions as may be prescribed by the Central Government and after consultation with the Corporation, the Corporation may from time to time invest any moneys which are not immediately required for expenses properly defrayable under this Code and may, subject to as aforesaid, from time to time re-invest or realise such investments.

(*3*) The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.

(*4*) The Corporation may constitute for the benefit of its officers and staff or any class of them, such provident or other benefit fund as it may think fit.

All employees to be insured.

28. Subject to the provisions of this Code, all employees in establishments to which this Chapter applies shall be insured (hereinafter referred to as insured persons) in such manner whether electronically or otherwise, as may be prescribed by the Central Government.

Contributions.

29. (*1*) The contribution payable under this Chapter in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(*2*) The contributions (employer's contribution and the employees' contribution both) shall be paid at such rates as may be prescribed by the Central Government.

(*3*) The wage period in relation to an employee shall be the unit as specified in the regulation (hereinafter referred to as the wage period) in respect of which all contributions shall be payable under this Chapter.

(*4*) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period the contributions shall fall due on such days as may be prescribed by the Central Government.

Administrative expenses.

30. The types of expenses which may be termed as administrative expenses and the percentage of the income of the Corporation which may be spent for such expenses shall be such as may be prescribed by the Central Government and the Corporation shall keep its administrative expenses within the limit so prescribed by the Central Government.

Provisions as to payment of contributions by employer, etc.

31. (*1*) The employer shall pay in respect of every employee, whether directly employed by him or by or through a contractor, both the employer's contribution and the employee's contribution.

(*2*) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Code and the rules and regulations, if any, made thereunder in this behalf, the employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by reduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relates to the period or part of the period in respect of which the contribution is payable or in excess of the sum representing the employee's contribution for the period.

(*3*) Notwithstanding any contract to the contrary, neither the employer nor the Contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(*4*) Any sum deducted by the employer from wages under this Chapter shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(*5*) The employer shall bear the expenses of remitting the contributions to the Corporation.

(*6*) An employer, who has paid contribution in respect of an employee employed by or through a contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any,) from the contractor, either by deduction from any amount payable to him by the employer under any contract, or as a debt payable by the contractor.

(*7*) The contractor shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the employer before the settlement of any amount payable under sub-section (*6*).

(*8*) In the case referred to in sub-section (*6*), the contractor shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to such conditions as may be specified in the regulations.

(*9*) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Chapter.

Benefits.

32. (*1*) Subject to the provisions of this Code, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:—

(*a*) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(*b*) periodical payments to an insured person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(*c*) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained by him as an employee for the purposes of this Chapter and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(*d*) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained by him as an employee for the purposes of this Chapter, as are entitled under this Chapter (hereinafter referred to as dependants' benefit);

(*e*) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(*f*) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses):

Provided that the amount of payment under this clause shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(*2*) The Corporation may, subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.

(*3*) The qualification of a person to claim sickness benefit, maternity benefit, disablement benefit and dependant benefit and the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

(*4*) Subject to the provisions of this Code, the Corporation may make regulations for any matter relating or incidental to the accrual and payment of benefits payable under this Chapter.

Corporation's power to promote measures for health, etc., of insured persons.

33. The Corporation may, in addition to the benefits specified in this Chapter, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the Employees' State Insurance Fund of the Corporation within such limits as may be prescribed by the Central Government.

Presumption as to accident arising in course of employment.

34. (*1*) For the purposes of this Chapter, an accident arising in the course of an employee's employment shall be presumed, in the absence of evidence to the contrary, to have arisen out of that employment.

(*2*) An accident happening to an employee in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

(*3*) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.

(*4*) An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if—

(*a*) the accident would have been deemed so to have arisen had he been under such obligation; and

(*b*) at the time of the accident, the vehicle—

(*i*) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and

(*ii*) is not being operated in the ordinary course of public transport service.

Explanation.—In this section, "vehicle" includes a vessel and an aircraft.

Accidents happening while acting in breach of law, etc.

35. An accident shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if—

(*a*) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(*b*) the act is done for the purpose of and in connection with the employer's trade or business.

Occupational disease.

36. (*1*) If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify by regulations in respect of each such employment, contracts any disease specified in such Part C as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury" arising out of and in the course of employment.

(*2*) Save as provided by sub-section (*1*), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

References to medical board.

37. (*1*) Any question—

(*a*) whether the relevant accident has resulted in permanent disablement; or

(*b*) whether the extent of loss of earning capacity can be assessed provisionally or finally; or

(*c*) whether the assessment of the proportion of the loss of earning capacity is provisional or final; or

(*d*) in the case of provisional assessment, as to the period for which such assessment shall hold good,

shall be determined by a medical board constituted in accordance with the provisions of the regulations (hereinafter referred to as medical board) and any such question shall hereafter be referred to as the "disablement question".

(*2*) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(*3*) Any decision under this Chapter of a medical board may be reviewed at any time by the medical board if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact whether the non-disclosure or misrepresentation was or was not fraudulent.

(*4*) Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

Provided that an assessment shall not be reviewed under this sub-section unless the medical board is of the opinion, having regard to the period taken into account by the assessment and the probable duration of the aggravation aforesaid, that substantial injustice will be done by not reviewing it.

(*5*) Except with the leave of a medical appeal tribunal constituted by regulations, an assessment shall not be reviewed under sub-section (*3*) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.

(*6*) Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final and the provisions of sub-section (*1*) shall apply to an application for review under this sub-section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that sub-section and to a decision of the medical board in connection with such case.

(*7*) If the insured person or the Corporation is aggrieved by any decision of the medical board, the insured person or the Corporation, as the case may be, may appeal to the medical appeal tribunal in the manner specified in the regulations or directly to the Employees' Insurance Courts constituted under section 48.

Dependants' benefit.

38. (*1*) If an insured person dies as a result of an employment injury sustained as an employee under this Chapter (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable to his dependants specified in sub-clause (*a*) and sub-clause (*b*) of clause (*24*) of section 2 at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(*2*) In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

(*3*) Any decision awarding dependants' benefit under this Chapter may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Chapter due to any birth or death or due to the marriage, re-marriage, or infirmity of, or attainment of the age of eighteen years by, a claimant.

(*4*) Subject to the provisions of this Chapter, the Corporation may, on such review under sub-section (*3*), direct that the dependants' benefit be continued, increased, reduced or discontinued.

Medical benefit.

39. (*1*) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(*2*) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(*3*) The qualification of an insured person and (where such medical benefit is extended to his family) his family, to claim medical benefit and the conditions subject to which such benefit may be given, the scale and period thereof shall be such as may be prescribed by the Central Government in consultation with the Corporation:

Provided that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be specified in the regulations:

Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not attained such permanent disablement.

(*4*) The Corporation may establish medical colleges, dental colleges, nursing colleges and training institutes for its officers and staff with a view to improve the quality of services provided under the Employees' State Insurance Scheme.

(*5*) The colleges and training institutions referred to in sub-section (*4*) may be run by the Corporation itself or on the request of the Corporation by the Central Government, any State Government, any Public Sector Undertaking of the Central Government or the State Government or any other body notified by the Central Government.

Explanation.—For the purposes of sub-section (*5*), the expression "other body" means any such organisation of persons which the Central Government considers capable to run colleges and training institutions referred to in sub-section (*4*).

Provision of medical treatment by State Government or by Corporation.

40. (*1*) The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment:

Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(*2*) Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the State Government.

(*3*) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines, and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.

(*4*) In default of agreement between the Corporation and any State Government as aforesaid, the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the High Court of a State appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the State Government).

(*5*) The State Government may, in addition to the Corporation under this Code, with the previous approval of the Central Government, establish such organisation (by whatever name called) to provide for certain benefits to employees in case of sickness, maternity and employment injury:

Provided that any reference to the State Government in this Code relating to this Chapter shall also include reference to the organisation as and when such organisation is established by the State Government.

(*6*) The organisation referred to in sub-section (*5*) shall have such structure, discharge functions, exercise powers and undertake such activities as may be prescribed by the State Government.

(*7*) The Corporation may, with the approval of the Central Government establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families), their families.

(*8*) The Corporation may enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

(*9*) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and (where such medical benefit has been extended to their families), to their families.

(*10*) Notwithstanding anything contained in any other provision of this Chapter, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to insured persons and (where such medical benefit is extended to their families), to the families of such insured persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportion as may be agreed upon between the State Government and the Corporation.

(*11*) In the event of the Corporation exercising its power under sub-section (*10*), the provisions relating to medical benefit under this Chapter shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.

(*12*) Notwithstanding anything contained in this Code, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government.

General provisions as to benefits.

41. (*1*) Save as may be provided in the regulations, no person shall be entitled to commute for a lump sum any disablement benefit admissible under this Chapter.

(*2*) Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.

(*3*) A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement)—

(*a*) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Chapter, and shall carry out the instructions given by the medical officer or medical attendant in-charge thereof;

(*b*) shall not while under treatment do anything which might retard or prejudice his chances of recovery;

(*c*) shall not leave the area in which medical treatment provided by this Chapter is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and

(*d*) shall allow himself to be examined by any duly appointed medical officer or other person authorised by the Corporation in this behalf.

(*4*) An insured person shall not be entitled to receive for the same period—

(*a*) both sickness benefit and maternity benefit; or

(*b*) both sickness benefit and disablement benefit for temporary disablement; or

(*c*) both maternity benefit and disablement benefit for temporary disablement.

(*5*) Where a person is entitled to more than one of the benefits mentioned in sub-section (*4*), he shall be entitled to choose which benefit he shall receive.

(*6*) If a person dies during any period for which he is entitled to a cash benefit under this Chapter, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.

(*7*) (*a*) Any person eligible for availing dependant or disablement benefit under this Chapter shall not be entitled to claim Employees Compensation from his employer under Chapter VII.

(*b*) Any women employee eligible for availing maternity benefit under this Chapter shall not be entitled to claim maternity benefit from her employer under Chapter VI.

(*8*) Where any person has received any benefit or payment under this Chapter when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of death, his legal representative shall be liable to repay the same from the assets of the deceased devolved on him.

(*9*) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.

(*10*) The amount recoverable under this section may be recovered in the manner specified under sections 131 to 134.

Corporation's rights when an employer fails to register, etc.

42. (*1*) If any employer,—

(*a*) fails or neglects to insure under section 28, an employee at the time of his appointment or within such extended period as may be prescribed by the Central Government, as a result of which the employee becomes disentitled to any benefit under this Chapter; or

(*b*) insures under section 28, an employee on or after the date of accident which resulted in personal injury to such employee which has the effect of making such employee entitled to receive any dependant benefit or disablement benefit from the Corporation; or

(*c*) fails or neglects to pay any contribution which under this Chapter he is liable to pay in respect of any employee and by reason thereof such employee becomes disentitled to any benefit or becomes entitled to a benefit on a lower scale,

then, the Corporation may, on being satisfied in the manner prescribed by the Central Government that the benefit is payable to the employee, pay to the employee benefit at such rate to which he is entitled or would have been entitled if the failure or neglect would not have occurred, and the Corporation shall be entitled to recover from the employer, subject to the employer being given an opportunity of being heard, the capitalised value of the benefit paid to the employee, to be calculated in such manner as may be prescribed by the Central Government:

Provided that the capitalised value to be calculated may be adjusted for the payment of any contribution and interest or damages that the employer is liable to pay for delay in the payment of or non-payment of such contribution.

(*2*) The amount recoverable under this section may be recovered as if it were an arrear of land revenue or recovered in the manner specified under sections 131 to 134.

Liability of owner or occupier of factories, etc., for excessive sickness benefit.

43. (*1*) Where the Corporation considers that the incidence of sickness among insured persons is excessive by reason of—

(*a*) insanitary working conditions in a factory or other establishment or the neglect of the owner or occupier of the factory or other establishment to observe any health regulations enjoined on him by or under any enactment for the time being in force, or

(*b*) insanitary conditions of any tenements or lodgings occupied by insured persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactments for the time being in force,

then, the Corporation may send to the owner or occupier of the factory or other establishment or to the owner of the tenement or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit; and if the claim is not settled by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate Government.

(*2*) If the appropriate Government is of the opinion that a *prima facie case* for inquiry is disclosed, it may appoint a competent person or persons to hold an inquiry into the matter referred under sub-section (*1*).

(*3*) If upon inquiry under sub-section (*2*), it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the insured persons is due to the default or neglect of the owner or occupier of the factory or other establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine the amount of the extra expenditure incurred as sickness benefit, and the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

(*4*) A determination under sub-section (*3*) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.

(*5*) For the purposes of this section, "owner" of tenements or lodging shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

Scheme for other beneficiaries.

44. Notwithstanding anything contained in this Chapter, the Central Government may, in consultation with the Corporation, and by notification, frame scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges, and prescribe the terms and conditions subject to which the scheme may be operated.

Explanation.—For the purposes of this section,—

(*a*) "other beneficiaries" means persons other than employees insured under section 28;

(*b*) "underutilised hospital" means any hospital not fully utilised by the employees insured under section 28; and

(*c*) "user charges" means the amount which is to be charged from other beneficiaries for medical facilities as may be specified in the regulations after prior approval of the Central Government.

Schemes for unorganised workers, gig workers and platform workers.

45. (*1*) Notwithstanding anything contained in this Chapter, the Central Government may, in consultation with the Corporation, and by notification, frame scheme for unorganised workers, gig workers and platform workers and the members of their families for providing benefits admissible under this Chapter by the Corporation.

(*2*) The contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions subject to which the scheme may be operated shall be such as may be prescribed in the scheme.

Exemption of factories or other establishments belonging to Government or any local authority.

46. The appropriate Government may, after consultation with the Corporation, by notification and subject to such conditions as may be specified in the notification, exempt any factory or other establishment belonging to any local authority, from the operation of this Chapter if the employees in any such factory or other establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Chapter.

Contributions, etc., due to Corporation to have priority over other debts.

47. Notwithstanding anything contained in any other law for the time being in force, any amount due under this Chapter shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of section 53 of the Insolvency and Bankruptcy Code, 2016. 31 of 2016.

Constitution of Employees' Insurance Court.

48. (*1*) The State Government shall, by notification, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(*2*) The Court shall consist of such number of Judges as the State Government may think fit.

(*3*) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(*4*) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(*5*) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

Matters to be decided by Employees' Insurance Court.

49. (*1*) If any question or dispute or claim arises as to—

(*a*) whether any person is an employee within the meaning of this Code relating to this Chapter or whether he is liable to pay the employee's contribution; or

(*b*) the rate of wages or average daily wages of an employee for the purposes of this Chapter; or

(*c*) the rate of contribution payable by an employer in respect of any employee under this Chapter; or

(*d*) the person who is or was the employer in respect of any employee for the purposes of this Chapter; or

(*e*) the right of any person to any benefit under this Chapter and as to the amount and duration thereof; or

(*f*) any direction issued by the Corporation on a review of any payment of dependants' benefit under this Chapter; or (*g*) any other matter which is in dispute between an employer and the Corporation relating to this Chapter, or between an employer and a Contractor relating to this Chapter or between a person and the Corporation relating to this Chapter or between an employee and an employer or Contractor relating to this Chapter, in respect of any contribution or benefit or other dues payable or recoverable under this Code relating to this Chapter;

(*h*) claim for the recovery of contributions from the employer under this Code relating to this Chapter;

(*i*) claim under sub-section (*8*) of section 41 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto;

(*j*) claim against an employer under section 42;

(*k*) order of the appellate authority under section 127 in respect of Chapter IV;

(*l*) claim by an employer to recover contributions from any contractor under this Code relating to this Chapter; and

(*m*) any other claim for the recovery of any benefit admissible under this Chapter,

such matter shall be decided by the Employers' Insurance Court.

(*2*) No matter which is in dispute between an employer and the Corporation in respect of any contribution or any other dues under this Chapter shall be raised by the employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation:

Provided that the Employees' Insurance Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(*3*) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as specified in sub-section (*1*) or to adjudicate on any liability which by or under this Code relating to this Chapter is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

Powers of Employees' Insurance Court.

50. (*1*) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

(*2*) The Employees' Insurance Court shall follow such procedure as may be prescribed by the State Government.

(*3*) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the court.

(*4*) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

Proceedings of Employees' Insurance Courts.

51. (*1*) The manner of commencement of proceedings before the Employees Insurance Court and the time limit of filing, fees and procedure thereof shall be such as may be prescribed by the State Government.

(*2*) Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of the court, by any other person so authorised.

(*3*) An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

Appeal to High Court.

52. (*1*) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(*2*) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(*3*) The appeal shall be filed under this section within a period of sixty days from the date of the order made by the Employees' Insurance Court.

(*4*) The provisions of sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section. 36 of 1963.

(*5*) Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court, shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

CHAPTER V

GRATUITY

Payment of gratuity.

53. (*1*) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(*a*) on his superannuation; or

(*b*) on his retirement or resignation; or

(*c*) on his death or disablement due to accident or disease; or

(*d*) on termination of his contract period under fixed term employment; or

(*e*) on happening any such event as may be notified by the Central Government:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the competent authority as may be notified by the appropriate Government who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed by the appropriate Government, until such minor attains majority.

(*2*) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages or such number of days as may be notified by the Central Government, based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season:

Provided also that in the case of an employee employed on fixed term employment or a deceased employee, the employer shall pay gratuity on pro rata basis.

(*3*) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government.

(*4*) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(*5*) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(*6*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(*b*) the gratuity payable to an employee may be wholly or partially forfeited—

(*i*) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(*ii*) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Explanation 1.—For the purposes of this Chapter, employee does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Explanation 2.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease, resulting in such disablement.

Explanation 3.—For the purposes of this section, it is clarified that in the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

54. For the purposes of this Chapter,— Continuous service.

(*A*) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Code;

(*B*) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (*A*), for any period of one year or six months, he shall be deemed to be in continuous service under the employer—

(*a*) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(*i*) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and (*ii*) two hundred and forty days, in any other case;

(*b*) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than—

(*i*) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(*ii*) one hundred and twenty days, in any other case.

Explanation.—For the purposes of this clause, the number of days on which an employee has actually worked under an employer shall include the days on which—

(*i*) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment; 20 of 1946. 14 of 1947.

(*ii*) he has been on leave with full wages, earned in the previous year;

(*iii*) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(*iv*) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twenty-six weeks;

(*C*) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (*A*), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy- five per cent. of the number of days on which the establishment was in operation during such period.

Nomination.

55. (*1*) Each employee, who has completed one year of service, shall make, a nomination within such time, in such form and in such manner, as may be prescribed by the appropriate Government.

(*2*) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Chapter amongst more than one nominee.

(*3*) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

(*4*) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed by the appropriate Government, a fresh nomination in favour of one or more members of his family.

(*5*) A nomination may, subject to the provisions of sub-sections (*3*) and (*4*), be modified by an employee at any time, after giving to his employer a written intimation in such form and in such manner as may be prescribed by the appropriate Government, of his intention to do so.

(*6*) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the form prescribed by the appropriate Government, in respect of such interest.

(*7*) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

56. (*1*) A person who is eligible for payment of gratuity under this Chapter or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed by the appropriate Government, for payment of such gratuity. Determination of amount of gratuity.

(*2*) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (*1*) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.

(*3*) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(*4*) If the amount of gratuity payable under sub-section (*3*) is not paid by the employer within the period specified in sub-section (*3*), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the competent authority for the delayed payment on this ground.

(*5*) (*a*) If there is any dispute as to the amount of gratuity payable to an employee under this Chapter or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the competent authority such amount as he admits to be payable by him as gratuity.

(*b*) Where there is a dispute with regard to any matter or matters specified in clause (*a*), the employer or employee or any other person raising the dispute may make an application to the competent authority in the form prescribed by the Central Government for deciding the dispute.

(*c*) The competent authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the competent authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(*d*) The competent authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(*e*) As soon as may be after a deposit is made under clause (*a*), the competent authority shall pay the amount of the deposit—

(*i*) to the applicant where he is the employee; or

(*ii*) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the competent authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(*6*) For the purpose of conducting an inquiry under sub-section (*5*), the competent authority shall have the same powers as are vested in a court, while trying a suit, under the
5 of 1908. Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(*a*) enforcing the attendance of any person or examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) issuing commissions for the examination of witnesses.

(*7*) Any inquiry under this section shall be a judicial proceeding within the meaning of section 193, section 228, and for the purpose of section 196, of the Indian Penal Code. 45 of 1860.

(*8*) Any person aggrieved by an order under sub-section (*5*) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the competent authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (*5*), or deposits with the appellate authority such amount.

(*9*) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the competent authority.

Compulsory insurance.

57. (*1*) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (*2*), obtain an insurance in the manner prescribed by the Central Government, for his liability for payment towards the gratuity under this Chapter, from any insurance company regulated by the Authority as defined under clause (*b*) of sub-section (*1*) of section 2 of the Insurance Regulatory and Development Authority Act, 1999: 41 of 1999.

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(*2*) The appropriate Government may, subject to such conditions as may be prescribed by the Central Government, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed by the Central Government from the provisions of sub-section (*1*).

(*3*) For the purposes of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed by the Central Government get his establishment registered with the competent authority in the manner prescribed by the Central Government and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (*1*) or has established an approved gratuity fund referred to in sub-section (*2*).

(*4*) The appropriate Government may prescribe rules to give effect to the provisions of this section and the rules so prescribed may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the competent authority of the amount of the gratuity payable to an employee from the insurer with whom an insurance has been taken under sub-section (*1*), or as the case may be, the Board of Trustees of the approved gratuity fund.

(*5*) Where an employer fails to make any payment by way of premium in respect of the insurance referred to in sub-section (*1*) or by way of contribution to an approved gratuity fund referred to in sub-section (*2*), he shall be liable to pay the amount of gratuity due under this Chapter (including interest, if any, for delayed payments) forthwith to the competent authority.

Explanation.—In this section, "approved gratuity fund" shall have the same meaning as assigned to it in sub-section (*5*) of section 2 of the Income-tax Act, 1961. 43 of 1961.

Competent Authority.

58. (*1*)The appropriate Government may, by notification, appoint any person having such qualifications and experience as may be prescribed by that Government to be a competent authority for implementation of any provision of this Chapter for such area as may be specified in the notification.

(*2*) Where more than one competent authority has been appointed for any area, the appropriate Government may, by general or special order, regulate the distribution of business among them.

(*3*) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under reference to assist him in holding the inquiry relating thereto.

CHAPTER VI

MATERNITY BENEFIT

Employment of, or work by, women prohibited during certain period.

59. (*1*) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(*2*) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(*3*) Without prejudice to the provisions of section 62, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do, during the period specified in sub-section (*4*), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health.

(*4*) The period referred to in sub-section (*3*) shall be—

(*a*) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(*b*) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 62.

Right to payment of maternity benefit.

60. (*1*) Subject to the other provisions of this Code, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day.

Explanation.—For the purposes of this sub-section, "the average daily wage" means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, subject to the minimum rate of wage fixed or revised under the Code on Wages, 2019. 29 of 2019.

(*2*) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Explanation.—For the purposes of calculating the period under this sub-section, the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages, during the period of twelve months immediately preceding the expected date of her delivery shall be taken into account.

(*3*) The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery:

Provided that the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

Provided further that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

Provided also that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days upto and including the date of the death of the child.

Explanation.—For the purposes of this sub-section, "child" includes a stillborn child.

(*4*) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

(*5*) In case the work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Continuance of payment of maternity benefit in certain cases.

61. Every woman entitled to the payment of maternity benefit under this Chapter, shall, notwithstanding the application of Chapter IV to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 32.

Notice of claim for maternity benefit and payment thereof.

62. (*1*) Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Chapter may give notice in writing in such form as may be prescribed by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Chapter may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

(*2*) In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery.

(*3*) Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after her delivery.

(*4*) On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit.

(*5*) The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed by the Central Government that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed by the Central Government that the woman has been delivered of a child.

(*6*) The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Chapter if she is otherwise entitled to such benefit or amount and in any such case an Inspector-cum-Facilitator may either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Payment of maternity benefit in case of death of a woman.

63. If a woman entitled to maternity benefit or any other amount under this Chapter, dies before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit under the second proviso to sub-section (*3*) of section 60, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under section 62 and in case there is no such nominee, to her legal representative.

Payment of medical bonus.

64. Every woman entitled to maternity benefit under this Chapter shall also be entitled to receive from her employer a medical bonus of three thousand five hundred rupees or as such amount as may be notified by the Central Government, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Leave for miscarriage, etc.

65. (*1*) In case of miscarriage, or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy.

(*2*) In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed by the Central Government, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.

(*3*) A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy shall, on production of such proof as may be prescribed by the Central Government, be entitled, in addition to the period of absence allowed to her under section 62, or, as the case may be, under sub-section (*1*), to leave with wages at the rate of maternity benefit for a maximum period of one month.

Nursing breaks.

66. Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of such duration as may be prescribed by the Central Government, for nursing the child until the child attains the age of fifteen months.

Creche facility.

67. (*1*) Every establishment to which this Chapter applies, in which fifty employees or such number of employees as may be prescribed by the Central Government, are employed shall have the facility of crèche within such distance as may be prescribed by the Central Government, either separately or along with common facilities:

Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her.

(*2*) Every establishment to which this Chapter applies shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under this Chapter.

Dismissal for absence during pregnancy.

68. (*1*) When a woman absents herself from work in accordance with the provisions of this Chapter, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service:

Provided that the discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus under this Chapter, shall not have the effect of depriving her of the maternity benefit or medical bonus:

Provided further that where the dismissal is for any gross misconduct as may be prescribed by the Central Government, the employer may, by order in writing, communicated to the woman, deprive her of the maternity benefit or medical bonus, or both.

(*2*) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed under sub-section (*1*), may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to the competent authority, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both, or discharged or dismissed shall be final.

No deduction of wages in certain cases.

69. No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Chapter shall be made by reason only of—

(*a*) the nature of work assigned to her by virtue of the provisions contained in section 59; or

(*b*) breaks for nursing the child allowed to her under the provisions of section 66.

Forfeiture of maternity benefit.

70. A woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing the maternity benefits provided under this Chapter shall not be entitled to receive maternity benefit for such period.

Duties of employer.

71. An abstract of the provisions of this Chapter and the rules relating thereto in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Power of Inspector-cum-Facilitator to direct payments to be made.

72. (*1*) Any woman claiming that,—

(*a*) maternity benefit or any other amount to which she is entitled under this Chapter and any person claiming that payment due under this Chapter has been improperly withheld;

(*b*) her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of this Chapter,

may make a complaint to the Inspector-cum-Facilitator.

(*2*) The Inspector-cum-Facilitator may, on receipt of a complaint referred to in sub-section (*1*), make an inquiry or cause an inquiry to be made and if satisfied that—

(*a*) payment has been wrongfully withheld, may direct the payment to be made in accordance with his order in writing;

(*b*) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Chapter, may pass such orders as he deems just and proper according to the circumstances of the case.

(*3*) Any person aggrieved by the order of the Inspector-cum-Facilitator under sub-section (*2*) may, within thirty days from the date on which such order is communicated to such person, appeal to the authority prescribed by the appropriate Government.

(*4*) The decision of the authority referred to in sub-section (*3*), where an appeal has been preferred to it under that sub-section or of the Inspector-cum-Facilitator where no such appeal has been preferred shall be final.

CHAPTER VII

EMPLOYEE'S COMPENSATION

Reports of fatal accidents and serious bodily injuries.

73. (*1*) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the competent authority giving the circumstances attending the death or serious bodily injury:

Provided that where the State Government has so specified, the person required to give the notice may instead of sending such report to the competent authority send it to the authority to whom he is required to give the notice.

Explanation.— For the purposes of this sub-section, "serious bodily injury" means an injury which involves, or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

(*2*) The State Government may, by notification, extend the provisions of sub-section (*1*) to any class of premises other than those coming within the scope of that sub-section, and may, by such notification, specify the persons who shall send the report to the competent authority.

(*3*) Nothing in this section shall apply to establishments to which Chapter IV, relating to Employees' State Insurance Corporation, applies.

Employer's liability for compensation.

74. (*1*) If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable—

(*a*) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days; and

(*b*) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(*i*) the employee having been at the time thereof under the influence of drink or drugs, or

(*ii*) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(*iii*) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

(*2*) An accident or an occupational disease referred to in sub-section (*1*) shall be deemed to arise out of and in the course of an employee's employment notwithstanding that he is at the time of the accident or at the time of contacting the occupational disease, referred to in that sub-section, acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if —

(*a*) such accident or contacting of such occupational disease would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(*b*) the act is done for the purpose of and in connection with the employer's trade or business.

(*3*) If an employee employed in any employment specified in the Second Schedule contracts any disease specified in the Third Schedule, being an occupational disease peculiar to that employment whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months, then, such disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment.

(*4*) An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and his employment is established.

(*5*) The Central Government or the State Government, after giving, by notification, not less than three months' notice of its intention so to do, may, by a like notification, modify or add any description of employment to the employments specified in the Second Schedule, and shall specify in the case of employments so modified or added, the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (*2*) shall apply, in the case of a notification by the Central Government, within the territories to which this Code extends or, in case of a notification by the State Government, within that State as if such diseases had been declared by this Code to be occupational diseases peculiar to those employments.

(*6*) Save as provided by sub-sections (*2*), (*3*) and (*4*), no compensation shall be payable to an employee in respect of any accident or disease unless the accident or disease is directly attributable to a specific injury by accident or disease arising out of and in the course of his employment.

(*7*) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any accident or disease if he has instituted in a Civil Court a suit for damages in respect of the accident or disease against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of such accident or disease—

(*a*) if he has instituted a claim to compensation in respect of the accident or disease before a competent authority; or

(*b*) if an agreement has been made between the employee and his employer providing for the payment of compensation in respect of the accident or disease in accordance with the provisions of this Chapter.

Compensation in case of death of or injury in plantation.

75. If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation under section 74.

Explanation.—For the purposes of this section, the expression "worker" means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work, skilled, unskilled, manual or clerical, and includes a person employed on contract for more than sixty days in a year, but does not include—

(*i*) a medical officer employed in the plantation;

(*ii*) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed the amount as determined by the appropriate Government, by notification, from time to time;

(*iii*) any person employed in the plantation primarily in a managerial or administrative capacity, notwithstanding that his monthly wages do not exceed the amount as determined by the appropriate Government, by notification, from time to time;

(*iv*) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, drains or canals.

Amount of Compensation.

76. (*1*) Subject to the provisions of this Chapter, the amount of compensation shall be,—

(*a*) where death results from the injury, an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more;

(*b*) where permanent total disablement results from the injury, an amount equal to sixty per cent. of the monthly wages of the injured employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time or, whichever is more:

Provided that the Central Government may, by notification from time to time, enhance the amount of compensation specified in clauses (*a*) and (*b*).

Explanation.—For the purposes of clauses (*a*) and (*b*), "relevant factor", in relation to an employee means the factor specified in column (*3*) of the Sixth Schedule relating to factors against the corresponding entry in column (*2*) thereof, specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due;

(*c*) where permanent partial disablement results from the injury,—

(*i*) in the case of an injury specified in Part II of the Fourth Schedule, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(*ii*) in the case of an injury not specified in the Fourth Schedule, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the medical practitioner) permanently caused by the injury.

Explanation 1.—For the purposes of this clause, where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation 2.—In assessing the loss of earning capacity under sub-clause (*ii*), the medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in the Fourth Schedule;

(*d*) where temporary disablement, whether total or partial, results from the injury, a half-monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the employee, to be paid in accordance with the provisions of sub-section (*4*).

(*2*) Notwithstanding anything contained in sub-section (*1*), while fixing the amount of compensation payable to an employee in respect of an accident which occurred outside India, the competent authority shall take into account the amount of compensation, if any, awarded to such employee in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the employee in accordance with the law of that country.

(*3*) The Central Government may, by notification, specify for the purposes of sub-section (*1*), such monthly wages in relation to an employee as it may consider necessary.

(*4*) The half-monthly payment referred to in clause (*d*) of sub-section (*1*) shall be payable on the sixteenth day—

(*i*) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or

(*ii*) after the expiry of a waiting period of three days from the date of disablement, where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever is shorter:

Provided that—

(*a*) there shall be deducted from any lump sum or half-monthly payments to which the employee is entitled the amount of any payment or allowance which the employee has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and such payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation;

(*b*) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.

(*5*) The employee shall be reimbursed, the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, by his employer.

(*6*) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(*7*) If the injury of the employee results in his death, the employer shall, in addition to the compensation under sub-section (*1*), deposit with the competent authority a sum of not less than fifteen thousand rupees for payment of the same to the eldest surviving dependent of the employee towards the expenditure of the funeral of such employee or where the employee did not have a dependent or was not living with his dependent at the time of his death, to the person who actually incurred such expenditure:

Provided that the Central Government may, by notification from time to time, enhance the amount specified in this sub-section.

Compensation to be paid when due and damages for default.

77. (*1*) Compensation under section 74 shall be paid as soon as it falls due.

(*2*) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the competent authority or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(*3*) Where any employer is in default in paying the compensation due under this Chapter within one month from the date it fell due, the competent authority shall—

(*a*) direct that the employer shall, in addition to the amount of the arrears, pay interest at such rate as may be prescribed by the Central Government, on the amount due; and

(*b*) if in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount of arrears by way of damages:

Provided that an order for the payment of damages shall not be passed under clause (*b*) without giving a reasonable opportunity to the employer to show cause as to why it should not be passed.

(*4*) The interest and the damages payable under sub-section (*3*) shall be paid to the employee or his dependent, as the case may be.

Method of calculating monthly wages for purposes of compensation.

78. For the purposes of calculation of compensation under section 74, the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely:—

(*a*) where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(*b*) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality;

(*c*) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (*b*), the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation. — For the purpose of this section, "a period of service" shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review.

79. (*1*) Any half-monthly payment payable under this Chapter, either under an agreement between the parties or under the order of a competent authority, may be reviewed by the competent authority, on the application either of the employer or of the employee accompanied by the certificate of a medical practitioner that there has been a change in the condition of the employee or, subject to such conditions as may be prescribed by the State Government, on application made without such certificate.

(*2*) Any half-monthly payment may, on review under this section, subject to the provisions of this Chapter, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

Commutation of half-monthly payments.

80. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the competent authority be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the competent authority, as the case may be.

Distribution of compensation.

81. (*1*) No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the competent authority, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased employee, an employer may make to any dependent advances on account of compensation of an amount equal to three months' wages of such employee and so much of such amount as does not exceed the compensation payable to that dependent shall be deducted by the competent authority from such compensation and repaid to the employer.

(*2*) Any other sum amounting to not less than five thousand rupees which is payable as compensation may be deposited with the competent authority on behalf of the person entitled thereto.

(*3*) The receipt of the competent authority shall be a sufficient discharge in respect of any compensation deposited with him.

(*4*) (*a*) On the deposit of any money under sub-section (*1*) as compensation in respect of a deceased employee, the competent authority shall, if he thinks necessary, cause notice to be published or to be served on each dependent in such manner as he thinks fit, calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation.

(*b*) If the competent authority is satisfied after any inquiry which he may deem necessary, that no dependent exists, he shall repay the balance of the money to the employer by whom it was paid.

(*c*) The competent authority shall, on an application by the employer, furnish a statement showing in detail all disbursements made.

(*5*) The compensation deposited in respect of a deceased employee shall, subject to any deduction made under sub-section (*1*), be apportioned by order by the competent authority among the dependents of the deceased employee or any of them in such proportion as the competent authority thinks fit, or may, in the discretion of the competent authority, be allotted to any one dependent:

Provided that the competent authority shall not make any order under this sub-section without hearing the dependents and shall record reasons in the order for the apportionment of such compensation among dependents or any of them, as the case may be.

(*6*) Where any compensation deposited with the competent authority is payable to any person, other than a woman or a person under legal disability, the competent authority may pay the compensation to the person entitled thereto.

(*7*) Where any lump sum deposited with the competent authority is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the competent authority may direct; and where a half-monthly payment is payable to any person under a legal disability, the competent authority may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependent of the employee or to any other person, whom the competent authority thinks fit to provide for the welfare of the employee.

(*8*) Where, on application made to him in this behalf or otherwise, the competent authority is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependent or for any other sufficient cause, an order of the competent authority as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the competent authority may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause as to why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependent of any sum already paid to him.

(*9*) Where the competent authority varies any order under sub-section (*8*) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner as specified in sub-section (*10*).

(10) The competent authority may recover as an arrear of land revenue any amount referred to in sub-section (*9*), and for such purpose the competent authority shall be deemed
1 of 1890. to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

Notice and claim.

82. (*1*) No claim for compensation shall be entertained by a competent authority unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (*3*) of section 74 are applicable, the accident shall be deemed to have occurred on the first of the days during which the employee was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the employee to absent himself from work, the period of two years shall be counted from the day the employee gives notice of the disablement to his employer:

Provided also that if an employee who, having been employed in an employment for a continuous period specified under sub-section (*3*) of section 74 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected.

(*2*) The want of or any defect or irregularity, in a notice given under sub-section (*1*) shall not be a bar to the entertainment of a claim—

(*a*) if the claim is preferred in respect of the death of an employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(*b*) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided that the competent authority may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time as provided under sub-section (*1*), if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(*3*) Every such notice shall give the name and address of the person injured and shall state the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed.

(*4*) The appropriate Government may require that any class of employers as may be prescribed by that Government shall maintain, at their premises, at which employees are employed, a notice-book, in such form as may be prescribed by that Government, which shall be readily accessible at all reasonable times to any injured employee employed on the premises and to any person acting *bonafide* on his behalf.

(*5*) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or where possible, electronically or, where a notice-book is maintained, by entry in the notice-book.

Special provisions relating to accidents occurring outside Indian territory.

83. (*1*) The provisions of this section shall, subject to the modifications specified in this section, apply in case of employees who are—

(*a*) masters of ships or seamen; or

(*b*) captain and other members of crew of aircraft;

(*c*) persons recruited by companies registered in India and working as such abroad;

(*d*) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other employees. 59 of 1988.

(*2*) The notice of the accident and the claim for compensation by a person injured may be served on the following persons, as if they were the employer—

(*a*) in case of accident where the person injured is a seamen, but not the master of the ship, on the master of the ship;

(*b*) in case of accident where the person injured is a member of crew of an aircraft, but not the captain of the aircraft, on the captain of the aircraft;

(*c*) in case of persons recruited by companies registered in India and working as such abroad, on the local agent of the company;

(*d*) in case of persons sent for work abroad along with motor vehicles as drivers, helpers, mechanics, cleaners or other employees, on the local agent of the owner of the motor vehicle, in the country of the accident:

Provided that where the accident happened and the disablement commenced on board, the ship or aircraft, as the case may be, then, it shall not be necessary for any seaman or members of the crew of aircraft to give any notice of the accident.

(*3*) The claim of compensation shall be made—

(*a*) in the case of the death of an employee referred to in sub-section (*1*), one year after the news of the death has been received by the claimant;

(*b*) in the case where the ship or the aircraft as the case may be, has been or is deemed to have been lost with all hands, eighteen months of the date on which the ship or the aircraft was, or is deemed to have been, so lost:

Provided that the competent authority may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(*4*) Where an injured employee referred to in sub-section (*1*) is discharged or left behind in any part of India or in any foreign country, then, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(*a*) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(*b*) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(*c*) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(*5*) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(*6*) Failure to give a notice or make a claim or commence proceedings within the time required by this section shall not be a bar to the maintenance of proceedings under this Chapter in respect of any personal injury, if such proceedings under this Chapter are commenced within one month from the date on which the said certificate of the appropriate Government was furnished to the person commencing the proceedings.

Medical examination.

84. (*1*) Where an employee has given notice of an accident, he, shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a medical practitioner, submit himself for such examination, and any employee who is in receipt of a half-monthly payment under this Chapter shall, if so required, submit himself for such examination from time to time:

Provided that an employee shall not be required to submit himself for examination by a medical practitioner at more than such frequent interval as may be prescribed by the appropriate Government.

(*2*) If an employee, on being required to do so by the employer under sub-section (*1*) or by the competent authority at any time, refuses to submit himself for examination by a medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(*3*) If an employee, before the expiry of the period within which he is liable under sub-section (*1*) to be required to submit himself for medical examination, voluntarily leaves the vicinity of the place in which he was employed without having been so examined, his right to compensation shall be suspended until he returns and offers himself for such examination:

Provided that where such employee proves before the medical practitioner that he could not so submit himself for medical examination due to the circumstances beyond his control and he was also handicapped to communicate such information in writing, the medical practitioner may after recording such reasons in writing, condone the delay and his right to compensation shall be revived as if no such suspension was made.

(*4*) Where an employee, whose right to compensation has been suspended under sub-section (*2*) or sub-section (*3*), dies without having submitted himself for medical examination as required by either of those sub-sections, the competent authority may, if he thinks fit, direct the payment of compensation to the dependants of the deceased employee.

(*5*) Where under sub-section (*2*) or sub-section (*3*), a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause (*ii*) of sub-section (*4*) of section 76, the waiting period shall be increased by the period during which the suspension continues.

(*6*) Where an injured employee has refused to be attended by a medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the employee has not thereafter been regularly attended by a medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the employee had been regularly attended by a medical practitioner, whose instructions he had followed, and compensation, if any, shall be payable accordingly.

Contracting.

85. (*1*) Where any employer in the course of or for the purposes of his trade or business contracts with contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the employer, the employer shall be liable to pay to any employee employed in the execution of the work any compensation, which he would have been liable to pay if that employee had been immediately employed by him; and that the amount of compansation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(*2*) Where the employer is liable to pay compansation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered the compansation and where a contractor who is himself an employer is liable to pay compansation or to indemnify an employer under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered the compansation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the competent authority.

(*3*) Nothing in this section shall be construed as preventing an employee from recovering compansation referred to in sub-section (*2*) from the contractor instead of the employer.

(*4*) The provisions of this section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the employer has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of employer against stranger.

86. Where an employee has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 85 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

87. (*1*) Where any employer has entered into a contract with any insurers in respect of any liability under this Chapter to any employee, then, in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer. Insolvency of employer.

(*2*) If the liability of the insurers to the employee is less than the liability of the employer to the employee, the burden of proof shall lie on the employee for the balance in the insolvency proceedings or liquidation.

(*3*) Where in any case such as is referred to in sub-section (*1*) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premium), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee:

Provided that the provisions of this sub-section shall not apply in any case in which the employee fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(*4*) There shall be deemed to be included among the debts which under section 53 of 31 of 2016. 18 of 2013. the Insolvency and Bankruptcy Code, 2016 or under section 320 of the Companies Act, 2013 are in the distribution of the assets of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation, the liability accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and the provisions of that Code and Act shall have effect accordingly.

(*5*) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if applications were made for that purpose under section 80, and a certificate of the competent authority as to the amount of such sum shall be conclusive proof thereof.

(*6*) The provisions of sub-section (*4*) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (*3*), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (*1*).

(*7*) The provisions of this section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

88. (*1*) Where a competent authority receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send by registered post or where possible, electronically a notice to the employee's employer requiring him to submit, within thirty days of the service of the notice, a statement, in such form as may be prescribed by the appropriate Government, giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, Power to require from employers statements regarding fatal accidents.

he is or is not liable to deposit compensation on account of the death and a copy of such notice shall also be sent by the competent authority in the same manner to the dependants of such employee ascertained by the competent authority in such manner as may be prescribed by the appropriate Government.

(*2*) If the employer is of the opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(*3*) If the employer is of the opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(*4*) Where the employer has so disclaimed liability, the competent authority, after such inquiry as he may think fit, may inform any of the dependants of the deceased employee, that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

(*5*) Where in the opinion of the competent authority, a dependant of the deceased employee is not in a position to engage an advocate to file a claim for compensation, the competent authority may provide an advocate to such dependant in such manner as may be prescribed by the appropriate Government for such purpose.

Registration of agreements.

89. (*1*) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability, a memorandum thereof shall be sent by the employer to the competent authority, who shall, on being satisfied as to its genuineness, record the memorandum in a register, electronically or otherwise, in such manner as may be prescribed by the appropriate Government:

Provided that—

(*a*) no such memorandum shall be recorded before seven days after communication by the competent authority of notice to the parties concerned;

(*b*) the competent authority may at any time rectify the register;

(*c*) where it appears to the competent authority that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, the competent authority may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as the competent authority thinks just in the circumstances.

(*2*) An agreement for the payment of compensation which has been registered under sub-section (*1*) shall be enforceable under this Code notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force. 9 of 1872.

(*3*) Where a memorandum of any agreement, the registration of which is required under this section, is not sent to the competent authority as required by this section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Chapter, and notwithstanding anything contained in the proviso to sub-section (*1*) of section 76, shall not, unless the competent authority otherwise directs, be entitled to deduct more than half of any amount paid to the employee by way of compensation whether under the agreement or otherwise.

Reference to competent authority.

90. (*1*) If any question arises in any proceedings under this Chapter as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a competent authority.

(*2*) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Chapter required to be settled, decided or dealt with by a competent authority or to enforce any liability incurred under this Chapter.

Appointment of competent authority.

91. (*1*) The State Government may, by notification, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development, industrial relations and legal affairs or such other experience and qualifications as may be prescribed by the appropriate Government to be a competent authority for Employee's Compensation for such area as may be specified in the notification.

(*2*) Where more than one competent authority has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business amongst them.

(*3*) Any competent authority may, for the purpose of deciding any matter referred to him for decision under this Chapter, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

Venue of proceedings and transfer.

92. (*1*) Where any matter under this Chapter is to be done by or before a competent authority, the same shall, subject to the provisions of this Chapter and in the manner prescribed in this behalf by the State Government, be done by or before the competent authority for the area in which—

(*a*) the accident took place which resulted in the injury; or

(*b*) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or

(*c*) the employer has his registered office:

Provided that no matter shall be processed before or by a competent authority, other than the competent authority having jurisdiction over the area in which the accident took place, without his giving notice electronically or otherwise in the manner prescribed by the Central Government to the competent authority having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India, any such matter may be done by or before a competent authority for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(*2*) If a competent authority, other than the competent authority with whom any money has been deposited under section 81, proceeds with a matter under this Chapter, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(*3*) If a competent authority is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other competent authority, whether in the same State or not, he may, subject to rules made under this Code relating to this Chapter, order such matter to be transferred to such other competent authority either for report or for disposal, and, if he does so, shall forthwith transmit to such other competent authority all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the manner as may be prescribed by the Central Government any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the competent authority shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

(*4*) The competent authority to whom any matter is so transferred shall, subject to rules made under this Code relating to this Chapter, inquire therein to and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(*5*) On receipt of a report from a competent authority to whom any matter has been transferred for report under sub-section (*3*), the competent authority by whom it was referred shall decide the matter referred to in conformity with such report.

(*6*) The State Government may transfer any matter from any competent authority appointed by it to any other competent authority appointed by it.

Form of application.

93. (*1*) Where an accident occurs in respect of which liability to pay compensation under this Chapter arises, a claim for such compensation may, subject to the provisions of this Chapter, be made before the competent authority.

(*2*) Subject to the provisions of sub-section (*1*), no application for the settlement of any matter by competent authority, other than an application by a dependant or joint application by dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(*3*) An application to a competent authority for claim under sub-section (*1*) or settlement under sub-section (2) may be made electronically or otherwise in such form and in such manner accompanied by such fee, if any, as may be prescribed by the Central Government.

(*4*) The time limit for the disposal of applications under this section and the costs incidental to the proceedings under this section to be imposed by the competent authority shall be such as may be prescribed by the State Government.

Power of competent authority to require further deposit in cases of fatal accident.

94. (*1*) Where any sum has been deposited by an employer as compensation payable in respect of an employee whose injury has resulted in death, and in the opinion of the competent authority such sum is insufficient, the competent authority may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(*2*) If the employer fails to show cause to the satisfaction of the competent authority, the competent authority may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Powers and procedure of competent authority.

95. The competent authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such competent authority is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the competent authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

5 of 1908.

2 of 1974.

Appearance of parties.

96. Any appearance, application or act required to be made or done by any person before or to a competent authority (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector-cum-Facilitator appointed under sub-section (*1*) of section 122 or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the competent authority, by any other person so authorised.

97. The competent authority shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be authenticated under the hand of the competent authority or in the manner as may be prescribed by the State Government and shall form part of the record: Method of recording evidence.

Provided that, if the competent authority is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

98. A competent authority may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision. Power to submit cases.

99. (*1*) An appeal shall lie to the High Court from the following orders of a competent authority under this Chapter, namely:— Appeal against order of competent authority.

(*a*) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(*b*) an order awarding interest or penalty by way of damages under section 77;

(*c*) an order refusing to allow redemption of a half-monthly payment;

(*d*) an order providing for the distribution of compensation among the dependants of a deceased employee, or disallowing any claim of a person alleging himself to be such dependant;

(*e*) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (*2*) of section 85; or

(*f*) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order as referred to in clause (*c*), unless the amount in dispute in the appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the competent authority, or in which the order of the competent authority gives effect to an agreement come to by the parties:

Provided also that no appeal by an employer under clause (*a*) shall lie unless the memorandum of appeal is accompanied by a certificate by the competent authority to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(*2*) The period of limitation for an appeal under this section shall be sixty days.

36 of 1963. (*3*) The provisions of section 5 of the Limitation Act, 1963, shall be applicable to appeal under this section.

CHAPTER VIII

SOCIAL SECURITY AND CESS IN RESPECT OF BUILDING AND OTHER CONSTRUCTION WORKERS

Levy and collection of cess.

100. (*1*) There shall be levied and collected a cess for the purposes of social security and welfare of building workers at such rate not exceeding two per cent. but not less than one per cent. of the cost of construction incurred by an employer, as the Central Government may, by notification, from time to time specify.

Explanation.— For the purposes of this sub-section, the cost of construction shall not include:—

(*a*) the cost of land; and

(*b*) any compensation paid or payable to an employee or his kin under Chapter VII.

(*2*) The cess levied under sub-section (*1*) shall be collected from every employer undertaking building or other construction work in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority or such other authority notified by the State Government is required, as may be prescribed by the Central Government.

(*3*) The proceeds of the cess collected under sub-section (*2*) shall be deposited by the local authority or such other authority notified by the State Government to the Board in such manner as may be prescribed by the Central Government.

Explanation.—For the purposes of this Chapter, the expression "Board" means the Building and other construction Workers' Welfare Board constituted under section 7.

(*4*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), the cess leviable under this Chapter including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed by the Central Government on the basis of the quantum of the building or other construction work involved.

Interest payable on delay in payment of cess.

101. If any employer fails to pay any amount of cess payable under section 100 within such time as may be prescribed by the appropriate Government, such employer shall be liable to pay interest at such rate as may be prescribed by the Central Government, on the amount of cess, to be paid, for the period from the date on which such payment is due till such amount is actually paid.

Power to exempt from cess.

102. Notwithstanding anything contained in this Chapter, the Central Government may, by notification, exempt any employer or class of employers in a State from the payment of cess payable under this Chapter where such cess is already levied and payable under any corresponding law in force in that State.

Self-assessment of cess.

103. (*1*) The employer shall, within sixty days or such period as may be notified by the appropriate Government of the completion of his each building and other construction work, pay such cess (adjusting the advance cess already paid under section 100) payable under this Chapter on the basis of his self-assessment on the cost of construction worked out on the basis of the documents and in the manner prescribed by the Central Government and after such payment of cess, he shall file a return under clause (*d*) of section 123.

(*2*) If the officer or the authority to whom or to which the return has been filed under sub-section (*1*) finds any discrepancy in the payment under the self assessment and the payment required under the return referred to in that sub-section, then, he or it shall, after making or causing to be made such inquiry as he or it thinks fit and after such inquiry make the appropriate assessment order.

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

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

104. If any amount of cess payable by any employer under section 103 is not paid within the date specified in the order of assessment made under sub-section (*2*) of section 103, it shall be deemed to be in arrears and the authority prescribed by the Central Government in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the amount of cess:

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

Appeal to appellate authority.

105. (*1*) Any employer aggrieved by an order of assessment made under section 103 or by an order imposing penalty made under section 104 may, within such time as may be prescribed by the Central Government, appeal to such appellate authority in such form and in such manner as may be prescribed by the Central Government.

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

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

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

Registration of building workers as beneficiaries.

106. Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be registered by the officer authorised by the Board as a beneficiary under this Chapter in such manner as may be prescribed by the Central Government.

Cessation as a beneficiary.

107. (*1*) A building worker who has been registered as a beneficiary under section 106 shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

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

Explanation.—For computing the period of three years under this sub-section as a beneficiary registered with a Board, there shall be added any period for which a person had been a beneficiary registered with any other Board immediately before his registration with the Board.

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

108. (*1*) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

(*a*) the amount of any cess levied under sub-section (*1*) of section 100;

(*b*) any grants and loans made to the Board by the Central Government;

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

(*2*) The Building and other Construction Worker, Welfare Fund shall be applied for meeting—

(*a*) expenses of the Board in the discharge of its functions under sub-section (*6*) of section 7; and

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

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

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

CHAPTER IX

SOCIAL SECURITY FOR UNORGANISED WORKERS

Framing of scheme for unorganised workers, and constitution of social security fund for gig workers, platform workers, etc.

109. (*1*) The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to—

(*i*) life and disability cover;

(*ii*) health and maternity benefits;

(*iii*) old age protection;

(*iv*) education;

(*v*) housing; and

(*vi*) any other benefit as may be determined by the Central Government.

(*2*) The State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to—

(*i*) provident fund;

(*ii*) employment injury benefit;

(*iii*) housing;

(*iv*) educational schemes for children;

(*v*) skill upgradation of workers;

(*vi*) funeral assistance; and

(*vii*) old age homes.

(*3*) Any scheme notified by the Central Government may be—

(*i*) wholly funded by the Central Government; or

(*ii*) partly funded by the Central Government and partly funded by the State Government; or

(*iii*) partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the Central Government; or

(*iv*) funded from any source including corporate social responsibility fund within the meaning of the Companies Act, 2013 or any other such source as may be specified in the scheme. 18 of 2013.

(*4*) The Central Government may, by notification, constitute a Social Security Fund or funds for provision of social security to the unorganised workers, platform workers or gig workers or any class of such workers comprising of the funding received under sub-section (*3*) or from any other source as may be notified by the Central Government.

(*5*) The Social Security Fund or funds as constituted under sub-section (*4*) shall be administered by the Central Government in such manner as may be prescribed by the Central Government.

(*6*) Every scheme notified by the Central Government under sub-section (*1*) shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to all or any of the following, namely:—

(*i*) scope of the scheme;

(*ii*) authority to implement the scheme;

(*iii*) beneficiaries of the scheme;

(*iv*) resources of the scheme;

(*v*) agency or agencies that will implement the scheme;

(*vi*) redressal of grievances; and

(*vii*) any other relevant matter,

and a special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of such scheme.

Funding of State Government schemes.

110. (*1*) Any scheme notified by the State Government under sub-section (*2*) of section 109 maybe—

(*a*) wholly funded by the State Government; or

(*b*) partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be specified in the scheme by the State Government; or

(*c*) funded from any source including corporate social responsibility fund referred to in clause (*iv*) of sub-section (*3*) of section 109 or any other such source as may be specified in the scheme.

(*2*) The State Government may seek financial assistance from the Central Government for the schemes formulated by it.

(*3*) The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

Record keeping.

111. The Government formulating and notifying the scheme under this Chapter shall provide therein the form and manner of keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained:

Provided that such record shall, as far as may be possible, bear continuous number for the purpose of proper management of the scheme and for avoiding any duplication and overlapping in records.

Workers facilitation centres.

112. The Central Government or the State Government may set up such workers facilitation centres as may be considered necessary from time to time to perform the following functions, namely:—

(*a*) disseminate information on available social security schemes for the unorganised workers;

(*b*) facilitate filling, processing and forwarding of application forms for registration of unorganised workers;

(*c*) assist unorganised worker to obtain registration from the authority specified in the scheme; and

(*d*) facilitate the enrolment of the registered unorganised workers in social security schemes.

Registration of unorganised worker.

113. (*1*) Every unorganised worker shall be eligible for registration, for the purposes of this Chapter, subject to the fulfilment of the following conditions, namely:—

(*a*) he has completed sixteen years of age or such age as may be prescribed by the Central Government;

(*b*) he has submitted a self-declaration electronically or otherwise in such form, in such manner and to such authority containing such information as may be prescribed by the Central Government.

(*2*) Every eligible unorganised worker under sub-section (*1*) shall make an application for registration in such form along with such documents, to such registering authority as may be prescribed by the Central Government and such unorganised worker shall be registered by such registering authority by assigning a distinguishable number to his application or by linking the application to the Aadhaar number.

(*3*) A registered unorganised worker shall be eligible to avail the benefit of a scheme framed under this Chapter on making such contribution, if any, as may be specified in the scheme.

(*4*) The Central Government, or as the case may be, the State Government shall make such contribution in a scheme as may be specified therein.

Schemes for gig workers and platform workers.

114. (*1*) The Central Government may formulate and notify, from time to time, suitable social security schemes for gig workers and platform worker on matters relating to—

(*a*) life and disability cover;

(*b*) health and maternity benefits;

(*c*) old age protection; and

(*d*) any other benefit as may be determined by the Central Government.

(*2*) Every scheme formulated and notified under sub-section (*1*) may provide for—

(*a*) the manner of administration of the scheme;

(*b*) the agency or agencies for implementing the scheme;

(*c*) the role of aggregators in the scheme;

(*d*) the sources of funding of the scheme; and

(*e*) any other matter as the Central Government may consider necessary for the efficient administration of the scheme.

CHAPTER X

FINANCE AND ACCOUNTS

Accounts.

115. Each of the Social Security Organisations shall maintain proper accounts of its income and expenditure in such form and in such manner as the appropriate Government may, after consultation with the Comptroller and Auditor-General of India, specify.

Audit.

116. (*1*) The accounts of each of the Social Security Organisations shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the respective Social Security Organisation to the Comptroller and Auditor-General of India.

(*2*) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of a Social Security Organisation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, documents and papers and to inspect any of the offices of the Social Security Organisation.

(*3*) The accounts of a Social Security Organisation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Social Security Organisation which shall along with its comments on the audit report of the Comptroller and Auditor-General of India forward the same to the appropriate Government.

Budget estimates.

117. (*1*) Each of the Social Security Organisations shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the appropriate Government before such date as may be fixed by it in that behalf.

(*2*) The budget shall contain provisions adequate in the opinion of the appropriate Government for the discharge of the liabilities incurred by the Social Security Organisation and for the maintenance of a working balance.

Annual report.

118. (*1*) Each of the Social Security Organisations shall submit to the appropriate Government an annual report of its work and activities along with the budget finally adopted by the Social Security Organisation.

(*2*) The appropriate Government shall cause a copy of the annual report, budget and the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the respective Social Security Organisation thereon to be laid before each House of Parliament or the State legislature, as the case may be.

Valuation of assets and liabilities.

119. Each of the fund maintained by a Social Security Organisation or by an establishment under this Code shall have a valuation of its assets and liabilities made by a valuer or actuary, as the case may be, appointed, with the prior approval of the appropriate Government, by such Social Security Organisation or the establishment, as the case may be, in the following manner, namely:—

(*a*) in case of Central Board, annually;

(*b*) in case of Corporation, once in every three years;

(*c*) in case of any other Social Security Organisation or establishment, as specified by the appropriate Government, by order:

Provided that the appropriate Government, if it considers necessary, may direct such valuation to be made at such intervals other than provided in this section.

Holding of property, etc.

120. (*1*) A Social Security Organisation may, subject to such conditions as may be prescribed by the appropriate Government, acquire and hold property, both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for such purposes and for the purposes for which the said Social Security Organisation is established.

(*2*) Subject to such conditions as may be prescribed by the appropriate Government, a Social Security Organisation may, from time to time invest any moneys vested in it, which are not immediately required for expenses properly defrayable and may, subject to as aforesaid, from time to time re-invest or realise such investments.

(*3*) Each of the Social Security Organisations may, with the previous sanction of the appropriate Government and on such terms as may be prescribed by such Government, raise loans and take measures for discharging such loans.

(*4*) Each of the Social Security Organisations, may, with the previous sanction of the appropriate Government and on such terms as may be prescribed by such Government, constitute for the benefit of its officers and staff or any class of them, such provident or other benefit funds as it may think fit.

Writing off of losses.

121. Subject to the conditions as may be prescribed by the appropriate Government, where any of the Social Security Organisations is of the opinion that the amount of contribution, cess, interest and damages due to it, under this Code, is irrecoverable, the concerned Social Security Organisation may sanction the writing off of the said amount in such manner as may be prescribed by the appropriate Government.

CHAPTER XI

AUTHORITIES, ASSESSMENT, COMPLIANCE AND RECOVERY

Appointment of Inspector-cum-Facilitators and their powers.

122. (*1*) The Central Government for the purposes of Chapter III and Chapter IV and the provisions in this Code relating to those Chapters, and the appropriate Government for the purposes of other provisions of this Code, may, by notification, appoint Inspector-cum-Facilitators who shall exercise the powers conferred on them under sub-section (*6*) in accordance with the inspection scheme referred to in sub-section (*2*).

(*2*) The Central Government for the purposes of Chapter III and Chapter IV and the provisions in this Code relating to those Chapters and the appropriate Government in respect of other provisions of this Code, may, by notification, lay down an inspection scheme which may provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically and such scheme shall, *inter alia*, have provisions to cater to special circumstances for assigning inspections and calling for information from the establishment or any other person.

(*3*) Without prejudice to the provisions of sub-section (*2*), the Central Government for the purposes of Chapter III and Chapter IV and the other provisions in this Code relating to those Chapters and the appropriate Government in relation to other provisions of this Code, may, by notification, confer such jurisdiction of randomised selection of inspection for the purposes of this Code, to the Inspector-cum-Facilitators as may be specified in such notification.

(*4*) Without prejudice to the powers of the Central Government or the appropriate Government, as the case may be, under this section, the inspection scheme may be designed taking into account, *inter alia*, the following factors, namely:—

(*a*) assignment of unique number to each establishment (which will be same as the registration number allotted to that establishment), each Inspector-cum-Facilitator and each inspection in such manner as may be notified for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government;

(*b*) timely uploading of inspection reports in such manner and subject to such conditions as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government;

(*c*) provisions for special inspections based on such parameters as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government; and

(*d*) the characteristics of employment relationships, the nature of work and characteristics of the workplaces based on such parameters as may be notified, for the purposes of Chapter III and Chapter IV and the other provisions of this Code relating to those Chapters, by the Central Government, and in respect of other provisions of this Code as aforesaid, by the appropriate Government.

(*5*) The Inspector-cum-Facilitator may—

(*a*) advice the employers and employees relating to compliance with the provisions of this Code; and (*b*) inspect the establishments as assigned to him under the provisions of this Code,

subject to the instructions or guidelines issued by the appropriate Government from time to time.

(*6*) Subject to the provisions of sub-section (*4*), the Inspector-cum-Facilitator may,—

(*a*) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is an employee of the establishment;

(*b*) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(*c*) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;

(*d*) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and

(*e*) exercise such other powers as may be prescribed by the appropriate Government.

(*7*) Any person required to produce any document or to give any information required by an Inspector-cum-Facilitator for the purposes of sub-section (*5*) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

45 of 1860.

2 of 1974.

(*8*) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure for the purposes of sub-section (*5*), as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

Maintenance of records, registers, returns, etc.

123. An employer of an establishment shall—

(*a*) maintain records and registers in the form prescribed by the appropriate Government, electronically or otherwise, containing such particulars and details with regard to persons employed, muster roll, wages and such other particulars and details, in such manner, as may be prescribed by the appropriate Government including—

(*i*) number of days for which work performed;

(*ii*) number of hours of work performed by the employees;

(*iii*) wage paid;

(*iv*) leave, leave wages, wages for overtime work and attendance;

(*v*) employees identification number, by whatever nomenclature it may be called;

(*vi*) number of dangerous occurrences, accidents, injuries in respect of which compensation has been paid by the employer and the amount of such compensation relating to Chapter IV and Chapter VII, respectively;

(*vii*) statutory deductions made by employer from the wages of an employee in respect of Chapter III and Chapter IV;

(*viii*) details as to cess paid in respect of building and other construction work;

(*ix*) total number of employees (regular, contractual or fixed term employment) on the day specified;

(*x*) persons recruited during a particular period;

(*xi*) occupational details of the employees; and

(*xii*) vacancies for which suitable candidates were not available during the specified period.

(*b*) display notices at the work places of the employees in such manner and form as may be prescribed by appropriate Government;

(*c*) issue wage slips to the employees, in electronic forms or otherwise; and

(*d*) file such return electronically or otherwise to such officer or authority in such manner and during such periods as may be prescribed by the appropriate Government.

Employer not to reduce wages, etc.

124. No employer in relation to an establishment to which this Code or any scheme framed thereunder applies shall, by reason only of his liability for the payment of any contribution under this Code, or any charges thereunder reduce whether directly or indirectly, the wages of any employee to whom the provisions of this Code or any scheme framed thereunder applies or the total quantum of benefits to which such employee is entitled under the terms of his employment, express or implied.

Assessment and determination of dues from employer.

125. (*1*) The Central Government may, by notification, authorise, such officers of the Central Board or the Corporation, as the case may be, not below the rank of Group A officer of that Government, to function as the Authorised Officers for the purposes of Chapter III or Chapter IV, as the case may be, who may, by order—

(*a*) in a case where a dispute arises regarding the applicability of Chapter III or Chapter IV, as the case may be, to an establishment, decide such dispute; and

(*b*) determine the amount due from any employer under any provision of Chapter III or Chapter IV, as the case may be, or the schemes made under such Chapter; and

(*c*) for any of the purposes relating to clause (*a*) and clause (*b*), conduct such inquiry, as he may deem necessary for such purposes:

Provided that no proceeding under this sub-section shall be initiated after the expiry of the period of five years from the date on which the dispute referred to in clause (*a*) is alleged to have been arisen or, as the case may be, the amount referred to in clause (*b*) is alleged to have been due from an employer.

(*2*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the inquiry under sub-section (*1*), as far as practicable, shall be held on day-to-day basis and endeavour shall be made to ensure that the inquiry is concluded within a period of two years: 5 of 1908.

Provided that where the inquiry is not concluded within the said period of two years, the Authorised Officer conducting such inquiry shall record the circumstances and reasons for not having concluded so and submit the circumstances and reasons so recorded to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or such other officer authorised by him in this behalf:

Provided further that the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, after considering the circumstances and the reasons which have been submitted by the Authorised Officer may grant an extension of one year to conclude the said inquiry:

Provided also that the inquiries which are pending immediately before the date of commencement of this Code shall be concluded by the Authorised Officer within a period not exceeding two years from the date of such commencement.

(*3*) The Authorised Officer conducting the inquiry under sub-section (*1*) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:— 5 of 1908.

(*a*) enforcing the attendance of any person or examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavit; and

(*d*) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. 45 of 1860.

(*4*) No order shall be made under sub-section (*1*), unless the employer concerned is given a reasonable opportunity of representing his case.

(*5*) Where the employer, employee or any other person required to attend the inquiry under sub-section (*1*) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so by the Authorised Officer conducting the inquiry, such inquiry officer may decide the applicability of the relevant provisions of this Code or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(*6*) Where an order under sub-section (*1*) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the Authorised Officer who conducted the inquiry for setting aside such order and if the Authorised Officer is satisfied that the show cause notice was not duly served or that such employer was prevented by any sufficient cause from appearing when the inquiry was held, the Authorised Officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the Authorised Officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the Authorised Officer.

Explanation.—Where an appeal has been preferred under this Code against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(*7*) No order passed under this section shall be set aside on any application under sub-section (*4*) unless notice thereof has been served on the opposite party.

Review of orders passed under section 125.

126. (*1*) Any person considering himself aggrieved by an order made under section 125, but from which no appeal has been preferred under section 127, and if such person, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order made against him, may apply for a review of that order to the Authorised Officer who made the order:

Provided that such Authorised Officer may also on his own motion review his order if he is satisfied that it is necessary so to do in the interest of justice.

(*2*) Every application for review under sub-section (*1*) shall be filed in such form and manner and within such time as may be prescribed by the Central Government.

(*3*) Where it appears to the Authorised Officer, receiving an application for review under sub-section (*2*), that there is no sufficient ground for review, he shall reject the application.

(*4*) Where the Authorised Officer is of the opinion that such application for review may be granted, he shall grant the same:

Provided that no such application shall be granted,—

(*a*) without previous notice to all the opposite parties in the application to enable them to appear and be heard in support of the order against which the review is filed; and

(*b*) on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

Appeal against order of Authorised Officer.

127. If an employer is not satisfied with the order made under section 125, he may prefer an appeal to an appellate authority as may be prescribed by the Central Government, within sixty days of the date of such order on deposit of twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the concerned Social Security Organisation:

Provided that such order made under section 125 shall not be brought into operation for such period as may be notified by the Central Government to provide convenience to the employer to prefer appeal:

Provided further that if the employer finally succeeds in the appeal, the concerned Social Security Organisation shall refund such deposit to the employer together with interest at such rate as may be prescribed by the Central Government within forty-five days of such final order in appeal.

Determination of escaped amount.

128. Where an order determining the amount due from an employer under section 125 or section 126 has been passed and if the Authorised Officer who passed the orders—

(*a*) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(*b*) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 125 or section 126 has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (*a*) on the part of the employer,

he may, within a period of five years from the date of communication of the order passed under section 125 or section 126, reopen the case and pass appropriate orders redetermining the amount due from the employer in accordance with the provisions of this Chapter:

Provided that no order redetermining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

Interest on amount due.

129. Except where expressly provided otherwise in this Code, the employer shall be liable to pay simple interest at such rate as may be prescribed by the Central Government, from the date on which any amount has become due under this Code till the date of its actual payment.

Power to recover damages.

130. Where an employer makes default in the payment of any contribution which he is liable to pay in accordance with the provisions of Chapter III or Chapter IV, as the case may be, or any scheme framed thereunder or in the transfer of accumulations under Chapter III, or in the payment of any charges payable under any other provision of this Code, the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or such other officer as may be authorised, by notification, by the appropriate Government, may levy on, and recover from, the employer by way of damages, an amount not exceeding the amount of arrears, in such manner as may be prescribed by the Central Government:

Provided that before levying and recovering such damages, the employer shall be given an opportunity of being heard:

Provided further that the Central Board or the Corporation, as the case may be, may reduce or waive the damages levied under this section in relation to an establishment for which a resolution plan or repayment plan recommending such waiver has been approved
31 of 2016. by the adjudicating authority established under the Insolvency and Bankruptcy Code, 2016 subject to the terms and conditions as may be specified by notification, by the Central Government.

131. (*1*) Any amount due from an employer or any other person in relation to an establishment including any contribution or cess payable, charges, interest, damages, or benefit or any other amount may, if the amount is in arrear, be recovered in the manner specified in this section and sections 132 to 134. Recovery of amount due.

(*2*) Where any amount is in arrear under this Code, the Authorised Officer, or the competent authority, as the case may be, shall issue to the Recovery Officer referred to in sub-section (*4*), a certificate under his signature, electronically or otherwise, specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below, namely:—

(*a*) attachment and sale of the movable or immovable property of the establishment or, as the case may be, of the employer;

(*b*) arrest of the employer and his detention in prison;

(*c*) appointing a receiver for the management of the movable or immovable properties of the defaulter:

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount or arrears specified in the certificate, the Recovery Officer may move such proceeding against the property of the employer for recovery of the whole or any part of such arrears.

(*3*) The Authorised Officer or the competent authority, as the case may be, may issue a certificate under sub-section (*2*), notwithstanding that proceeding for recovery of the arrears by any other mode has been taken.

(*4*) The Authorised Officer or the competent authority, as the case may be, may forward the certificate issued under this section, to the Recovery Officer within whose jurisdiction the employer—

(*a*) carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or

(*b*) resides or any movable or immovable property of, the establishment or, the employer is situates.

(*5*) Where an establishment or the employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the Authorised Officer or the competent authority, as the case may be—

(*a*) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction, or

(*b*) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government, specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and thereupon that Recovery Officer shall proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the Authorised Officer or the competent authority, as the case may be.

Validity of certificate and amendment thereof.

132. (*1*) When the Authorised officer or the competent authority, as the case may be, issues a certificate to a Recovery Officer under section 131, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall be entertained by the Recovery Officer.

(*2*) Notwithstanding the issue of a certificate to a Recovery Officer, the Authorised Officer or the competent authority, as the case may be, shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer.

(*3*) The Authorised Officer or the competent authority, as the case may be, shall intimate to the Recovery Officer any orders of withdrawing or cancelling a certificate or any correction made by him in respect of the said certificate under sub-section (*2*).

(*4*) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Authorised Officer or the competent authority, as the case may be, may grant time to the employer for payment of the amount recoverable under the certificate and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(*5*) Where a certificate for the recovery of amount has been issued, the Authorised Officer or the competent authority, as the case may be, shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(*6*) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued under section 131 has been modified in appeal or other proceeding under this Code, resulting in reduction of the demand but the order is the subject-matter of further proceeding under this Code, the Authorised Officer or the competent authority, as the case may be, shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(*7*) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Code, the Authorised Officer or the competent authority, as the case may be, shall, when the order being the subject-matter of such appeal or other proceeding become final and conclusive, amend the certificate or withdraw it, as the case may be, in consonance with such finality or conclusion.

Other modes of recovery.

133. (*1*) Notwithstanding the issue of a certificate to the Recovery Officer under section 131, the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation so authorised by it in this behalf, may, recover the amount by any one or more of the modes provided in this section.

(*2*) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, may, require such person to deduct from the said amount the arrears so due, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation so authorised by it in this behalf:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908. 5 of 1908.

(*3*) (*a*) The Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or, as the case may be, the establishment, to pay to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer authorised by it in this behalf either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(*b*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(*c*) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf and in the case of a joint account to all the joint holders at their last addresses so known.

(*d*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(*e*) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(*f*) Where a person to whom a notice under this sub-section is sent objects to it by statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Code, whichever is less.

(*g*)The Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(*h*)The Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(*i*) Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Code, whichever is less.

(*j*) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceeding may be moved against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 131 to 134 and the notice shall have the same effect as an attachment of amount in arrears by the Recovery Officer in exercise of his powers under section 131.

(*4*) The Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf may apply to the court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(*5*) The Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other officer of such Social Security Organisation authorised by it in this behalf, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961. 43 of 1961.

Application of certain provisions of Income-tax Act.

134. The provisions of the Second Schedule and the Third Schedule to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules refer to the amount in arrears of the amount mentioned in section 131 of this Code instead of to the income-tax: 43 of 1961.

Provided that any reference in the said provisions and the rules to the "assessees" shall be construed as a reference to an employer as defined in this Code.

CHAPTER XII

OFFENCES AND PENALTIES

Penalty for failure to pay contributions, etc.

135. If any person,—

(*a*) being an employer, fails to pay any contribution which he is liable to pay under this Code or rules, regulations or schemes made thereunder; or

(*b*) deducts or attempts to deduct from the wages of an employee, the whole or any part of employer's contribution; or

(*c*) in contravention of the provisions of this Code, reduces the wages or any privilege or benefits admissible to an employee; or

(*d*) in contravention of the provisions of Chapter IV or Chapter VI or rules, regulations or schemes made or framed under this Code relating, respectively, to such Chapters, dismisses, discharges, reduces in rank or otherwise penalises a woman employee; or (*e*) fails or refuses to submit any return, report, statement or any other information required under this Code or any rules, regulations or schemes made or framed thereunder; or

(*f*) obstructs any Inspector-cum-Facilitator or other officer or staff of the Central Board or the Corporation or other Social Security Organisation or a competent authority in the discharge of his duties; or

(*g*) fails to pay any amount of gratuity to which an employee is entitled under this Code; or

(*h*) fails to pay any amount of compensation to which an employee is entitled under this Code; or

(*i*) fails to provide any maternity benefit to which a woman is entitled under this Code; or

(*j*) fails to send to a competent authority a statement which he is required to send under Chapter VII; or

(*k*) fails to produce on demand by the Inspector-cum-Facilitator any register or document in his custody kept in pursuance of this Code or the rules, regulations or schemes made or framed thereunder;

(*l*) fails to pay the cess for building workers which he is liable to pay under this Code; or

(*m*) is guilty of any contravention of or non-compliance with any of the requirements of this Code or the rules or the regulations or schemes made or framed thereunder in respect of which no special penalty is provided in this Chapter; or

(*n*) obstructs executive officer in exercising his functions under Chapter XIII, or

(*o*) dishonestly makes a false return, report, statement or information to be submitted thereunder,

he shall be punishable—

(*i*) where he commits an offence under clause (*a*) with imprisonment for a term which may extend to three years but—

(*a*) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of one lakh rupees;

(*b*) which shall not be less than six months, in any other case and shall also be liable to fine of fifty thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(*ii*) where he commits an offence under any of the clauses (*b*) to (*g*) [except clause (*e*)] , clauses (*i*) and (*k*) to (*m*), with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both;

(*iii*) where he commits an offence under clauses (*e*), (*h*), (*j*) or clause (*n*) with a fine which may extend to fifty thousand rupees;

(*iv*) where he commits an offence under clause (*o*), with imprisonment for a term which may extend to six months.

Enhanced punishment in certain cases after previous conviction.

136. Whoever, having been convicted by a court of an offence punishable under this Code, commits the same offence shall, for second, or every subsequent such offence, be punishable with imprisonment for a term which may extend to two years and with fine of two lakh rupees:

Provided that where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation which under this Code he is liable to pay, he shall, for such second or subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of three lakh rupees.

Offences by companies.

137. (*1*) Where an offence under this Chapter has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section,—

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

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

Cognizance of offences.

138. (*1*) No court shall take cognizance of an offence punishable under this Code except on a complaint made by such officer or other person as may be prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed thereunder, by the appropriate Government.

(*2*) Notwithstanding anything contained in sub-section (*1*), no prosecution under this Code shall be instituted except by or with the previous sanction of the authority prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made thereunder, by the appropriate Government.

(*3*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Chapter.

Prior opportunity before prosecution.

139. Notwithstanding anything contained in this Chapter, the Inspector-cum-Facilitator or any other officer notified for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, shall, before initiation of prosecution proceeding against an employer for any offence under this Chapter, give an opportunity to the employer to comply with the aforesaid relevant provisions by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, then, no such proceeding shall be initiated against the employer; but no such opportunity shall be accorded to an employer, if the violation of the same nature of such provisions is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Chapter.

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Compounding of offences.

140. (*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence committed for the first time, punishable under this Chapter, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application made, either before or after the institution of any prosecution, be compounded by an officer authorised by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, in such manner as may be prescribed by the Central Government on payment by the offender to the appropriate Government such amount as may be notified by that Government.

(*2*) Nothing contained in sub-section (*1*) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date —

(*a*) of commission of a similar offence which was earlier compounded; or

(*b*) of commission of similar offence for which such person was earlier convicted.

(*3*) Every officer referred to in sub-section (*1*) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government.

(*4*) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed by the Central Government.

(*5*) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(*6*) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought to the notice of the court in which the prosecution is pending in writing by the officer referred to in sub-section (*1*), and on such notice of the compounding of the offence being given to the court, the person against whom the offence is so compounded shall be discharged.

(*7*) Any person who fails to comply with the order made by the officer referred to in sub-section (*1*), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

CHAPTER XIII

EMPLOYMENT INFORMATION AND MONITORING

Reporting of vacancies to career centres.

141. (*1*) The appropriate Government may, by notification, require that from such date as may be specified in the notification, the employer in every establishment or any class or category of establishments, before filling up any vacancy in any employment in that establishment or such class or category of establishment, as the case may be, shall report or cause to be reported that vacancy to such career centre as may be specified in the notification, and the employer shall thereupon comply with such requisition.

(*2*) For the purposes of sub-section (*1*), the appropriate Government may prescribe the following, namely:—

(*i*) the manner in which the vacancies, referred to in sub-section (*1*), shall be reported to the career centres electronically or otherwise;

(*ii*) the form in which such vacancies shall be reported to the career centres; and

(*iii*) the manner and form of filing the return by the employer to the concerned career centre.

(*3*) Nothing in sub-sections (*1*) and (*2*) shall be deemed to impose any obligation upon any employer to recruit any person through the career centre to fill any vacancy merely because such vacancy has been reported.

(*4*) The executive officer shall have access to any record or document in the possession of any employer required to furnish any information or returns for the purposes of this Chapter and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of such records or documents or ask any question necessary for obtaining any information required.

Exclusions from application of this Chapter.

142. (*1*) The provisions of section 141 shall not apply in relation to vacancies,—

(*a*) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment in plantation; or

(*b*) in any employment in domestic service; or

(*c*) in any employment connected with the staff of Parliament or any State Legislature; or

(*d*) in any employment the total duration of which is less than ninety days; or

(*e*) in any class or category of establishments as may be notified by the Central Government; and

(*f*) in any other employment as may be notified by the Central Government.

(*2*) Unless the Central Government, by notification direct, the provisions of this Chapter shall not apply in relation to—

(*a*) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or through independent recruitment agencies such as Union Public Service Commission, Staff Selection Commission or a State Public Service Commission or any other agencies as may be notified by the Central Government; or

(*b*) vacancies in an employment which carries a monthly remuneration of less than an amount notified by the appropriate Government.

CHAPTER XIV

MISCELLANEOUS

Application of Aadhaar.

143. (*1*) An employee or unorganised worker or any other person, as the case may be, for—

(*a*) registration as member or beneficiary; or

(*b*) seeking benefit whether in kind, cash or medical sickness benefit or pension, gratuity or maternity benefit or any other benefit or for withdrawal of fund; or

(*c*) receiving any payment or medical attendance as insured person himself or for his dependants, under this Code or rules, regulations or schemes made or framed thereunder has to establish his identity or, as the case may be, the identity of his family members or dependants through Aadhaar number in such manner as may be prescribed by the Central Government and for such purpose the expression "Aadhaar" shall have the meaning as defined in clause (*a*) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. 18 of 2016.

(*2*) For the purposes of sub-section (*1*), the Aadhaar number issued to an individual shall be in accordance with the provisions of section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. 18 of 2016.

Power to exempt establishment.

144. (*1*) Notwithstanding anything contained in this Code, the appropriate Government may, by notification, and subject to the conditions which may include the eligibility conditions to be fulfilled prior to exemption and the conditions to be complied with after exemption, as may be prescribed by the Central Government in this behalf, grant exemption to an establishment or class of establishments (including factory or other establishments under the control of Central Government or State Government or local bodies) or employees or class of employees, from any or all of the provisions of this Code as may be specified in the notification and may renew for further period such exemption by like notification:

Provided that no such exemption,—

(*i*) in respect of Chapter III, without prior consultation with the Central Board; and

(*ii*) in respect of Chapter IV, without prior consultation with the Corporation,

shall be granted or renewed and the Central Board or the Corporation, as the case may be, shall on such consultation forward its view to the appropriate Government within such time as may be prescribed by that Government:

Provided further that in case such exemption is in respect of those Chapters or in respect of any of them, the establishment or class of establishments so exempted shall, in order to provide benefits which are substantially similar or superior to the benefits provided in those Chapters or any of them arrange insurance of such value which the appropriate Government considers appropriate for granting such exemption.

(*2*) The appropriate Government may, in the notification referred to in sub-section (*1*), specify therein conditions as may be prescribed which the exempted establishment or the class of establishment or employee or class of employees, as the case may be, shall comply with after such exemption.

(*3*) The exemption granted under sub-section (*1*) to an establishment or class of establishment or employee or class of employees, as the case may be, shall be initially for a period of three years from the date of publication of such notification and may be extended by the appropriate Government to the extent of such period as may be prescribed by the Central Government.

(*4*) The exemption granted under sub-section (*1*) shall only be granted if the employees in the establishment or class of establishments or employee or the class of employees so exempted are otherwise in receipt of benefits substantially similar or superior to the benefits provided in the provisions of this Code to be so exempted.

(*5*) If the establishment or class of establishments or employee or class of employees in respect of whom the exemption has been granted under sub-section (*1*), fails to comply with, any conditions specified under that sub-section, then, the appropriate Government may on such failure cancel the exemption so granted.

Liability in case of transfer of establishment.

145. Where an employer transfers his establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any liabilities, cess or any other amount payable under this Code in respect of the periods up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

The members, officers and staff to be public servants.

146. Every member of a Social Security Organisation and the officers and staff thereof, any Inspector-cum-Facilitator, competent authority, Authorised officer, Recovery Officer and any other person discharging any function under this Code shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

147. No suit, prosecution or other legal proceeding shall lie against —

(*i*) the Central Government;

(*ii*) a State Government;

(*iii*) a Social Security Organisation;

(*iv*) a competent authority;

(*v*) any officer or staff of a Social Security Organisation; or

(*vi*) any other person or authority,

discharging the functions or exercising the powers under this Code, for anything which is in good faith done or intended to be done in pursuance of this Code or of any rules, regulations or schemes made or framed thereunder.

Misuse of benefits.

148. If the appropriate Government is satisfied in the manner prescribed by it that any establishment or any other person has misused any benefit provided to him under this Code or rules, regulations or schemes made or framed thereunder, then, such Government may, by notification, deprive such establishment or other person, as the case may be, from such benefit for such time as may be specified in the notification:

Provided that no such order shall be passed unless an opportunity of being heard is given to such establishment or other person, as the case may be.

Power of Central Government to give directions.

149. The Central Government may give directions to the Social Security Organisations in respect of matters relating to the implementation of the provisions of this Code.

Power to frame schemes.

150. The appropriate Government may, subject to the condition of previous publication, frame schemes not inconsistent with this Code, for the purposes of giving effect to the provisions thereof.

Protection against attachment, etc.

151. (*1*) Notwithstanding anything contained in any law for the time being in force, the amount standing to be credited in favour of the employee under Chapters III, IV, V, VI or VII or, of any member of any fund under this Code, or of any exempted employee in a provident fund maintained by his employer, shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by such employee or member or the exempted employee, as the case may be.

(*2*) Any amount standing to the credit of a member in the fund or of an exempted employee in a provident fund maintained by his employer at the time of the death of such member or the exempted employee, as the case may be, and payable to his nominee under the scheme or the rules of the fund shall, subject to any deduction authorised by the said scheme or rules, as the case may be, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before his death and shall also not be liable to attachment under any decree or order of any court.

(*3*) Notwithstanding anything contained in any other law for the time being in force, any amount due under the Chapters referred to in sub-section (*1*) shall be the charge on the assets of the establishment to which it relates and shall be paid in priority in accordance with the provisions of section 53 of the Insolvency and Bankruptcy Code, 2016. 31 of 2016.

Power to amend Schedule.

152. (*1*) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification amend the First Schedule, Fourth Schedule, Fifth Schedule and Sixth Schedule by way of addition or deletion therein and upon such addition or deletion, the Schedules shall stand to have been amended accordingly.

(*2*) If the appropriate Government is satisfied that it is necessary or expedient so to do, it may, by notification amend the Second Schedule and Third Schedule by way of addition therein and not otherwise, and upon such addition, the Schedule shall stand to have been amended accordingly.

Power of appropriate Government to make rules.

153. (*1*) The appropriate Government may, by notification, and subject to the condition of previous publication, make rules not inconsistent with this Code, for the purpose of giving effect to the provisions thereof.

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

(*a*) the amount in connection with premium for Group Insurance Scheme of the beneficiaries under clause (*c*), educational schemes for the benefit of children of the beneficiaries under clause (*d*), medical expenses for treatment of major ailments of a beneficiary or, such dependant under clause (*e*), of sub-section (*6*) of section 7;

(*b*) other member who may authenticate by signature the orders and decisions of the Social Security Organisations and other instruments issued under sub-section (*2*) of section 9;

(*c*) bank or other financial institution in which the gratuity shall be invested for the benefit of minor under the second proviso to sub-section (*1*) of section 53;

(*d*) time, form and manner of nomination by an employee under sub-section (*1*), time to make fresh nomination under sub-section (*4*), the form and manner of modification of a nomination under sub-section (*5*), and the form for fresh nomination under sub-section (*6*), of section 55;

(*e*) time and form of application under sub-section (*1*) of section 56;

(*f*) the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the competent authority of the amount of the gratuity payable to an employee from the insurer under sub-section (*4*) of section 57;

(*g*) the qualifications and experience of competent authority under sub-section (*1*) of section 58;

(*h*) authority to whom an appeal may be preferred under sub-section (*3*) of section 72;

(*i*) class of employers and the form of notice-book under sub-section (*4*) of section 82;

(*j*) the interval for medical examination under proviso to sub-section (*1*) of section 84;

(*k*) form of statement and the manner of ascertaining the dependants under sub-section (*1*) and the manner of providing an advocate to the dependant under sub-section (*5*) of section 88;

(*l*) manner of recording memorandum under sub-section (*1*) of section 89;

(*m*) such other experience and qualifications for appointment as a competent authority under sub-section (*1*) of section 91;

(*n*) time-limit to pay the amount of cess under section 101;

(*o*) fees for appeal under sub-section (*2*) of section 105;

(*p*) conditions to acquire, hold, sell or otherwise transfer any movable or immovable property under sub-section (*1*), conditions to invest moneys, re-invest or realise investments under sub-section (*2*), terms to raise loans and take measures for discharging such loans under sub-section (*3*), and terms to constitute provident or other benefit funds under sub-section (*4*), of section 120;

(*q*) conditions and manner of writing off losses under section 121;

(*r*) other powers of Inspector-cum-Facilitator under clause (*e*) of sub-section (*6*) of section 122;

(*s*) form and manner for maintenance of records and registers and other particulars and details under clause (*a*), manner and form for display of notices at the work places of the employees under clause (*b*), and the manner, officer or authority and period of filing returns to the officer or authority under clause (*d*), of section 123;

(*t*) officer or other person who may make complaint under sub-section (*1*), and the authority to give sanction for prosecution under sub-section (*2*) of section 138;

(*u*) the manner and form for reporting vacancies to the career centres under clauses (*i*) and (*ii*), and the manner and form of filing the return by the employer to the concerned career centre under clause (*iii*), of sub-section (*2*), of section 141;

(*v*) the time within which the Central Board or the Corporation, as the case may be, shall forward its view to the appropriate Government under sub-section (*1*); and the conditions which the exempted establishment or the class of establishment or class of employees shall comply after exemption under sub-section (*2*), of section 144;

(*w*) any other matter which is required to be, or may be, prescribed by the appropriate Government under the provisions of this Code.

Power of Central Government to make rules.

154. (*1*) The Central Government may, by notification, and subject to the condition of previous publication, make rules not inconsistent with this Code, for the purpose of giving effect to the provisions thereof.

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

(*a*) manner of establishment and maintenance of career centre and the career services under clause (*8*) of section 2;

(*b*) the income of dependent parents (including father-in-law and mother-in-law of a woman employee) under sub-clause (*e*) of clause (*33*) of section 2;

(*c*) such other authority who, may appoint the person or persons to manage the affairs of the factory and the matters which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier, under the proviso to clause (*49*) of section 2;

(*d*) the time and manner of registration of establishment under section 3;

(*e*) the manner of administration of the funds vested in the Board under sub-section (*1*), the manner of performance of functions by an Executive Committee under sub-section (*3*), the terms and conditions, including tenure of office of member of the Central Board and Executive Committee and their duties under sub-section (*5*), and the manner of performance of such other functions under sub-section (*6*), of section 4;

(*f*) the manner of administration of Employees' State Insurance Scheme; and the manner of representation of States under clause (*d*), of sub-section (*1*), the manner of constitution of Standing Committee under sub-section (*3*), the manner of administration of the affairs of the Corporation, exercise of powers and performance of function by the Standing Committee under clause (*a*) of sub-section (*4*), the composition of the Medical Benefit Committee under sub-section (*5*), and the terms and conditions, including tenure of office, subject to which a member of the Corporation and Standing Committee shall discharge their respective duties under sub-section (*7*), of section 5;

(*g*) the manner of exercising the powers and performance of the functions by the National Social Security Board under sub-section (*1*), the number of persons to be nominated as members, their term of office and other conditions of their service, procedure to be followed in the discharge their functions and manner of filling vacancies under sub-section (*4*) and time, place and rules of procedure relating to transaction of business under sub-section (*6*), of section 6.

(*h*) welfare measures and facilities under clause (*j*) of sub-section (*6*) of section 7;

(*i*) meetings and procedure in regard to the transaction of business at meetings and the fee and allowances of members of Social Security Organisation or any Committee under sub-section (*4*), of section 9;

(*j*) manner of re-constitution of the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers Board or the Building Workers' Welfare Board, or any of the Committees under sub-section (*1*), and alternate arrangements for the purpose of administration of the relevant provisions of this Code under sub-section (*2*), of section 11;

(*k*) manner of establishment of a Pension Fund under clause (*b*) and the manner of establishment of Insurance Fund under clause (*c*), of sub-section (*1*) of section 16;

(*l*) the manner of maintenance of a provident fund account in relation to the establishment under sub-section (*1*) of section 21;

(*m*) the manner of transfer and dealing with accounts under section 22;

(*n*) form, manner, time-limits and fees for filing of appeal under sub-section (*2*) of section 23;

(*o*) salary and allowances of the Director General or the Financial Commissioner under sub-section (*3*) and the limit of maximum monthly salary under the proviso to sub-section (*6*), of section 24;

(*p*) limits for defraying expenditure under clause (*k*) of section 26;

(*q*) conditions to acquire, hold, sell or otherwise transfer any movable or immovable property under sub-section (*1*), conditions to invest moneys by the Corporation under sub-section (*2*), and the terms to raise loans and take measures for discharging such loans under sub-section (*3*), of section 27;

(*r*) manner of insurance of employees under section 28;

(*s*) the rate of contributions under sub-section (*2*), and the days on which the contributions fall due where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period under sub-section (*4*), of section 29;

(*t*) the percentage of income which may be spent on expenses and the limits for such expenses under section 30;

(*u*) the amount of payment under the proviso to clause (*f*) of sub-section (*1*), and the qualifications to claim benefits, conditions, rate and period thereof under sub-section (*3*), of section 32;

(*v*) the limits within which the Corporation may incur expenditure from the Employees' State Insurance Fund under section 33;

(*w*) the rates, periods and conditions for payment of dependants' benefit under sub-sections (*1*) and (*2*) of section 38;

(*x*) the qualification of an insured person and his family, to claim medical benefit and the conditions subject to which such benefit may be given, the scale and period thereof under sub-section (*3*), and the payment of contribution and other conditions under the second proviso to sub-section (*3*), of section 39;

(*y*) the terms and conditions subject to which the scheme may be operated under section 44;

(*z*) the contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions under sub-section (*2*) of section 45;

(*za*) the form of application to the competent authority under clause (*b*) of sub-section (*5*) of section 56;

(*zb*) the manner of obtaining an insurance by every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government under sub-section (*1*), the conditions to exempt and manner of establishing an approved gratuity fund under sub-section (*2*), and the time and manner to get establishment registered and the manner thereof under sub-section (*3*), of section 57;

(*zc*) the form of notice under sub-section (*1*), and the proof of pregnancy and proof of delivery under sub-section (*5*), of section 62;

(*zd*) the proof of miscarriage or medical termination of pregnancy under sub-section (*1*), the proof of tubectomy operation under sub-section (*2*), and the proof of illness under sub-section (*3*), of section 65;

(*ze*) the duration of breaks under section 66;

(*zf*) the number of employees and distance for creche facility under sub-section (*1*) of section 67;

(*zg*) gross misconduct under the second proviso to sub-section (*1*) of section 68;

(*zh*) rate of interest to be paid by the employer under clause (*a*) of sub-section (*3*) of section 77;

(*zi*) the manner of notice under the first proviso to sub-section (*1*), and the manner of transmitting money under sub-section (*3*), of section 92;

(*zj*) the form, manner and fee for application for claim or settlement under sub-section (*3*) of section 93;

(*zk*) the manner and time of collection of cess under sub-section (*2*), and manner of deposit of the cess so collected under sub-section (*3*), and the uniform rate or rates of advance cess under sub-section (*4*), of section 100;

(*zl*) the rate of interest in case of delayed payment of cess under section 101;

(*zm*) the manner of self-assessment of cess under sub-section (*1*) of section 103;

(*zn*) the authority to inquire and impose penalty under section 104;

(*zo*) time-limit to prefer appeal, appellate authority, form and manner of appeal under sub-section (*1*) of section 105;

(*zp*) manner of registration as beneficiary under section 106;

(*zq*) benefits of a beneficiary under sub-section (*2*) of section 107;

(*zr*) manner of administration of the Social Security Fund or funds under sub-section (*5*) of section 109;

(*zs*) eligible age for registration under clause (*a*) and form, manner, authority and information under clause (*b*) of sub-section (*1*), and the form of application and documents for registration and registering authority under sub-section (*2*), of section 113;

(*zt*) form, manner and time for filing application for review under sub-section (*2*), of section 126;

(*zu*) appellate authority to whom an employer may prefer an appeal under section 127, and rate of interest on the refund of deposit to the employer, under the second proviso, to the said section;

(*zv*) the rate of simple interest which the employer shall be liable to pay under section 129;

(*zw*) manner of levying and recovery of damages under section 130;

(*zx*) manner to certify under sub-section (*5*) of section 131;

(*zy*) manner of compounding of offences under sub-section (*1*), and the form and manner of application for compounding of an offence under sub-section (*4*), of section 140;

(*zz*) manner to establish identity under section 143;

(*zza*) the eligibility conditions to be fulfilled prior to exemption and the conditions to be complied with after exemption under sub-section (*1*), and the period of extension of exemption under sub-section (*3*), of section 144;

(*zzb*) any other matter which is required to be, or may be, prescribed by the Central Government under the provisions of this Code.

Power of State Government to make rules.

155. (*1*) The State Government may, by notification, and subject to the condition of previous publication, make rules not inconsistent with this Code, for the purpose of giving effect to the provisions thereof.

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

(*a*) the manner of exercising the powers and performance of functions by State Unorganised Workers' Board under sub-section (*9*), the number of persons to be nominated as members, their term of office and other conditions of service, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board under sub-section (*12*), and the time, place and rules of procedure relating to the transaction of business at its meetings under sub-section (*14*), of section 6;

(*b*) the terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members, and the manner of filling of casual vacancies of the members, and the terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees under clause (*c*) of sub-section (*5*) of section 7;

(*c*) structure, functions, powers and activities of the organisations under sub-section (*6*) of section 40;

(*d*) procedure to be followed by the Employees' Insurance Court under sub-section (*2*) of section 50;

(*e*) manner of commencement of proceedings before the Employees' Insurance Court and the time-limit of filing, fees and procedure thereof under sub-section (*1*) of section 51;

(*f*) conditions when application for review is made without certificate of a medical practitioner under sub-section (*1*) of section 79;

(*g*) manner of matters to be dealt by or before a competent authority under sub-section (*1*) of section 92;

(*h*) time- limit for disposal of application and costs incidental to the proceedings under sub-section (*4*) of section 93;

(*i*) the manner of authentication of memorandum under section 97; and

(*j*) any other matter which is required to be, or may be, prescribed by the State Government under the provisions of this Code.

Power of Corporation to make regulations.

156. (*1*) The Corporation may, by notification, and subject to the condition of previous publication, make regulations, not inconsistent with this Code and the rules and schemes made or framed thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of Chapter IV and the provisions of this Code relating to that Chapter.

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

(*a*) the cases and matters to be submitted for the decision of the Corporation under clause (*b*) of sub-section (*4*) and the composition of committees under sub-section (*6*), of section 5;

(*b*) the method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employees under clause (*a*) of sub-section (*7*) of section 24;

(*c*) unit in respect of which all contribution shall be payable under sub-section (*3*) of section 29;

(*d*) maintenance of register of employees by or through the contractor under sub-section (*7*), conditions for deduction of wages under sub-section (*8*) and any matter relating or incidental to the payment and collection of contribution under sub-section (9), of section 31;

(*e*) qualifications and experience of other person to certify sickness under clause (*a*), authority to certify eligibility of a woman under clause (*b*), authority to certify eligibility for payment under clause (*c*) of sub-section (*I*), the conditions for extension of medical benefits under sub-section (*2*) and any matter relating or incidental to the accrual and payment of benefits under sub-section (*4*), of section 32;

(*f*) continuous period in which the employee contracts occupational disease under sub-section (*1*) of section 36;

(*g*) constitution of medical board under sub-section (*1*), constitution of medical appeal tribunal under sub-section (*5*) and manner of filing appeals before the medical appeal tribunal under sub-section (*7*), of section 37;

(*h*) conditions for voluntary retirement scheme under the first proviso to sub-section (*3*) of section 39;

(*i*) other authority for providing permission under clause (*c*) of sub-section (*3*), form of nomination under sub-section (*6*) and the authority to determine benifits under sub-section (*9*), of section 41;

(*j*) user charges to be paid by other beneficiaries for medical facilities under clause (*c*) of the *Explanation* to section 44; and

(*k*) any matter in respect of which regulations are required or permitted to be made by this Code.

Prior publication of rules, regulations, etc.

157. The power to make rules, regulations and schemes under this Code shall be subject to the condition of the previous publication of the same being made, in the following manner, namely:—

(*a*) the date to be specified after a draft of rules, regulations and schemes under consideration, shall not be less than forty-five days from the date on which the draft of the proposed rules, regulations and schemes is published for general information in the Official Gazette;

(*b*) rules, regulations and schemes shall finally be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Code.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.

158. (*1*) The Central Government may, by notification, make rules for the transfer to any foreign country of money deposited with a competent authority under Chapter VII which has been awarded to or may be due to, any person residing or about to reside in such foreign country and for the receipt, distribution and administration in any State of any money deposited under the law relating to employees' compensation in any foreign country, which has been awarded to, or may be due to any person residing or about to reside in any State:

Provided that no sum deposited under Chapter VII in respect of fatal accidents shall be so transferred without the consent of the employer concerned after the competent authority receiving the sum has passed orders determining its distribution and apportionment under section 81.

(*2*) Where money deposited with a competent authority has been so transferred in accordance with the rules made under this section, the provisions elsewhere contained in this Code regarding distribution by the competent authority of compensation deposited with him shall cease to apply in respect of any such money.

Laying of rules, regulations and schemes, etc.

159. (*1*) Every rule, regulation, notification and scheme made or framed by the Central Government or the Corporation, as the case may be, under this Code shall be laid, as soon as may be after it is made or framed, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation, notification or scheme, as the case may be, or both Houses agree that the rule, regulation, notification or scheme, as the case may be, should not be made, such rule, regulation, notification or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation, notification or scheme, as the case may be.

(*2*) Every rule and scheme made or framed, and every notification issued by, the State Government under this Code, shall be laid as soon as may be after it is made or framed, before the State Legislatures, where it consists of two Houses, or where such legislature consists of one House, before that House.

Effect of laws and agreements inconsistent with this Code.

160. (*1*) The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Code:

Provided that where under any such award, agreement, contract of service or otherwise, a person is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Code, the person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Code.

(*2*) Nothing contained in this Code shall be construed to preclude a person from entering into an agreement with his employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Code.

Delegation of powers.

161. The appropriate Government may, by notification, direct that all or any of the powers and functions which may be exercised or performed by that Government may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by the Central Board, the Corporation, the National Social Security Board, the State Unorganised Workers Board, Building Workers Welfare Board or any officer or authority subordinate to the Central Board, the Corporation, the National Social Security Board, the State Unorganised Workers Board, Building Workers Welfare Board.

Power to remove difficulties.

162. (*1*) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Code, as may be necessary or expedient for removing the difficulty:

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

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

Repeal and savings.

163. (*1*) The following enactments are hereby repealed, namely:—

1. The Employees' Compensation Act, 1923; 8 of 1923.
2. The Employees' State Insurance Act, 1948; 34 of 1948.
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; 19 of 1952.
4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959; 31 of 1959.
5. The Maternity Benefit Act, 1961; 53 of 1961.
6. The Payment of Gratuity Act, 1972; 39 of 1972.
7. The Cine-Workers Welfare Fund Act, 1981; 33 of 1981.
8. The Building and Other Construction Workers' Welfare Cess Act, 1996; 28 of 1996.
9. The Unorganised Workers Social Security Act, 2008. 33 of 2008.

(*2*) Notwithstanding such repeal,—

(*a*) anything done or any action taken under the enactments so repealed including any rule, regulation, notification (including the notifications issued by the States), scheme, appointment, order or direction made thereunder or any benefit provided or given under any provision of such enactments, rules, regulations, notifications or schemes made thereunder for any purpose shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of this Code including any rule, regulation, notification, scheme, appointment, order or direction made thereunder and shall be in force to the extent they are not contrary to the provisions of this Code including any rule, regulation, notification, scheme, appointment, order or direction made thereunder till they are repealed under the corresponding provisions of this Code including any rule, regulation, notification, scheme, appointment, order or direction made thereunder by the appropriate Government.

(*b*) the Central Board and the Executive Committee constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 so repealed and the Corporation, Standing Committee and the Medical Benefit Council constituted under Employees' State Insurance Act, 1948 so repealed shall remain so constituted and discharge respectively the functions and exercise the powers of the Central Board, Executive Committee, Corporation, Standing Committee and Medical Benefit Committee under this Code, till such Central Board, Executive Committee, Corporation, Standing Committee and Medical Benefit Committee are constituted in accordance with the provisions of this Code.

19 of 1952.

34 of 1948.

(*c*) any exemption given under any enactments so repealed shall continue to be in force till its validity expires or it is ceased to be in operation under the provisions of this Code or any direction made thereunder for such purpose.

(*3*) Without prejudice to the provisions of sub-section (*2*), the provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

10 of 1897.

THE FIRST SCHEDULE

[*See* section 1(*4*)]

APPLICABILITY

Chapter No.	Chapter Heading	Applicability
(*1*)	(*2*)	(*3*)
III	Employees' Provident Fund	Every establishment in which twenty or more employees are employed.
IV	Employees' State Insurance Corporation	Every establishment in which ten or more employees are employed other than a seasonal factory: Provided that Chapter IV shall also be applicable to an establishment, which carries on such hazardous or life threatening occupation as notified by the Central Government, in which even a single employee is employed: Provided further that an employer of a plantation, may opt the application of Chapter IV in respect of the plantation by giving willingness to the corporation, where the benefits available to the employees under that Chapter are better than what the employer is providing to them. Provided also that the contribution from the employers and employees of an establishment shall be payable under section 29 on and from the date on which any benefits under Chapter IV relating to the Employees State Insurance Corporation are provided by the Corporation to the employees of the establishment and such date shall be notified by the Central Government.
V	Gratuity	(*a*) every factory, mine, oilfield, plantation, port and railway company; and (*b*) every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such shops or establishments as may be notified by the appropriate Government from time to time.
VI	Maternity Benefit	(*a*) to every establishment being a factory, mine or plantation including any such establishment belonging to Government; and

(*1*)	(*2*)	(*3*)
		(*b*) to every shop or establishment in which ten or more employees are employed, or were employed, on any day of the preceding twelve months; and such other shops or establishments notified by the appropriate Government.
VII	Employee's Compensation	Subject to the provisions of the Second Schedule, it applies to the employers and employees to whom Chapter IV does not apply.
VIII	Social Security and Cess in respect of Building and Other Construction Workers	Every establishment which falls under the building and other construction work.
IX	Social Security for Unorganised Workers	Unorganised sector, unorganised workers, gig worker, platform worker.
XIII	Employment Information and Monitoring	Career centres, vacancies and employers.

THE SECOND SCHEDULE

[*See* section 2(*26*)]

LIST OF PERSONS WHO ARE EMPLOYEES WITHIN THE MEANING OF SECOND PROVISO TO CLAUSE (*26*) OF SECTION 2

The following persons are employees within the meaning of second proviso to clause (*26*) of section 2 and subject to the said proviso, any person who is—

(*i*) employed in railways, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(*ii*) employed, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (*k*) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made whether or not employment in any such work is within such premises or precincts, and steam, water or other mechanical power or electrical power is used; or

(*iii*) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises; or

Explanation.—For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or

(*iv*) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

(*v*) employed, in any mine as defined in clause (*j*) of section 2 of the Mines Act, 1952 (35 of 1952), in any mining operation or in any kind of work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(*vi*) employed as the master or as a seaman of—

(*a*) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(*b*) any sea going ship not included in sub-clause (*a*) provided with sufficient area for navigation under sails alone; or

(*vii*) employed for the purpose of—

(*a*) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to the Ports Act, 1908 (15 of 1908), or the Major Port Trusts Act, 1963 (38 of 1963) of goods which have been discharged from or are to be loaded into any vessel; or

(*b*) warping a ship through the lock; or

(*c*) mooring and unmooring ships at harbour wall berths or in pier; or

(*d*) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or (*e*) the docking or undocking of any vessel during an emergency; or

(*f*) preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or

(*g*) any work on jolly-boats for bringing a ship's line to the wharf; or

(*viii*) employed in the construction, maintenance, repair or demolition of—

(*a*) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or

(*b*) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(*c*) any road, bridge, tunnel or canal; or

(*d*) any wharf, quay, sea-wall or other marine work including any moorings of ships; or

(*ix*) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same; or

(*x*) employed, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline or sewer; or

(*xi*) employed in the service of any fire brigade; or

(*xii*) employed upon a railway as defined in clause (*31*) of section 2 and sub-section (*1*) of section 197 of the Railways Act, 1989 (24 of 1989), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or

(*xiii*) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service or as a telegraphist or as a postal or railway signaller, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department; or

(*xiv*) employed, in connection with operation for winning natural petroleum or natural gas; or

(*xv*) employed in any occupation involving blasting operations; or

(*xvi*) employed in the making of any excavation for which explosives have been used, or whose depth from its highest to its lowest point exceeds twelve feet; or

(*xvii*) employed in the operation of any ferry boat capable of carrying more than ten persons; or

(*xviii*) employed on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea; or

(*xix*) employed, in the generating, transforming transmitting or distribution of electrical energy or in generation or supply of gas; or

(*xx*) employed in a lighthouse as defined in clause (*d*) of section 2 of the Indian Lighthouse Act, 1927 (17 of 1927); or

(*xxi*) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

(*xxii*) employed in the training, keeping or working of elephants or wild animals; or (*xxiii*) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forests fires; or

(*xxiv*) employed in operations for the catching or hunting of elephants or other wild animals; or

(*xxv*) employed as a diver; or

(*xxvi*) employed in the handling or transport of goods in, or within the precincts of,—

(*a*) any warehouse or other place in which goods are stored; or

(*b*) any market; or

(*xxvii*) employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radioactive substances; or

(*xxviii*) employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934 (22 of 1934); or

(*xxix*) employed in horticultural operations, forestry, bee-keeping or farming by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

(*xxx*) employed, in the construction, working, repair or maintenance of a tube-well; or

(*xxxi*) employed in the maintenance, repair or renewal of electric fittings in a building; or

(*xxxii*) employed in a circus; or

(*xxxiii*) employed as watchman in any factory or establishment; or

(*xxxiv*) employed in any operation in the sea for catching fish; or

(*xxxv*) employed in any employment which requires handling of snakes for the purpose of extraction of venom or for the purpose of looking after snakes or handling any other poisonous animal or insect; or

(*xxxvi*) employed in handling animals like horses, mules and bulls; or

(*xxxvii*) employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or

(*xxxviii*) employed in cleaning of sewer lines or septic tanks within the limits of a local authority; or

(*xxxix*) employed on surveys and investigation, exploration or gauge or discharge observation of rivers including drilling operations, hydrological observations and flood forecasting activities, ground water surveys and exploration; or

(*xl*) employed in cleaning of jungles or reclaiming land or ponds; or

(*xli*) employed in cultivation of land or rearing and maintenance of live-stock or forest operations or fishing; or

(*xlii*) employed in installation, maintenance or repair of pumping equipment used for lifting of water from wells, tube-wells, ponds, lakes, streams and the like; or

(*xliii*) employed in the construction, boring or deepening of an open well or dug well, bore well, bore-cum-dug well, filter point and the like; or (*xliv*) employed in spraying and dusting or insecticides of pesticides in agricultural operations or plantations; or

(*xlv*) employed in mechanised harvesting and threshing operations; or

(*xlvi*) employed in working or repair or maintenance of bulldozers, tractors, power tillers and the like; or

(*xlvii*) employed as artist for drawing pictures on advertisement boards at a height of 3.66 metres or more from the ground level; or

(*xlviii*) employed in any newspaper establishment as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) and engaged in outdoor work; or

(*xlix*) Employed as sales promotion employee; or

(*l*) any other employee or class of employee employed in an establishment or class of establishment to which the Employees' Compensation Act, 1923 (8 of 1923) was applicable in any State immediately before the commencement of this Code.

THE THIRD SCHEDULE

[*See* sections 36 and 74]

LIST OF OCCUPATIONAL DISEASES

Serial No.	Occupational disease	Employment
(*1*)	(*2*)	(*3*)
	PART A	
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination	(*a*) all work involving exposure to health or laboratory work; (*b*) all work involving exposure to veterinary work; (*c*) work relating to handling animals, animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (*d*) other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds	All work involving exposure to the risk concerned.
	PART B	
1.	Diseases caused by phosphorus or its toxic compounds	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium or its toxic compounds	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds	All work involving exposure to the risk concerned.

(1)	(2)	(3)
7.	Diseases caused by radioactive substances and ionising radiations	All work involving exposure to the action of radioactive substances or ionising radiations.
8.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydro-carbons (of the aliphatic and aromatic series)	All work involving exposure to the risk concerned.
10.	Diseases caused by carbon disulphide	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infra-red radiations	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise	All work involving exposure to the risk concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances	All work involving exposure to the risk concerned.
16.	Diseases caused by beryllium or its toxic compounds	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the work process	All work involving exposure to the risk concerned.
19.	Diseases caused by fluorine or its toxic compounds	All work involving exposure to the risk concerned.
20.	Diseases caused by nitroglycerin or other nitroacid esters	All work involving exposure to the risk concerned.
21.	Diseases caused by alcohols and ketones	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants, carbon monoxide, and its toxic derivatives, hydrogen sulphide	All work involving exposure to the risk concerned.
23.	Lung cancer and mesotheliomas caused by asbestos	All work involving exposure to the risk concerned.

(1)	(2)	(3)
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter	All work involving exposure to the risk concerned.
25.	Snow blindness in snow bound areas	All work involving exposure to the risk concerned.
26.	Disease due to effect of heat in extreme hot climate	All work involving exposure to the risk concerned.
27.	Disease due to effect of cold in extreme cold climate	All work involving exposure to the risk concerned.
	PART C	
1.	Pneumoconioses caused by sclerogenic mineral dust (silicoses, anthraoosilicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death	All work involving exposure to the risk concerned.
2.	Bagassosis	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssionsis)	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveelitis caused by the inhalation of organic dusts	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals	All work involving exposure to the risk concerned.
6.	Acute Pulmonary oedema of high altitude	All work involving exposure to the risk concerned.

THE FOURTH SCHEDULE

[*See* sections 2(*52*) and 2(*53*)]

PART I

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT TOTAL DISABLEMENT

Serial No.	Description of Injury	Percentage of loss of earning capacity
(*1*)	(*2*)	(*3*)
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and a foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

PART II

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

1.	Amputation through shoulder joint	90
2.	Amputation below shoulder with stump less than [20.32 Cms.] from tip of acromion	80
3.	Amputation form [20.32 Cms.] from tip of acromion to less than [11.43 Cms.] below tip of olecranon	70
4.	Loss of a hand or of the thumb and four fingers of one hand or amputation from [11.43 Cms.] below tip of olecranon	60
5.	Loss of thumb	30
6.	Loss of thumb and its metacarpal bone	40
7.	Loss of four fingers of one hand	50
8.	Loss of three fingers of one hand	30
9.	Loss of two fingers of one hand	20
10.	Loss of terminal phalanx of thumb	20
11.	Guillotine amputation of tip of thumb without loss of bone	10
	Amputation cases—lower limbs	
12.	Amputation of both feet resulting in end bearing stumps	90
13.	Amputation through both feet proximal to the metatarso-phalangeal joint	80
14.	Loss of all toes of both feet through the metatarso-phalangeal joint	40

(1)	(2)	(3)
15.	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
16.	Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
17.	Amputation at hip	90
18.	Amputation below hip with stump not exceeding [12.70 Cms.] in length measured from tip of great trenchanter	80
19.	Amputation below hip with stump exceeding [12.70 Cms.] in length measured from tip of great trenchanter but not beyond middle thigh	70
20.	Amputation below middle thigh to [8.89 Cms.] below knee	60
21.	Amputation below knee with stump exceeding [8.89 Cms.] but not exceeding [12.70 Cms.]	50
22.	Amputation below knee with stump exceeding [12.70 Cms.]	50
23.	Amputation of one foot resulting in end bearing	50
24.	Amputation through one foot proximal to the metatarso-phalangeal joint	50
25.	Loss of all toes of one foot through the metatarso-phalangeal joint	20
	Other injuries	
26.	Loss of one eye, without complications, the other being normal	40
27.	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal	30
28.	Loss of partial vision of one eye	10
	Loss of—	
	A—Fingers of right or left hand	
	Index finger	
29.	Whole	14
30.	Two phalanges	11
31.	One phalanx	9
32.	Guillotine amputation of tip without loss of bone	5
	Middle finger	
33.	Whole	12
34.	Two phalanges	9
35.	One phalanx	7
36.	Guillotine amputation of tip without loss of bone	4
	Ring or little finger	
37.	Whole	7
38.	Two phalanges	6

(1)	(2)	(3)
39.	One phalanx	5
40.	Guillotine amputation of tip without loss of bone	2
	B—Toes of right or left foot	
	Great toe	
41.	Through metatarso-phalangeal joint	14
42.	Part, with some loss of bone	3
	Any other toe	
43.	Through metatarso-phalangeal joint	3
44.	Part, with some loss of bone	1
	Two toes of one foot, excluding great toe	
45.	Through metatarso-phalangeal joint	5
46.	Part, with some loss of bone	2
	Three toes of one foot, excluding great toe	
47.	Through metatarso-phalangeal joint	6
48.	Part, with some loss of bone	3
	Four toes of one foot, excluding great toe	
49.	Through metatarso-phalangeal joint	9
50.	Part, with some loss of bone	3

THE FIFTH SCHEDULE

[*See* section 15]

MATTERS THAT MAY BE PROVIDED FOR IN THE SCHEMES

Any Scheme framed under section 15 may provide for any of the following matters:—

PART-A

Serial No.	Matters on which the Provident Fund Scheme may make provisions
(*1*)	(*2*)
1.	The employees or class of employees who shall join the Fund, and the conditions under which employees may be exempted from joining the Fund or from making any contribution.
2.	The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of, employees, (whether employed by him directly or by or through a contractor), the contributions which an employee may, if he so desires, make under section 16, and the manner in which such contributions may be recovered.
3.	The manner in which employees' contributions may be recovered by contractors from employees employed by or through such contractors.
4.	The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.
5.	The constitution of any committee for assisting any board of trustees.
6.	The opening of regional and other offices of any board of trustees.
7.	The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Central Government, the preparation of the budget, the audit of accounts and the submission of reports to the Central Government, or to any specified State Government.
8.	The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
9.	The fixation by the Central Government in consultation with the boards of trustees concerned of the rate of interest payable to members.
10.	The form in which an employee shall furnish particulars about himself and his family whenever required.
11.	The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.
12.	The registers and records to be maintained with respect to employees and the returns to be furnished by employers or contractors.
13.	The form or design of any identity card, token or disc for the purpose of identifying any employee, and for the issue, custody and replacement thereof.

(1)	(2)
14.	The fees to be levied for any of the purposes specified in this Schedule.
15.	The contraventions or defaults which shall be punishable under section 135.
16.	The further powers, if any, which may be exercised by Inspector-cum-Facilitators.
17.	The manner in which accumulations in any existing provident fund shall be transferred to the Fund and the mode of valuation of any assets which may be transferred by the employers in this behalf.
18.	The conditions under which a member may be permitted to pay premia on life insurance, from the Fund.
19.	Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

PART-B

MATTERS THAT MAY BE PROVIDED FOR IN THE PENSION SCHEME

1.	The employees or class of employees to whom the Pension Scheme shall apply.
2.	The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.
3.	The regulation of the manner in which and the period of service for which, no contribution is received.
4.	The manner in which employees' interest will be protected against default in payment of contribution by the employer.
5.	The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.
6.	The form in which an employee shall furnish particulars about himself and the members of his family whenever required.
7.	The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.
8.	The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.
9.	The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.
10.	The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.
11.	The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.
12.	Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.

PART-C

MATTERS THAT MAY BE PROVIDED FOR IN THE EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME

1.	The employees or class of employees who shall be covered by the Insurance Scheme.

(*1*)	(*2*)
2.	The manner in which the accounts of the Insurance Fund shall be kept and the investment of moneys belonging to the Insurance Fund subject to such pattern of investment as may be determined, by order, by the Central Government.
3.	The form in which an employee shall furnish particulars about himself and the members of his family whenever required.
4.	The nomination of a person to receive the insurance amount due to the employee after his death and the cancellation or variation of such nomination.
5.	The registers and records to be maintained in respect of employees; the form or design of any identity card, token or disc for the purpose of identifying any employee or his nominee or member of his family entitled to receive the insurance amount.
6.	The scales of insurance benefits and conditions relating to the grant of such benefits to the employees.
7.	The manner in which the amount due to the nominee or the member of the family of the employee under the scheme is to be paid including a provision that the amount shall not be paid otherwise than in the form of a deposit in a savings bank account, in the name of such nominee or member of family, in any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).
8.	Any other matter which is to be provided for in the Employees' Deposit-linked Insurance Scheme or which may be necessary or proper for the purpose of implementing that Scheme.

THE SIXTH SCHEDULE

[*See* section 76(*b*)]

FACTORS FOR WORKING OUT LUMP SUM EQUIVALENT OF COMPENSATION AMOUNT IN CASE OF PERMANENT DISABLEMENT AND DEATH

	Completed years of age on the last birthday of the employee immediately preceding the date on which the compensation fell due	Factors
(*1*)	(*2*)	(*3*)
Not more than	16	228.54
	17	227.49
	18	226.38
	19	225.22
	20	224.00
	21	222.71
	22	221.37
	23	219.95
	24	218.47
	25	216.91
	26	215.28
	27	213.57
	28	211.79
	29	209.92
	30	207.98
	31	205.95
	32	203.85
	33	201.66
	34	199.40
	35	197.06
	36	194.64
	37	192.14
	38	189.56
	39	186.90
	40	184.17
	41	181.37
	42	178.49

(1)	(2)	(3)
	43	175.54
	44	172.52
	45	169.44
	46	166.29
	47	163.07
	48	159.80
	49	156.47
	50	153.09
	51	149.67
	52	146.20
	53	142.68
	54	139.13
	55	135.56
	56	131.95
	57	128.33
	58	124.70
	59	121.05
	60	117.41
	61	113.77
	62	110.14
	63	106.52
	64	102.93
	65 or more	99.37

STATEMENT OF OBJECTS AND REASONS

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:—

(a) industrial relations;

(b) wages;

(c) social security;

(d) safety; and

(e) welfare and working conditions.

2. In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and employees' representatives, it had been decided to bring the proposed legislation. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following nine central labour enactments relating to social security, namely:—

1. The Employees' Compensation Act, 1923;

2. The Employees' State Insurance Act, 1948;

3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

4. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;

5. The Maternity Benefit Act, 1961;

6. The Payment of Gratuity Act, 1972;

7. The Cine Workers Welfare Fund Act, 1981;

8. The Building and Other Construction Workers Welfare Cess Act, 1996; and

9. The Unorganised Workers' Social Security Act, 2008.

3. The amalgamation of the said laws will facilitate the implementation and remove the multiplicity of definitions and authorities without compromising the basic concepts of welfare and benefits to workers. The proposed legislation, namely, the Code on Social Security, 2019 would facilitate the use of technology ensuring transparency and accountability leading to effective enforcement of the provisions of the proposed legislation. Widening the scope of the benefits to the fixed term employees and facilitating ease of compliance of labour laws would be a big step towards equity and promote setting up of more enterprises thus catalysing the creation of employment opportunities.

4. The salient features of the Code on Social Security, 2019, *inter alia*, are—

(i) to extend the coverage of Employees' State Insurance to all establishments employing ten or more employees and to the employees working in establishments with less than ten employees on voluntary basis and also to plantations on option basis. It further seeks to empower the Central Government to notify the applicability of the said coverage to establishments which carries on the hazardous or life threatening occupation irrespective of the number of workers employed therein;

(ii) to extend the Employees' Provident Fund, Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries or establishments employing twenty or more employees and thereby expands the existing coverage;

(iii) to make provision for specifying differential rates of employees' contribution for class of employees for employees' provident fund as the Central Government may notify for a specified period;

(iv) to provide that the money dues shall be the charge on the assets of the employer and shall be paid on priority basis in accordance with the Insolvency and Bankruptcy Code, 2016;

(v) to provide that in case of employer's failure to register the employee with Employees' State Insurance Corporation or failure to pay contribution and the Employees' State Insurance Corporation releasing the benefits to the workers, then, such benefits shall be recovered from the employer;

(vi) to empower the Central Government to frame schemes for providing social security, to the gig workers and platform workers who do not fall under traditional employer-employee relation;

(vii) to empower the Central Government, by notification, to constitute a Social Security Fund or funds for provision of social security for the unorganised workers, platform workers or gig workers or any such class of workers;

(viii) to provide for payment of gratuity in case of Fixed Term Employment on pro-rata basis even if the period of fixed term contract is less than five years;

(ix) to provide for maternity benefit to the woman employee;

(x) to provide for compensation to the employees in case of the accidents while commuting from residence to place of work and vice versa;

(xi) to provide for levying and collecting the cess for the purposes of social security and welfare of building workers;

(xii) to provide for limitation period of five years for institution of proceedings in respect of assessment and determination of money dues from employer;

(xiii) to expand the sources of the fund for schemes to include funds from corporate social responsibility or any other source as may be specified in the scheme and also contains enabling provision for constituting the special purpose vehicle for the purpose of implementation of schemes for unorganised workers;

(xiv) to provide for renaming the designation of Inspector as Inspector-cum-Facilitator and to enhance his power to supply information and give advice to employers and workers concerning the most effective means of complying with the provisions of the proposed Code;

(xv) to provide for filing of a single return electronically or otherwise by the employer;

(xvi) to provide that the interests charged on delayed payments under the provisions of the proposed Code be specified in the rules;

(xvii) to provide penalty for the different types of violations commensurate with the gravity of the violations;

(xviii) to make Aadhaar mandatory for seeding at the time of registration of member or beneficiary or any other person to register or for receiving benefit;

(xix) to empower the appropriate Government to exempt certain establishments from all or any of the provisions of the proposed Code.

5. The notes on clauses explain in detail the various provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
the 6*th December*, 2019.

SANTOSH GANGWAR.

Notes on Clauses

Clause 1 of the Bill seeks to provide for short title, extent, commencement and application of the proposed Code.

Clause 2 of the Bill seeks to define certain expressions used in the Code, which *inter alia*, includes "appropriate Government", "building worker", "employment injury", "factory", "permanent partial disablement", "permanent total disablement', "tribunal", etc.

Clause 3 of the Bill seeks to provide for registration of establishment to which the proposed Code applies in the manner provided in the rules.

Clause 4 of the Bill seeks to provide for the manner of constitution and composition of the Central Board of Trustees for the purposes of Chapter III and the provisions of this proposed Code relating to that Chapter.

Clause 5 of the Bill seeks to provide for the manner of constitution and the composition of the Employees State Insurance Corporation for the purposes of chapter IV and the provisions of this proposed Code relating to that chapter.

Clause 6 of the Bill seeks to provide for the manner of constitution, composition and functions of the National Social Security Board for Unorganised Workers and also for the constitution of State Unorganised Workers Board.

Clause 7 of the Bill seeks to provide for the manner of constitution, composition and function of the State Building and Other Construction Workers' Welfare Board.

Clause 8 of the Bill seeks to provide the conditions which leads to disqualification and removal of a member of any social security organisation.

Clause 9 of the Bill seeks to provide for the procedure of Social Security Organisation relating to their meetings, functions and allowances.

Clause 10 of the Bill seeks to provide that the Central Provident Fund Commissioner and the Director General shall not undertake any work unconnected with their office without prior approval of the Central Government.

Clause 11 of the Bill seeks to provide for the supersession of the Corporation, the Central Board of Trustees, the Unorganised Workers' National Social Security Board or the State Unorganised Workers Social Security Board by the Central or State Government as the case may be.

Clause 12 of the Bill seeks to provide for the constitution of State Board, Regional Board, local committees, etc.

Clause 13 of the Bill seeks to provide for entrustment of additional functions by the Central Government to Social Security Organisations.

Clause 14 of the Bill seeks to provide for appointment of officers of the Central Board by the Central Government.

Clause 15 of the Bill seeks to provide for framing of Schemes, such as the Employees' Provident Fund Scheme, Employees' Pension Scheme, and Employees' Deposit Linked Insurance Scheme.

Clause 16 of the Bill seeks to provide for establishment of the funds by the Central Government with respect to Schemes.

Clause 17 of the Bill seeks to provide regarding contribution in respect of employees and contractors.

Clause 18 of the Bill seeks to provide for fund to be recognised under the Income Tax Act, 1961.

Clause 19 of the Bill seeks to provide priority of payment of contributions over other debts.

Clause 20 of the Bill seeks to provide non-applicability Chapter III to certain establishments.

Clause 21 of the Bill seeks to provide authorisation to certain employers to maintain provident fund accounts.

Clause 22 of the Bill seeks to provide transfer of accounts where the employee relinquishes his employment and obtains employment in any other establishment.

Clause 23 of the Bill seeks to provide for appeal to tribunal for matters specified therein.

Clause 24 of the Bill seeks to provide appointment of Principal Officers and other staff of the Corporation.

Clause 25 of the Bill seeks to provide for payment of all contributions and other moneys received in the Employees' State Insurance Fund and its administration thereof.

Clause 26 of the Bill seeks to provide the purposes for which the Employees' State Insurance Fund may be expanded for the purposes specified therein.

Clause 27 of the Bill seeks to provide for acquiring and holding of property, sale or otherwise transfer of property both movable and immovable by the Corporation.

Clause 28 of the Bill seeks to provide for insurance of all employees in the establishments where provisions of this proposed code shall apply.

Clause 29 of the Bill seeks to provide for contribution payable by the employer and the employee to be paid to the Corporation.

Clause 30 of the Bill seeks to provide administrative expenses and percentage of income of Corporation which may be spent for such expenses.

Clause 31 of the Bill seeks to provide for payment of contribution by employers and recovery of contribution from the contractor, if paid by him and shall bear the expenses of remitting the contributions to the Corporation

Clause 32 of the Bill seeks to provide for benefits mentioned specified in this clause to the insured persons, their dependants, etc., which includes periodical payments to any insured person in case of his sickness, periodical payments to an insured person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified by regulations.

Clause 33 of the Bill seeks to provide power of corporation to promote measures for improvement of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons.

Clause 34 of the Bill seeks to provide presumption as to accident arising in course of employment. An accident happening to an employee in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimise serious damage to property. An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.

Clause 35 of the Bill seeks to provide happening of accidents while acting in breach of law, etc. An accident shall be deemed to arise out of and in the course of an employee's employment if the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be or the act is done for the purpose of and in connection with the employer's trade or business.

Clause 36 of the Bill seeks to provide a list of ooccupational disease specified in the Third Schedule of the proposed code. The contracting of the disease shall, unless the contrary is proved, be deemed to be an "employment injury" arising out of and in the course of employment.

Clause 37 of the Bill seeks to provide references to medical board to insured persons related to permanent disablement, lose of earning capacity, etc., as mentioned therein.The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement. Any decision of a medical board may be reviewed at any time by the medical board if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or misrepresentation by the employee or any other person of a material fact. If the Insured Person or the Corporation is aggrieved by any decision of the medical board, the Insured Person or the Corporation, as the case may be, may appeal to the medical appeal tribunal in the manner specified in the regulations or directly to the Employees' Insurance Courts.

Clause 38 of the Bill seeks to provide dependants' benefit. If an insured person dies as a result of an employment injury sustained as an employee (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable to his dependants at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

Clause 39 of the Bill seeks to provide medical benefit. An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit. An insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be specified in the regulations. The Corporation may establish medical colleges, dental colleges, nursing colleges and training institutes for its officers and staff with a view to improve the quality of services provided under the Employees' State Insurance Scheme.

Clause 40 of the Bill seeks to provide for medical treatment by State Government or by the Corporation.The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment. The Corporation may enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

Clause 41 of the Bill seeks to provide general provisions of the benefits. A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement) shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Chapter, and shall carry out the instructions given by the medical officer or medical attendant in-charge thereof.

Clause 42 of the Bill seeks to provide the rights of Corporation, when an employer fails to register or neglects to insure an employee or neglects to pay any contribution, the Corporation may, on being satisfied in the manner prescribed by the Central Government that the benefit is payable to the employee, pay to the employee benefit at such rate to which he is entitled or would have been entitled if the failure or neglect would not have occurred, and the Corporation shall be entitled to recover from the employer, subject to the employer being given an opportunity of being heard, the capitalised value of the benefit paid to the employee, to be calculated in such manner as may be prescribed by the Central Government.

Clause 43 of the Bill seeks to provide liability of owner or occupier of factories, etc., for excessive sickness benefit.Where the Corporation considers that the incidence of sickness among insured persons is excessive by reasons of insanitary working conditions in a factory or other establishment, insanitary conditions of any tenements or lodgings occupied by insured persons then, the Corporation may send to the owner or occupier of the factory or other establishment, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit.

Clause 44 of the Bill seeks to provide for schemes for other beneficiaries. The Central Government may, in consultation with the Corporation, and by notification, frame scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is under utilised on payment of user charges.Other beneficiaries "mean persons other than employees insured.

Clause 45 of the Bill seeks to provide for schemes for un organised workers, gig workers and platform workers. The Central Government may, in consultation with the Corporation, and by notification, frame scheme for unorganised workers, gig workers and platform workers and the members of their families for providing benefits admissible under Chapter-IV by the Corporation.

Clause 46 of the Bill seeks to provide for exemption of factories or other establishments belonging to Government or any local authority.The appropriate Government may, after consultation with the Corporation, by notification and subject to such conditions as may be specified in the notification, exempt any factory or other establishment belonging to any local authority, from the operation of Chapter IV, if the employees in any such factory or other establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under Chapter IV.

Clause 47 of the Bill seeks to provide for contributions, etc., due to Corporation to have priority over other debts. Any amount due under Chapter-IV relating to Employees State Insurance shall be the first charge on the assets of the establishment to which it relates and shall be paid in priority to all other debts.

Clause 48 of the Bill seeks to provide for constitution of Employees' Insurance Court by State Government by notification.

Clause 49 of the Bill seeks to provide for the matters specified in therein, to be decided by Employees' Insurance Court.

Clause 50 of the Bill seeks to provide for the powers of Employees' Insurance Court which shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence. An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

Clause 51 of the Bill seeks to provide for the proceedings of Employees' Insurance Courts, manner of commencement of proceedings before that Court. But, and the time limit of filing, fees and procedure thereof shall be such as may be provided by rules by the State Government.

Clause 52 of the Bill seeks to provide for appeals from orders of Employees' Insurance Courts. No appeal shall lie from an order of an Employees' Insurance Court. But, an appeal shall lie to the High Court from an order of an Employees' Insurance Court, if it involves a substantial question of law.

Clause 53 of the Bill seeks to provide for eligibility for payment of Gratuity. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, on his superannuation; or on his retirement or resignation; or on his death or disablement due to accident or disease; or on termination of his contract period under fixed term employment; or on happening any such event as may be notified by the Central Government.The completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment or happening of any such event as may be notified by the Central Government.

Clause 54 of the Bill seeks to define continuous service for the purpose of payment of gratuity. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this proposed Code.

Clause 55 of the Bill seeks to provide manner of nomination. Each employee, who has completed one year of service, shall make, a nomination within such time, in such form and in such manner, as may be provided by rules by the appropriate Government. A nomination may be modified by an employee at any time, after giving to his employer a written intimation in such form and in such manner as may be provided by rule by the appropriate Government, of his intention to do so.

Clause 56 of the Bill seeks to provide for determination and payment of amount of gratuity. As soon as gratuity becomes payable, the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the competent authority specifying the amount of gratuity so determined.The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

Clause 57 of the Bill seeks to provide for compulsory insurance.With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall obtain an insurance in the manner provided by rules by the Central Government, for his liability for payment towards the gratuity, from any insurance company regulated by the Authority as defined under clause (b) of the Insurance Regulatory and Development Authority of India Act, 1999.

Clause 58 of the Bill seeks to provide for the appointment of competent authority. The appropriate Government may, by notification, appoint any person having such qualifications and experience as may be provided by rules, by the Central Government to be a competent authority for implementation of any provision of Chapter V for such area as may be specified in the notification.

Clause 59 of the Bill seeks to provide for prohibition of employment of, or work by, women during certain period. No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

Clause 60 of the Bill seeks to provide for right to payment of maternity benefit. Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, and any period immediately following that day, If she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected date of her delivery.The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the expected date of her delivery. A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks.

Clause 61 of the Bill seeks to provide for continuance of payment of maternity benefit in certain cases. This clause entitles every woman eligible to the payment of maternity benefit under Chapter VI relating to maternity benefit continue to be so entitled until she becomes qualified to claim maternity benefit under the provision of the proposed code relating to Employees State Insurance irrespective of the fact that she is employed to the factory or other establishment to which the provisions relating to Employees State Insurance applies.

Clause 62 of the Bill seeks to provide for notice of claim for maternity benefit and payment thereof. Any woman employed in an establishment and entitled to maternity benefit under the provisions of Chapter VI relating to maternity benefit may give notice in writing in such form as may be provided by rules by the Central Government, to her employer, stating that her maternity benefit and any other amount to which she may be entitled, paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit. The failure to give notice under this clause shall not disentitle a woman to maternity benefit or any other amount under the said Chapter if she is otherwise entitled to such benefit or amount.

Clause 63 of the Bill seeks to provide for payment of maternity benefit in case of death of a woman before receiving such maternity benefit or amount, or where the employer is liable for maternity benefit, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given and in case there is no such nominee, to her legal representative.

Clause 64 of the Bill seeks to provide for payment of medical bonus of three thousand five hundred rupees or such amount as may be notified by the Central Government from her employer, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

Clause 65 of the Bill seeks to provide for leave for miscarriage, medical termination of pregnancy, tubectomy operation, suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy on production of such proof as may be prescribed by rules by the Central Government.

Clause 66 of the Bill seeks to provide for nursing breaks. Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work, two breaks of such duration as may be prescribed by rules by the Central Government, for nursing the child until the child attains the age of fifteen months.

Clause 67 of the Bill seeks to provide for creche facility in every establishment where fifty employees or such number of employees as may be prescribed by the Central Government, are employed.The employer shall allow four visits a day to the crèche by the woman, which shall also include the intervals of rest allowed to her. The employer shall intimate in writing and electronically to every woman at the time of her initial appointment in such establishment regarding every benefit available under Chapter VI relating to maternity benefit.

Clause 68 of the Bill seeks to provide for dismissal for absence during pregnancy. When a woman absents herself from work in accordance with the provisions of Chapter VI, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

Clause 69 of the Bill seeks to provide for no deduction of wages in certain cases. No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of Chapter VI relating to maternity benefit shall be made by reason only of the nature of work assigned to her or breaks for nursing the child allowed to her under the relevant provisions.

Clause 70 of the Bill seeks to provide for forfeiture of maternity benefit to a woman who works for remuneration during the period she has been permitted by an employer to absent herself for availing the maternity benefit.

Clause 71 of the Bill seeks to provide for duties of employer. An abstract of the provisions of Chapter VI and the rules relating thereto in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed.

Clause 72 of the Bill seeks to provide for power of Inspector-cum-Facilitator to direct payments to be made to a women, maternity benefit or any other amount to which she is entitled under Chapter VI relating to maternity benefit and any person claiming that payment due under the said Chapter has been improperly withheld or her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provisions of the said Chapter. The Inspector-cum-Facilitator may, on receipt of a complaint, make an inquiry or cause an inquiry and pass such orders as he deems just and proper according to the circumstances of the case.

Clause 73 of the Bill seeks to provide for reports of fatal accidents and serious bodily injuries to competent authority. A notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death or serious bodily injury, within seven days of the death or serious bodily injury, send a report to the competent authority giving the circumstances attending the death or serious bodily injury.

Clause 74 of the Bill seeks to provide for employer's liability for compensation. If personal injury is caused to an employee by accident or an occupational disease listed in the Third Schedule arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter VII.

Clause 75 of the Bill seeks to provide for compensation in case of death of or injury in plantation. If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided by the employer in a plantation, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation.

Clause 76 of the Bill seeks to provide for the manner of calculation of amount of compensation to be paid in case of death, permanent total disablement, permanent partial disablement or temporary disablement resulting from the injury. The employee shall be reimbursed, the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment, by his employer. If the injury of the employee results in his death, the employer shall, in addition to the compensation deposit with the competent authority a sum of not less than fifteen thousand rupees for payment of the same to the eldest surviving dependent of the employee towards the expenditure of the funeral of such employee.

Clause 77 of the Bill seeks to provide for compensation to be paid when due and damages for default as soon as it falls due. In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts. Where any employer is in default in paying the compensation within one month from the date it fell due, the competent authority shall direct that the employer in addition to the amount of the arrears, pay interest at rates specified in the rules. If there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount of arrears by way of damages.

Clause 78 of the Bill seeks to provide for method of calculating monthly wages for purposes of compensation. For the purposes of calculation of compensation, the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates).

Clause 79 of the Bill seeks to provide for review of half-monthly payment payable under Chapter VII relating to Employee compensation. Any half-monthly payment payable under this Chapter, either under an agreement between the parties or under the order of a competent authority, may be reviewed by the competent authority, on the application either of the employer or of the employee accompanied by the certificate of a medical practitioner.

Clause 80 of the Bill seeks to provide for commutation of half-monthly payments . On the application of either party to the competent authority half-monthly payments may be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the competent authority.

Clause 81 of the Bill seeks to provide for distribution of compensation in respect of an employee whose injury has resulted in death. No payment of compensation in respect of an employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the competent authority, and no such payment made directly by an employer shall be deemed to be a payment of compensation.The employer may make to any dependent advances on account of compensation of an amount equal to three months' wages of such employee. On the deposit of any money as compensation in respect of a deceased employee, the competent authority shall cause notice to be published or to be served on each dependent, calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation.

Clause 82 of the Bill seeks to provide for notice of the accident and claim. No claim for compensation shall be entertained by a competent authority unless notice of the accident has been given in the manner as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. The competent authority may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred in due time, if he is satisfied that the failure so to give the notice or prefer the claim, was due to sufficient cause.

Clause 83 of the Bill seeks to provide for special provisions relating to accidents occurring outside Indian territory in the case of employees who are masters of ships or seamen or captain and other members of crew of aircraft, persons recruited by companies registered in India and working as such abroad, persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 as drivers, helpers, mechanics, cleaners or other employees.

Clause 84 of the Bill seeks to provide for free medical examination. An employee who has given notice of an accident, he, shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a medical practitioner, submit himself for such examination, and any employee who is in receipt of a half-monthly payment under Chapter VII shall, if so required, submit himself for such examination from time to time.

Clause 85 of the Bill seeks to provide for compensation in case of contracting the work.Where any employer in the course of or for the purposes of his trade or business contracts with contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the employer, the employer shall be liable to pay to any employee employed in the execution of the work any compensation, which he would have been liable to pay if that employee had been immediately employed by him.Where the employer is liable to pay compensation, he shall be entitled to be indemnified by the contractor.

Clause 86 of the Bill seeks to provide for remedies of employer against stranger.Where an employee has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid, the person by whom the compensation was paid shall be entitled to be indemnified by the person so liable to pay damages.

Clause 87 of the Bill seeks to provide for liability in case of insolvency of employer. Where any employer has entered into a contract with any insurers in respect of any liability under Chapter VII relating to compensation to any employee, then, in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer.

Clause 88 of the Bill seeks to provide for power to require statements regarding fatal accidents from employers. Where a competent authority receives information from any source that an employee has died as a result of an accident arising out of and in the course of his employment, he may send a notice to the employee’s employer requiring him to submit, within thirty days, a statement, giving the circumstances attending the death of the employee, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death and a copy of such notice shall also be sent by the competent authority to the dependents of such employee ascertained by the competent authority. Where in the opinion of the competent authority, a dependent of the deceased employee is not in a position to engage an advocate to file a claim for compensation, the competent authority may provide an advocate to such dependent.

Clause 89 of the Bill seeks to provide for registration of agreements. Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability, a memorandum thereof shall be sent by the employer to the competent authority, who shall, on being satisfied as to its genuineness, record the memorandum in a register. An agreement for the payment of compensation which has been registered shall be enforceable under the proposed Code.

Clause 90 of the Bill seeks to provide for reference to competent authority. If any question arises in any proceedings as to the liability of any person to pay compensation or as to whether a person injured is or is not an employee or as to the amount or duration of compensation or as to the nature or extent of disablement, the question shall be settled by a competent authority. No Civil Court shall have jurisdiction to settle, decide or deal with any question which is required to be settled, decided or dealt with by a competent authority.

Clause 91 of the Bill seeks to provide for qualification and appointment of competent authority. The State Government may, by notification, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development, industrial relations and legal affairs or such other experience and qualifications as may be prescribed by the Central Government to be a competent authority for Employee's Compensation.

Clause 92 of the Bill seeks to provide for venue of proceedings and transfer. Where any matter related with compensation to be done by or before a competent authority, the same shall be done by or before the competent authority for the area in which, the accident took place which resulted in the injury or the employee or in case of his death, the dependant claiming the compensation ordinarily resides or the employer has his registered office. If a competent authority is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other competent authority, order such matter to be transferred to such other competent authority.

Clause 93 of the Bill seeks to provide for form of application for claim of compensation. An application to a competent authority for claim under or settlement may be made electronically or otherwise in such form and in such manner accompanied by such fee, if any, as may be prescribed by rules by the Central Government.

Clause 94 of the Bill seeks to provide for power of competent authority to require further deposit in cases of fatal accident, from the employer as compensation payable , if in the opinion of the competent authority that such sum is insufficient, the competent authority may, by notice in writing state his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

Clause 95 of the Bill seeks to provide for powers and procedure of competent authority. The competent authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects.

Clause 96 of the Bill seeks to provide for appearance of parties before the competent authority. Any appearance, application or act required to be made or done by any person before or to a competent authority may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector-cum-Facilitator or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the competent authority, by any other person so authorised.

Clause 97 of the Bill seeks to provide for method of recording evidence before the competent authority. The competent authority shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be authenticated under the hand of the competent authority.

Clause 98 of the Bill seeks to provide for power to submit cases. A competent authority may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Clause 99 of the Bill seeks to provide for appeal. An appeal shall lie to the High Court from the orders of a competent authority on the matters specified in this clause. No appeal by an employer shall lie unless the memorandum of appeal is accompanied by a certificate by the competent authority to the effect that the appellant has deposited with him the amount payable under the order appealed against. The period of limitation for an appeal shall be sixty days.

Clause 100 of the Bill seeks to provide for levy and collection of cess in respect of building and other construction workers. There shall be levied and collected a cess for the purposes of social security and welfare of building workers at such rate not exceeding two per cent. but not less than one per cent. of the cost of construction incurred by an employer.

Clause 101 of the Bill seeks to provide for Interest payable on delay in payment of cess on building or other construction work. If any employer fails to pay any amount of cess payable within specified time, such employer shall be liable to pay interest as may be specified in the rules for the period from the date on which such payment is due till such amount is actually paid.

Clause 102 of the Bill seeks to provide for the power to exempt from cess on building or other construction work. The Central Government may, by notification, exempt any employer or class of employers in a State from the payment of cess payable, where such cess is already levied and payable under any corresponding law in force in that State.

Clause 103 of the Bill seeks to provide for self-assessment of cess by the employer. Employer shall after completion of his each building and other construction work, pay such cess by adjusting the advance cess already paid on the basis of his self-assessment on the cost of construction worked out on the basis of the documents and after such payment of cess, he shall file a return.

Clause 104 of the Bill seeks to provide penalty for non-payment of cess within the specified time. If any amount of cess payable by any employer is not paid within the date specified in the order of assessment, it shall be deemed to be in arrears and the authority prescribed by the Central Government in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the amount of cess.

Clause 105 of the Bill seeks to provide for appeal by the employer. Any employer aggrieved by an order of assessment or by an order imposing penalty may, within such time as may be provided in the rules by the Central Government, appeal to such appellate authority in such form and in such manner as may be provided in the rules by the Central Government. Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

Clause 106 of the Bill seeks to provide for registration of building workers as beneficiaries. Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be registered by the officer authorised by the Board as a beneficiary under Chapter VIII relating to building and other construction in such manner as may be provided in the rules by the Central Government.

Clause 107 of the Bill seeks to provide for cessation as a beneficiary. A building worker who has been registered as a beneficiary shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year.

Clause 108 of the Bill seeks to provide for Building and Other Construction Workers' Welfare Fund and its application. The fund shall be constituted by the Board to be called the Building and other Construction Workers' Welfare Fund. It shall be credited with the amount of any cess levied, any grants and loans made to the Board by the Central Government or any sum received by the Board. The fund shall be applied for meeting expenses of the National Social Security Board in discharge of its functions, salaries, allowances and other remuneration of the members, officers and other employees for the Board not exceeding five per cent. of total expense and on objects and for purposes authorised by the proposed code.

Clause 109 of the Bill seeks to provide for framing of schemes and constitution of social security fund for unorganised workers gig workers' platform workers, etc. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers (including audio visual workers, beedi workers, non-coal workers) on matters relating to life and disability cover, health and maternity benefits, old age protection, education, housing, etc.The State Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to provident fund, employment injury benefit, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes. A special purpose vehicle may also be constituted by the Central Government for the purpose of implementation of such scheme.

Clause 110 of the Bill seeks to provide for funding of schemes notified by the State Government. Any scheme notified by the State Government may be wholly funded by the State Government, partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers, funded from any source including corporate social responsibility fund. The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

Clause 111 of the Bill seeks to provide for keeping the records electronically or otherwise relating to the scheme and the authority by whom such records shall be maintained.

Clause 112 of the Bill seeks to provide for setting-up of workers facilitation centres. The Central Government or the State Government may set-up workers facilitation centres to perform the functions such as disseminate information on available social security schemes, facilitate filling, processing and forwarding of application forms for registration of unorganised worker and facilitate the enrolment of the registered unorganised workers in social security schemes.

Clause 113 of the Bill seeks to provide for registration of unorganised worker for social security. Every unorganised worker shall be eligible for registration if he has completed sixteen years of age or such age and he has submitted a self-declaration electronically or otherwise in such form, in such manner and to such authority containing such information as may be required. A registered unorganised worker shall be eligible to avail the benefit of a scheme on making such contribution, if any.

Clause 114 of the Bill seeks to provide for framing of scheme for gig workers and platform workers. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for gig workers and platform workers on the matter relating to life and disability cover, health and maternity benefits, old age protection, etc.

Clause 115 of the Bill seeks to provide for maintenance of proper accounts of income and expenditure of each of the Social Security Organisations in a manner as the appropriate Government may, after consultation with the Comptroller and Auditor-General of India, specify.

Clause 116 of the Bill seeks to provide for audit. The accounts of each of the Social Security Organisations shall be audited annually by the Comptroller and Auditor-General of India.

Clause 117 of the Bill seeks to provide for budget estimates of the Social Security Organisations. Each of the Social Security Organisations shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the appropriate Government before the date as may be fixed by it in that behalf.

Clause 118 of the Bill seeks to provide for the annual report. Each of the Social Security Organisations shall submit to the appropriate Government an annual report of its work and activities along with the budget finally adopted by it. A copy of the annual report, budget and the audited accounts together with the report of the Comptroller and Auditor-General of India and the comments of the respective Social Security Organisation thereon shall be laid before each House of Parliament or the State legislature, as the case may be by the appropriate Government.

Clause 119 of the Bill seeks to provide for valuation of assets and liabilities. Each of the fund maintained by a Social Security Organisation or by an establishment under the proposed code shall have a valuation of its assets and liabilities made by a valuer or actuary.

Clause 120 of the Bill seeks to provide for holding of property, etc., by the Social Security Organisation, subject to such conditions as may be prescribed by the appropriate Government, acquire and hold property, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it, invest any moneys vested in it,raise loans and take measures for discharging such loans and do all things necessary for such purposes and for the purposes for which the said Social Security Organisation is established.

Clause 121 of the Bill seeks to provide for writing off of losses.where any of the Social Security Organisations is of the opinion that the amount of contribution, cess, interest and damages due to it, under the proposed Code, is irrecoverable, the concerned Social Security Organisation may sanction the writing off of the said amount in such manner as provided in the rules by the appropriate Government.

Clause 122 of the Bill seeks to provide for appointment of Inspector-cum-Facilitators, their powers and design of inspection scheme. The Central Government for the purposes of Chapter III i.e. Employee Provident Fund and Chapter IV i.e. Employees State Insurance Corporation and the provisions in the proposed Code relating to those chapters, and the appropriate Government for the purposes of other provisions of the proposed code, may, by notification, appoint Inspector-cum-Facilitators.The Inspector-cum-Facilitator may give advice to employers and employees relating to compliance with the provisions of the proposed code, inspect the establishments as assigned to him subject to the instructions or guidelines issued by the appropriate Government from time to time.

Clause 123 of the Bill seeks to provide for maintenance of records, registers, returns,display notices at the work places,issue wage slips, etc. by the employer. An employer of an establishment shall maintain records and registers in the form electronically or otherwise, containing such particulars and details with regard to persons employed, muster roll, wages and such other particulars and details, in such manner, as provided in the rules by the appropriate Government.

Clause 124 of the Bill seeks to provide that the employer shall not reduce the wages of the employees with the reason only to meet his liability for the payment of any contribution under the proposed code, or any charges thereunder.

Clause 125 of the Bill seeks to provide for assessment and determination of money dues from employer. The Central Government may, by notification, authorise, such officers of the Central Board or the Corporation, as the case may be, not below the rank of Group 'A' officer of that Government, to function as the Authorised officers for the purposes of determine the amount due from any employer,conduct such inquiry and decide the dispute regarding the applicability of chapters relating to Employee Provident Fund or Employees State Insurance Corporation.

Clause 126 of the Bill seeks to provide for the review of orders passed by the authorised officer. Any person considering himself aggrieved by orders passed by the Authorised Officer, but from which no appeal has been preferred, may apply for a review of that order to the Authorised officer who made the order if the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The authorised officer may also on his own motion, review his order if he is satisfied that it is necessary so to do in the interest of justice.

Clause 127 of the Bill seeks to provide for appeal against the order of the Authorised officer. If an employer is not satisfied with the order made by Authorised officer, he may prefer an appeal to an appellate authority as may be provided in the rules by the Central Government, within sixty days of the date of such order only after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the concerned Social Security Organisation.

Clause 128 of the Bill seeks to provide for determination of escaped amount. Such determination shall be made where the authorised officer has reason to believe that by reason of the omission of failure on the part of the employer to make any document or report available or to disclose fully and truly or material facts necessary for determining the correct amount due from the employer any amount so due from such employer for any period has escaped his notice and in case of other escape as specified in detail in the clause.

Clause 129 of the Bill seeks to provide for interest on amount due.The employer shall be liable to pay simple interest at such rate as may be specified in the rules from the date on which any amount has become due under the proposed code till the date of its actual payment.

Clause 130 of the Bill seeks to provide for power to recover damages.Where an employer makes default in the payment of any contribution which he is liable to pay in accordance with the provisions of the proposed code, the Central Provident Fund Commissioner of the Central Board or the Director General of the Corporation, as the case may be, or such other officer as may be authorised, by notification, by the appropriate Government, may levy on, and recover from, the employer by way of damages, an amount not exceeding the amount of arrears after giving an opportunity to employer of being heard.

Clause 131 of the Bill seeks to provide for recovery of amount due. Any amount due from an employer or any other person in relation to an establishment including any contribution or cess payable, charges, interest, damages, or benefit or any other amount may, if the amount is in arrear, be recovered in the specified manner.The Authorised officer, or the competent authority, as the case may be, shall issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment.

Clause 132 of the Bill seeks to provide for the validity of certificate and its amendment. When the Authorised officer or the competent authority issues a certificate to a Recovery Officer, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall be entertained by the Recovery Officer.

Clause 133 of the Bill seeks to provide for other modes of recovery. Such mode includes the power of the Central Provident Fund Commissioner or the Director General of the Corporation or any other officer of the Social Security Organisation to require a person to whom the person who is in arrears of the employer to deduct from amount of arrears due, and such person shall comply with any such requisition and to pay the sum so deducted to the credit of Central Provident Fund Commissioner or the Director General of the Corporation, as the case may be, or any other person who is authorised in this behalf.

Clause 134 of the Bill seeks to provide for application of certain provisions of Income-tax Act, 1961. The provisions of the Second and Third Schedules to the Income-tax Act and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in the proposed code instead of to the income-tax.

Clause 135 of the Bill seeks to provide penalty for failure of pay contribution, etc. The penalties specified in the clause are inconsonance with the gravity of the offences.

Clause 136 of the Bill seeks to provide for enhanced punishment in certain cases after previous conviction.Whoever, having been convicted by a court of an offence punishable under this proposed Code, commits the same offence for second, or subsequent offence, shall be punishable with imprisonment for a term which may extend to two years and with fine of two lakhs rupees. Where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation under this proposed code, he shall be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of three lakhs rupees.

Clause 137 of the Bill seeks to provide for offences by companies.Where an offence under chapter XII has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 138 of the Bill seeks to provide for cognizance of offences by Court. No court shall take cognizance of an offence punishable under the proposed code except on a complaint made by such officer or other person as may be prescribed for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under the proposed code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of the proposed code, by the appropriate Government.

Clause 139 of the Bill seeks to provide for prior opportunity to employer for compliance before prosecution. Before initiation of prosecution proceeding against an employer for any offence under the proposed code, an opportunity shall be given to the employer to comply with the aforesaid relevant provisions by way of a written direction. If the employer complies with the direction then, no such proceeding shall be initiated against the employer.

Clause 140 of the Bill seeks to provide for compounding of offences as provided under the said clause.

Clause 141 of the Bill seeks to provide for regarding reporting of vacancies to career centres. The appropriate Government may, by notification, require that from such date as may be specified in the notification, the employer in every establishment or any class or category of establishments, before filling up any vacancy in any employment in that establishment shall report that vacancy to such career centre as may be specified in the notification. It shall not be obligation upon any employer to recruit any person through the career centre to fill any vacancy merely because such vacancy has been reported.

Clause 142 of the Bill seeks to provide for exclusions of certain employment from the application of Chapter XIII. This Chapter shall not apply in respect of vacancies relating to in any employment in agriculture (including horticulture) in any establishment in private sector other than employment in plantation, and employment as agriculture or farm machinery operatives, in any employment in domestic service, in any employment connected with the staff of Parliament or any State Legislature, etc.

Clause 143 of the Bill seeks to provide for application of Aadhaar for registration as member or beneficiary, seeking benefit whether in kind, cash or medical sickness benefit or pension, gratuity or maternity benefit or any other benefit or for withdrawal of fund, receiving any payment or medical attendance as insured person himself or for his dependents, under the proposed code or rules, regulations or schemes made or framed thereunder has to establish his identity or the identity of his family members or dependents through Aadhaar number.

Clause 144 of the Bill seeks to provide for power of appropriate Government to exempt establishment. The appropriate Government may, by notification, and subject to the conditions which may include the eligibility conditions to be fulfilled prior to exemption and the conditions to be complied with after exemption, as may be prescribed by the Central Government in this behalf, grant exemption to an establishment or class of establishments or employees or class of employees, from any or all of the provisions of the proposed Code as may be specified in the notification and may renew for further period such exemption by like notification. No such exemption shall be granted or renewed without prior consultation with the Central Board or without prior consultation with the Corporation.

Clause 145 of the Bill seeks to provide for liability in case of transfer of establishment. Where an employer transfers his establishment in whole or in part, by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any liabilities, cess or any other amount payable under this proposed Code in respect of the periods up to the date of such transfer.

Clause 146 of the Bill seeks to provide for the members, officers and staff of Social Security Organisation, any Inspector-cum-Facilitator, Competent Authority, Authorised officer, Recovery Officer and any other person discharging any function under the proposed Code shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 147 of the Bill seeks to provide for protection of a person or authority from legal proceeding if action is taken in good faith in pursuance of the proposed Code.

Clause 148 of the Bill seeks to provide for misuse of benefits. In case the appropriate Government is satisfied that any establishment or any person has misused the benefit provided under the proposed code then, the appropriate government may, by notification, deprive such establishment or other person, as the case may be, from such benefit for such time as may be specified in the notification.

Clause 149 of the Bill seeks to provide for power of Central Government to give directions. The Central Government may give directions to the Social Security Organisations in respect of matters relating to the implementation of the provisions of this proposed Code.

Clause 150 of the Bill seeks to provide for power of the appropriate Government to frame schemes. The appropriate Government may, subject to the condition of previous publication, frame schemes not inconsistent with this proposed Code, for the purposes of giving effect to the provisions thereof.

Clause 151 of the Bill seeks to provide for protection against attachment of amount, etc. The amount standing to be credited in favour of the employee under relevant Chapters or, of any member in the fund, or of any exempted employee in a provident fund maintained by his employer, shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by such employee or member or the exempted employee.

Clause 152 of the Bill seeks to provide for power to amend schedules. The Central Government may, by notification amend First, Fourth, Fifth and Sixth Schedules by way of addition or deletion therein and upon such addition or deletion, the said Schedule shall stand to have been amended accordingly. Similarly, the appropriate Government may amend the Second or Third Schedules by way of addition to the said Schedules.

Clause 153 of the Bill seeks to provide for power of Central Government to make rules. The appropriate Government may, by notification, and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of the proposed Code.

Clause 154 of the Bill seeks to provide for Power of make rules. The Central Government may, by notification, and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of the proposed Code.

Clause 155 of the Bill seeks to provide for power of State Government to make rules. The State Government may, by notification, and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of the proposed Code.

Clause 156 of the Bill seeks to provide for power of Corporation to make regulations. The Corporation may, by notification, and subject to the condition of previous publication, make regulations, not inconsistent with this proposed Code and the rules and schemes made or framed thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of Chapter-IV and the provisions of this proposed Code relating to that Chapter.

Clause 157 of the Bill seeks to provide for prior publication of rules, regulations, etc. The purpose of such publication is to obtain the objections and suggestions of the persons affected and to consider those objections and suggestions before the rules, regulations are finalised.

Clause 158 of the Bill seeks to provide for rules to give effect to arrangements with other countries for transfer of money. The Central Government may, by notification, make rules for the transfer to any foreign country of money deposited with a Competent Authority under Chapter VII relating to Employees Compensation, which has been awarded to or may be due to, any person residing or about to reside in such foreign country.

Clause 159 of the Bill seeks to provide for laying of rules, regulations and schemes, etc. Every rule, regulation, notification and scheme made, issued or framed by the Central Government or the Corporation, as the case may be, under this proposed Code shall be laid, as soon as may be after it is made, issued or framed, before each House of Parliament. Every rule and scheme made or framed, and every notification issued by, the State Government under this proposed Code, shall be laid as soon as may be after it is made or framed or issued before the State Legislatures.

Clause 160 of the Bill seeks to provide for effect of laws and agreements inconsistent with the proposed Code. Such provision is required to give the overriding effect for smooth implementation of the provisions of the proposed Code.

Clause 161 of the Bill seeks to provide for delegation of powers. The appropriate Government, may, by notification, direct that all or any of the powers and functions which may be exercised or performed by that Government, may, in relation to such matters and subjects in such conditions, be also exercisable by the Board, Corporation or any officer or authority as specified in the said clause.

Clause 162 of the Bill seeks to provide for power of Central Government to remove difficulties by order, published in the Official Gazette. Such order shall not be made after the expiry of a period of two years from the commencement of this proposed Code.

Clause 163 of the Bill seeks to provide for repeal and savings. The enactments which are being repealed are enumerated in the said clause. Further, anything done or any action taken under the enactments to be repealed under the said clause including any rule, regulation, notification (including the notifications issued by the State Governments), schemes, appointment, order or direction made thereunder or any benefit provided or given under any provision of the enactments so repealed, rules, regulations, notifications or schemes made thereunder for any purpose have been saved to the extent they are not contrary to the provisions of the proposed Code, till they are repealed under the corresponding provisions of the proposed code. It also provides that the Central Board and the Executive Committee constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 so repealed and the Corporation, Standing Committee and the Medical Benefit Council constituted under the Employees' State Insurance Act, 1948 so repealed shall remain so constituted and discharge respectively the functions and exercise the powers of the Central Board, Executive Committee, Corporation, Standing Committee and Medical Benefit Committee under the proposed Code, till such Central Board, Executive Committee, Corporation, Standing Committee and Medical Benefit Committee are constituted in accordance with the provisions of the proposed Code. It also contains that any exemption given under any enactments so repealed shall continue to be in force till its validity expires or it is ceased to be in operation under the provisions of the proposed Code or any direction made thereunder for such purpose. Further details have been specified in the provisions of the clause.

FINANCIAL MEMORANDUM

At present, the provisions of the proposed Code does not involve any expenditure either recurring or non-recurring from the Consolidated Fund of India. However, the financial implications may arise in future for formulating the schemes for unorganised sector and for entrusting the additional work for administration of other enactments or schemes relating to social security under clause 13 of the Bill. Such recurring or non-recurring expenditure cannot be estimated at present.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 154 empowers the Central Government, subject to the condition of previous publication, to make rules for the purpose of giving effect to the provisions of the proposed legislation. Sub-clause (2) of the said clause specifies the matters in respect of which such rules may be made. These matters include (a) manner of establishment and maintenance of career centre and the career services under sub-clause (8) of clause 2; (b) the income of dependant parents (including father-in-law and mother-in-law of a woman employee), under sub-clause (33) (e) of clause 2; (c) such other authority who may appoint the person or persons to manage the affairs of the factory and the matters which are directly related to the condition of ship for which the owner of ship shall be deemed to be the occupier, under the proviso to sub-clause (49) of clause 2; (d) the time and manner of registration of establishment under clause 3; (e) the manner of administration of the funds vested in the Board under sub-clause (1), the manner of performance of functions by an Executive Committee under sub-clause (3), the terms and conditions, including tenure of office of member of the Central Board and Executive Committee and their duties under sub-clause (5) and the manner of performance of such other functions under sub-clause (6) of clause 4; (f) the manner of administration of Employees' State Insurance scheme and the manner of representation of States under sub-clause (1) (d), the manner of constitution of Standing Committee under sub-clause (3), the manner of administration of the affairs of the Corporation, exercise of powers and performance of function by the Standing Committee under sub-clause (4) (a), the composition of the Medical Benefit Committee under sub-clause (5) and the terms and conditions, including tenure of office, subject to which a member of the Corporation and Standing Committee shall discharge their respective duties under sub-clause (7) of clause 5; (g) the manner of exercising the powers and performance of the functions by the National Social Security Board under sub-clause (1), the number of persons to be nominated as members, their term of office and other conditions of service, procedure to be followed in the discharge of their functions and manner of filling vacancies under sub-clause (4) and time, place and rules of procedure relating to the transaction of business under sub-clause (6) of clause 6; (h) welfare measures and facilities under sub-clause (6) (j) of clause 7; (i) meetings and procedure in regard to the transaction of business at meetings (including the quorum at such meetings) under sub-clause (1) and fee and allowances of members of Social Security Organisation or any Committee under sub-clause (4), of clause 9; (j) manner of re-constitution of the Corporation or the Central Board or the National Social Security Board or the State Unorganised Workers Board or the Building Workers' Welfare Board, or any of the Committees under sub-clause (1) and the alternate arrangements for the purpose of administration of the relevant provisions of this Code under sub-clause (2), of clause 11; (k) manner of establishment of a Pension Fund and the manner of establishment of Insurance Fund under sub-clause (1) of clause 16; (l) the manner of maintenance of a provident fund account in relation to the establishment under sub-clause (1) of clause 21; (m) the manner of transfer and dealing with accounts under clause 22; (n) form, manner, time limits and fees for filing of appeal under sub-clause (2) of clause 23; (o) salary and allowances of the Director General or the Financial Commissioner under sub-clause (3) and the limit of maximum monthly salary under the proviso to sub-clause (6), of clause 24; (p) limits for defraying expenditure under clause 26 (k) ; (q) conditions to acquire, hold, sell or otherwise transfer any movable or immovable property under sub-clause (1), conditions to invest moneys by the Corporation under sub-clause (2) and the terms to raise loans and take measures for discharging such loans under sub-clause (3), of clause 27; (r) manner of insurance of employees under clause 28; (s) the rate of contributions under sub-clause (2) and the days on which the contributions fall due where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period under sub-clause (4), of clause 29; (t) the percentage of income which may be spent on expenses and the limits for such expenses under clause 30; (u) the amount of payment under the proviso to sub-clause (1) (f) and the qualifications to claim benefits, conditions, rate and period thereof under sub-clause (3) of clause 32; (v) the limits within which the Corporation may incur expenditure from the Employees' State Insurance Fund under clause 33; (w) the rates, periods and conditions for payment of dependants' benefit under sub-clauses (1) and (2) of clause 38; (x) the qualification of an insured person and his family, to claim medical benefit and the conditions subject to which such benefit may be given, the scale and period thereof under sub-clause (3) and the payment of contribution and other conditions under the second proviso to sub-clause (3) of clause 39; (y) the terms and conditions subject to which the scheme may be operated under clause 44; (z) the contribution, user charges, scale of benefits, qualifying and eligibility conditions and other terms and conditions under sub-clause (2) of clause 45; (aa) the form of application to the competent authority under sub-clause (5) (b) of clause 56; (bb) the manner of obtaining an insurance by every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government under sub-clause (1), conditions to exempt and manner of establishing an approved gratuity fund under sub-clause (2), and the time and manner to get establishment registered and the manner thereof under sub-clause (3) of clause 57; (cc) the form of notice under sub-clause (1) and the proof of pregnancy and proof of delivery under sub-clause (5) of clause 62; (dd) the proof of miscarriage or medical termination of pregnancy under sub-clause (1) the proof of tubectomy operation under sub-clause (2) and the proof of illness under sub-clause (3) of clause 65; (ee) the duration of breaks under clause 66; (ff) the number of employees and distance for crèche facility under sub-clause (1) of clause 67; (gg) gross misconduct under the second proviso to sub-clause (1) of clause 68; (hh) rate of interest to be paid by the employer under sub-clause (3) (a) of clause 77; (ii) the manner of notice under the first proviso to sub-clause (1), and the manner of transmitting money under sub-clause (3) of clause 92; (jj) the form, manner and fee for application for claim and settlement under sub-clause (3) of clause 93; (kk) the manner and time of collection of cess under sub-clause (2), manner of deposit of the cess so collected under sub-clause (3) and the uniform rate or rates of advance cess under sub-clause (4) of clause 100; (ll) the rate of interest in case of delayed payment of cess under clause 101; (mm) the manner of self-assessment of cess under sub-clause (1) of clause 103; (nn) the authority to inquire and impose penalty under clause 104; (oo) time limit to prefer appeal, appellate authority, form and manner of appeal under sub-clause (1) of clause 105; (pp) manner of registration as beneficiary under clause 106; (qq) benefits of a beneficiary under sub-clause (2) of clause 107; (rr) manner of administration of the Social Security Fund or funds under sub-clause (5) of clause 109; (ss) eligible age for registration and form, manner, authority and information under sub-clause (1) and the form of application and documents for registration and registering authority under sub-clause (2) of clause 113; (tt) form, manner and time for filing application for review under sub-clause (2) of clause 126; (uu) appellate authority to whom an employer may prefer an appeal under clause 127, and rate of interest on the refund of deposit to the employer, under the second proviso, to the said clause; (vv) the rate of simple interest which the employer shall be liable to pay under clause 129; (ww) manner of levying and recovery of damages under clause 130; (xx) manner to certify under sub-clause (5) of clause 131; (yy) manner of compounding of offences under sub-clause (1) and the form and manner of application for compounding of an offence under sub-clause (4), of clause 140; (zz) manner to establish identity under clause 143; (aaa) the eligibility conditions to be fulfilled prior to exemption and the conditions to be complied with after exemption and the period of extension of exemption under sub-clause (3) of clause 144; (bbb) any other matter which is required to be, or may be, prescribed by the Central Government under the provisions of this Code.

2. Sub-clause (1) of clause 155 empowers the State Government, subject to the condition of previous publication, to make rules for the purpose of giving effect to the provisions of the proposed legislations. Sub-clause (2) specifies the matters in respect of which rules may be made. These matters include (a) the manner of exercising the powers and performance of functions by State Unorganised Workers' Board under sub-clause (9), the number of persons to be nominated as members, their term of office and other conditions of service, the procedure

to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Unorganised Workers' Board under sub-clause (12), and the time, place and rules of procedure relating to the transaction of business at its meetings under sub-clause (14) of clause 6; (b) the terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members and the manner of filling of casual vacancies of the members, under sub-clause (4) and the terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees under sub-clause (5) (c) of clause 7; (c) structure, functions, powers and activities of the organisations under sub-clause (6) of clause 40; (d) procedure to be followed by the Employees' Insurance Court under sub-clause (2) of clause 50; (e) manner of commencement of proceedings before the Employees' Insurance Court and the time-limit of filing, fees and procedure thereof under sub-clause (1) of clause 51; (f) conditions when application for review is made without certificate of a medical practitioner under sub-clause (1) of clause 79; (g) manner of matters to be dealt by or before a competent authority under sub-clause (1) of clause 92; (h) time limit for disposal of application and costs incidental to the proceedings under sub-clause (4) of clause 93; (i) the manner of authentication of memorandum under clause 97; and (j) any other matter which is required to be, or may be, prescribed by the State Government under the provisions of this Code.

3. Sub-clause (1) of clause 153 empowers the appropriate Government, subject to the condition of previous publication, to make rules for the purpose of giving effect to the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters include (a) the amount in connection with premium for Group Insurance Scheme of the beneficiaries, educational schemes for the benefit of children of the beneficiaries and the medical expenses for treatment of major ailments of a beneficiary or, such dependant under sub-clause (6) of clause 7; (b) other member who may authenticate the orders and decisions of the Social Security Organisations and other instruments issued under sub-clause (2) of clause 9; (c) bank or other financial institution in which the gratuity shall be invested for the benefit of minor under the second proviso to sub-clause (1) of clause 53; (d) the time, form and manner of nomination by an employee under sub-clause (1), the time to make fresh nomination under sub-clause (4), the form and manner of modification of a nomination under sub-clause (5) and the form for fresh nomination under sub-clause (6) of clause 55; (e) time and form of application under sub-clause (1) of clause 56; (f) the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the competent authority of the amount of the gratuity payable to an employee from the insurer under sub-clause (4) of clause 57; (g) the qualifications and experience of competent authority under sub-clause (1) of clause 58; (h) authority to whom an appeal may be preferred under sub-clause (3) of clause 72; (i) class of employers and the form of notice-book under sub-clause (4) of clause 82; (j) the frequent interval for medical examination under proviso to sub-clause (1) of clause 84; (k) form of statement and the manner of ascertaining the dependants under sub-clause (1), the manner of providing an advocate under sub-clause (5) of clause 88; (l) manner of recording memorandum under sub-clause (1) of clause 89; (m) such other experience and qualifications for appointment as a competent authority under sub-clause (1) of clause 91; (n) time-limit to pay the amount of cess under clause 101; (o) fees for appeal under sub-clause (2) of clause 105; (p) conditions to acquire, hold, sell or otherwise transfer any movable or immovable property under sub-clause (1), conditions to invest moneys, re-invest or realise investments under sub-clause (2), terms to raise loans and take measures for discharging such loans under sub-clause (3) and terms to constitute for the benefit of officers and staff or any class of them, provident or other benefit funds under sub-clause (4) of clause 120; (q) conditions and manner of writing off losses under clause 121; (r) other powers of Inspector-cum-Facilitator under sub-clause (6) (e) of clause 122; (s) form and manner for maintenance of records and registers and other particulars and details, manner and form for display of notices at the work places of the employees and the manner and period of filing returns under clause 123; (t) officer or other person who may make complaint under sub-clause (1), the authority to give sanction under sub-clause (2) of clause 138; (u) the manner and form for reporting

vacancies to the career centres and the manner and form of filing the return by the employer to the concerned career centre under sub-clause (2) of clause 141; (v) the time within which the Central Board or the Corporation as the case may be, shall forward its view to the appropriate Government under sub-clause (1) and the conditions which the exempted establishment or the class of establishment or the employers or class of employers or the employees or class of employees as the case may be, shall comply after exemption under sub-clause (2) of clause 144; and (w) any other matter which is required to be, or may be, prescribed by the appropriate Government under the provisions of this Code.

4. Sub-clause (1) of clause 156 empowers the Corporation, subject to the condition of previous publication to make regulations for carrying into effect the provisions of Chapter VI and the provisions of this Code relating to that Chapter. Sub-clause (2) specifies the matters in respect of which such regulations may be made. These matters include (a) the cases and matters to be submitted for the decision of the Corporation under sub-clause (4) of clause 5; (b) composition of committees under sub-clause (6) of clause 5; (c) the method of recruitment, salary and allowances, discipline and other conditions of services of the officers and employees under sub-clause (7) (a) of clause 24; (d) unit in respect of which all contributions shall be payable under sub-clause (3) of clause 29; (e) maintenance of register of employees by or through the contractor under sub-clause (7), conditions for deduction of wages under sub-clause (8), any matter relating or incidental to the payment and collection of contribution under sub-clause (9) of clause 31; (f) qualifications and experience of other person to certify sickness under sub-clause (1) (a), authority to certify eligibility of a woman under sub-clause (1) (b), authority to certify eligibility for payment under sub-clause (1) (c), conditions for extension of medical benefits under sub-clause (2) and any matter relating or incidental to the accrual and payment of benefits under sub-clause (4) of clause 32; (g) continuous period in which the employee contracts occupational disease under sub-clause (1) of clause 36; (h) constitution of medical board under sub-clause (1), constitution of medical appeal tribunal under sub-clause (5) and manner of filing appeals before the medical appeal tribunal under sub-clause (7) of clause 37; (i) conditions for voluntary retirement scheme under the first proviso to sub-clause (3) of clause 39; (j) other authority for providing permission under sub-clause (3) (c), form of nomination under sub-clause (6) and the authority to determine benefits under sub-clause (9) of clause 41; (k) user charges to be paid by other beneficiaries for medical facilities under the *Explanation* to clause 44; and (l) any matter in respect of which regulations are required or permitted to be made by this Code.

5. The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 374 OF 2019

A Bill further to amend the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019. Short title and commencement.

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

56 of 2007. **2.** In the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the principal Act), for the long line, the following long line shall be substituted, namely:— Amendment of long line.

"An Act to give effect to the provisions for the welfare of parents and senior citizens as guaranteed and recognised under the Constitution by providing for the maintenance and welfare of parents and senior citizens, ensuring their overall physical and mental well-being, establishment, management and regulation of institutions for senior citizens and services therefor and for other matters connected therewith or incidental thereto;

Amendment of section 2.

3. In section 2 of the principal Act,—

(*i*) for clauses (*a*) and (*b*), the following clauses shall be substituted, namely:—

'(*a*) "children", in relation to a parent or a senior citizen, means his son or daughter, whether biological, adoptive or step-child and includes his son-in-law, daughter-in-law, grandson, grand-daughter and the legal guardian of minor children, if any;

(*aa*) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(*ab*) "Conciliation Officer" means the person referred to in sub-section (*6*) of section 6;

(*ac*) "local body" means the Municipality as defined in clause (e) of article 243P of the Constitution or, as the case may be, the Panchayat as defined in clause (d) of article 243 thereof;

(*b*) "maintenance" includes provision for food, clothing, housing, safety and security, medical attendance, healthcare and treatment necessary to lead a life of dignity;';

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

'(*ba*) "Maintenance Officer" means an officer designated as such by the State Government under sub-section (*1*) of section 18;';

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

'(*ca*) "Multi-Service Day Care Centre for Senior Citizens" means an institution registered as such under sub-section (*2*) of section 19, established or maintained by the Government or a local body or an organisation for providing day-care facilities, including healthcare, peer interaction, recreation and entertainment to senior citizens;

(*cb*) "Nodal Officer for Senior Citizens" means a police officer designated as such by the State Government under sub-section (*2*) of section 22;

(*cc*)"organisation" includes any voluntary or private or non-Governmental organisation or a society or trust registered under any law for the time being in force;';

(*iv*) for clauses (*d*) and (*e*), the following clauses shall be substituted, namely:—

'(*d*) "parent" means father or mother, whether biological, adoptive or step-parent and includes father-in-law, mother-in-law and grandparents, whether or not a senior citizen;

(*e*) "prescribed" means prescribed by rules made under this Act;';

(*v*) in clause (*g*), for the words "citizen who is not a minor and is", the words "citizen, including a minor through his legal guardian, who is" shall be substituted;

(*vi*) after clause (*h*), the following clause shall be inserted, namely:—

'(*ha*) "Senior Citizens' Care Home" means an institution registered as such under sub-section (*2*) of section 19, established or maintained by the Government or a local body or an organisation for providing residential facilities to senior citizens for their care and welfare;';

(*vii*) for clause (*k*), the following clause shall be substituted, namely:—

'(*k*) "welfare" means provision for food, clothing, housing, safety and security, medical attendance, healthcare, treatment, recreation and other amenities necessary for the physical and mental well being of parents and senior citizens.'.

Substitution of new section for section 4.

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

Maintenance of parents and senior citizens.

"4. (*1*) A parent or a senior citizen who is unable to maintain himself to lead a life of dignity from his own earning, including earning from any property owned by him, and is either not maintained by his children or relatives or is neglected by them, shall be entitled to make an application for maintenance under section 5.

(*2*) The obligation of the children to maintain a parent extends to such needs of the parent as are necessary for him to lead a life of dignity.

(*3*) The obligation of a relative to maintain a childless senior citizen extends to such needs of the senior citizen as are necessary for him to lead a life of dignity provided such relative has sufficient means to do so and is either in possession of, or shall inherit, the property of such senior citizen after his death:

Provided that where more than one relative is in possession of, or shall inherit, the property of a childless senior citizen, the obligation of such relatives shall be in proportion in which they are in possession of, or shall inherit, the property''.

Amendment of section 5.

5. In section 5 of the principal Act, for sub-sections (*1*) to (*5*), the following sub-sections shall be substituted, namely:—

"(*1*) An application for maintenance under section 4 may be made to the Tribunal in person or by registered post or online or by any other means, by—

(*a*) a parent or senior citizen, as the case may be, against one or more children as defined in clause (*a*) of section 2; or

(*b*) a childless senior citizen, against one or more relatives as defined in clause (*g*) of section 2,

and if such parent or senior citizen is incapable so to do, he may authorise any other person or organisation to make such application on his behalf or the Tribunal may also take *suo motu* cognizance of such matter.

(*2*) On receipt of an application for maintenance under sub-section (*1*), the Tribunal may, after giving notice of the application to the children or relative, as the case may be, and after giving the parties an opportunity of being heard, hold an inquiry for determining the maintenance in accordance with the provisions of section 6.

(*3*) During the pendency of the proceeding for maintenance, the Tribunal may, by order, direct the children or relative to pay such monthly allowance towards the interim maintenance of such parent or senior citizen, as may be determined by it from time to time.

(*4*) Every application under sub-section (*1*) shall be disposed of by the Tribunal within a period of ninety days from the date of receipt of such application:

Provided that in case of senior citizens who are eighty years or above, such application shall be disposed of within a period of sixty days:

Provided further that in exceptional circumstances and for reasons to be recorded in writing, the Tribunal may extend such period only once for a maximum period of thirty days.

(*5*) Where an application under sub-section (*1*) is filed against one or more children or relatives, such children or relative may implead any other person who is liable to maintain the parent or senior citizen, as the case may be.".

Amendment of section 6.

6. In section 6 of the principal Act,—

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

"(*1*) The proceedings referred to in section 5 may be taken against the children or relatives in the district where—

(*a*) the parent or senior citizen resides or has last resided; or

(*b*) any of the children or relatives reside.";

(*ii*) in sub-section (*3*), for the words and figures "as provided under the Code of Criminal Procedure, 1973", the words "as provided under the Code" shall be substituted; 2 of 1974.

(*iii*) in sub-section (*4*),—

(*a*) in the opening portion, for the words "an order for payment of maintenance is proposed to be made", the words and figure "the application under section 5 has been filed" shall be substituted;

(*b*) in the proviso, for the words "an order for payment of maintenance is proposed to be made is", the words, brackets and figure "process has been issued under sub-section (*2*), are" shall be substituted;

(*iv*) for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) The Tribunal may, for assisting and persuading the parties to arrive at amicable settlement, refer the proceedings under section 5 to a Conciliation Officer, nominated by the Tribunal in such manner as may be prescribed, and such Conciliation Officer shall submit his findings within fifteen days from the date of his nomination and in case of any amicable settlement, the Tribunal shall pass an order to that effect.".

Amendment of section 7.

7. In section 7 of the principal Act, in sub-section (*1*), for the words "order for maintenance", the words "application filed" shall be substituted.

Amendment of section 8.

8. In section 8 of the principal Act, in sub-section (*2*), for the words and figures "the Code of Criminal Procedure, 1973", the words "the Code" shall be substituted. 2 of 1974.

Substitution of new section for section 9.

9. For section 9 of the principal Act, the following section shall be substituted, namely:—

Order for maintenance.

"9. (*1*) The Tribunal may, on being satisfied of the neglect or refusal on part of the children or the relative, as the case may be, to maintain a parent or senior citizen who is unable to maintain himself to lead a life of dignity, pass an order for maintenance directing such children or relative to provide such monthly allowance, other resources and care for the maintenance of the parent or senior citizen, as it may, from time to time, determine.

(*2*) While determining the maintenance, the Tribunal may take into consideration the standard of living of the parent or senior citizen and the earnings of such parent or senior citizen and of the children or relative.

(*3*) The order for maintenance shall be enforceable from the date of such order or, if so ordered by the Tribunal, from the date of the application.

(*4*) A copy of the order for maintenance shall be—

(*i*) made available free of cost to the parent or senior citizen, as the case may be;

(*ii*) posted on the Notice Board of the Tribunal;

(*iii*) made available online on the website of the concerned Department of the State; and

(*iv*) provided to the Maintenance Officer.

(*5*) Where an order for maintenance is made against more than one person, the death of one of them shall not affect the liability of the others to continue providing the maintenance.".

Amendment of section 10.

10. In section 10 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) On proof of misrepresentation or mistake of fact or any change in the circumstances of the parent or senior citizen receiving maintenance under section 9, the Tribunal may make such alteration in the order for maintenance, as it deems fit.".

Amendment of section 11.

11. In section 11 of the principal Act,—

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

"(*1*) An order for maintenance may be enforced by the Tribunal in any place where the person against whom it is made resides, on being satisfied as to the identity of the parties and non-compliance of such order.";

2 of 1974.

(*ii*) in sub-section (*2*), for the words and figures, "Code of Criminal Procedure, 1973 and shall be executed in the manner prescribed for the execution of such order by that Code", the words "the Code and shall be executed in the manner prescribed by the Code for the execution of such order" shall be substituted;

(*iii*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) If the children or relative against whom an order for maintenance is passed under section 9 fails to comply with such order without sufficient cause, the Tribunal may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application is made by the parent or the senior citizen to the Tribunal to levy such amount.

(*4*) If the children or relatives, as the case may be, fails to pay the fine levied under sub-section (*3*), the Tribunal may sentence him to imprisonment for a term which may extend to one month or until the payment is made, whichever is earlier.".

Amendment of section 12.

12. In section 12 of the principal Act, the following provisos shall be inserted, namely:—

"Provided that where any application for maintenance under Chapter IX of the Code is pending before any Court prior to the date of commencement of the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019, the Court may, on the request of the parent or senior citizen, allow withdrawal of such application and such parent or senior citizen shall be entitled to file an application for maintenance before the Tribunal under this Act:

Provided further that such application filed before the Tribunal shall be deemed to have been filed from the date when such application was filed before the Court.".

Amendment of section 13.

13. In section 13 of the principal Act, for the words "within thirty days", the words "within fifteen days" shall be substituted.

Amendment of section 16.

14. In section 16 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) in the opening portion, after the words "senior citizen or a parent", the words "or any of the children or relatives" shall be inserted;

(*b*) in the first proviso, after the word "parent", the words "senior citizen" shall be inserted;

(*ii*) in sub-section (*6*), after the words "receipt of an appeal", the words "and in exceptional circumstances and for reasons to be recorded in writing, within a further period of thirty days" shall be inserted.

Amendment of section 18.

15. In section 18 of the principal Act,—

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

"(*1*) The State Government shall designate an officer in the rank of District Social Welfare Officer or an officer of equivalent rank from any related Department of the State or the Block level Officer or the Tehsildar as Maintenance Officer for the purposes of this Act.";

(*ii*) in sub-section (*2*), for the words "shall represent a parent", the words "may represent a parent or a senior citizen" shall be substituted;

(*iii*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) It shall be the duty of the Maintenance Officer to ensure that the order for maintenance passed under section 9 is complied with, and in case of its non-compliance, he may take such steps as may be necessary for the compliance of such order.

(*4*) The Maintenance Officer shall be a point of contact for the parent or senior citizen to liaison and co-ordinate with them.".

Amendment of heading of CHAPTER III.

16. In the principal Act, for the heading of CHAPTER III, the following heading shall be substituted, namely:—

"ESTABLISHMENT AND MANAGEMENT OF SENIOR CITIZENS' CARE HOMES AND MULTI-SERVICE DAY CARE CENTRES FOR SENIOR CITIZENS".

Substitution of new section for section 19.

17. For section 19 of the principal Act, the following section shall be substituted, namely:—

Senior Citizens' Care Homes and Multi-Service Day Care Centre for Senior Citizens.

"19. (*1*) The Government or an organisation may establish or maintain Senior Citizens' Care Homes for providing residential facilities for the care of senior citizens or Multi-Service Day Care Centre for Senior Citizens for providing day care facilities for senior citizens.

(*2*) Notwithstanding anything contained in any other law for the time being in force, all such institutions established and maintained as Senior Citizens' Care Homes or as Multi-Service Day Care Centre for Senior Citizens shall be registered with the Registration Authority referred to in sub-section (*3*).

(*3*) The State Government shall designate a Registration Authority for registration of institutions under this Act in such manner as may be prescribed.

(*4*) Every institution registered under this Act shall provide necessary amenities specified under sub-section (*5*) and if it fails to do so, the State Government may cancel or withhold registration of such institution, after following such procedure as may be prescribed.

(*5*) The Central Government shall prescribe minimum standards for establishment and maintenance of Senior Citizens' Care Homes and Multi-Service Day Care Centres and for the food, infrastructure, medical facilities, recreation, staff, safety and security and such other matters as may be necessary.

(*6*) The State Government shall designate such authority, as it deems fit, as the Regulatory Authority to monitor the functioning of the institutions registered under this Act through regular inspections or social audit to ensure that the minimum standards are adhered to.".

Amendment of heading of CHAPTER IV.

18. In the principal Act, in the heading of CHAPTER IV, for the word "MEDICAL", the word "HEALTHCARE" shall be substituted.

Substitution of new sections 20 and 20A for section 20.

19. For section 20 of the principal Act, the following sections shall be substituted, namely:—

Healthcare for senior citizens.

"20. The Government shall ensure that,—

(*i*) all hospitals, whether fully or partially funded by the Government or private healthcare institutions, provide beds for senior citizens as far as possible;

(*ii*) separate queues are earmarked for senior citizens in all healthcare and allied institutions;

(*iii*) facilities for treatment of chronic, terminal and degenerative diseases are expanded for senior citizens;

(*iv*) research and development in geriatric sciences is undertaken;

(*v*) facilities are earmarked for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care and other objectives and outcomes of National and State level programmes for geriatric healthcare are monitored and achieved;

(*vi*) necessary measures are taken to provide barrier-free access for senior citizens in all healthcare and allied institutions.

Homecare services for senior citizens.

20A. (*1*) The Government or an organisation may provide homecare services for such senior citizens who suffer from difficulties in performing activities of daily life due to any physical or mental impairment.

(*2*) The institutions providing such homecare services shall engage trained and certified attendants or caregivers for the senior citizens as per their needs.

(*3*) Institutions providing training, certification and homecare services shall be registered as service provider with the Registration Authority referred to in sub-section (*3*) of section 19.".

Amendment of heading of CHAPTER V.

20. In the principal Act, for the heading of CHAPTER V, the following heading shall be substituted, namely:—

"PROTECTION OF LIFE AND PROPERTY OF SENIOR CITIZENS AND OTHER WELFARE MEASURES".

Amendment of section 21.

21. In section 21 of the principal Act, for clauses (*i*), (*ii*) and (*iii*), the following clauses shall be substituted, namely:—

"(*i*) the provisions of the Act and measures for the well-being of senior citizens are given wide publicity through various means;

(*ii*) the officers of the Central Government and of the State Government, including the members of Civil Defence Corps and Home Guards, police officers and members of judicial service are given periodic sensitisation and awareness training on the provisions of this Act and the issues relating thereto.".

Insertion of new section 21A.

22. After section 21 of the principal Act, the following section shall be inserted, namely:—

Action plan for senior citizens.

"21A. (*1*) The State Government shall prepare and implement a comprehensive action plan for the welfare of senior citizens including for protection of their life and property.

(*2*) The State Government shall take all measure to ensure effective co-ordination between the services provided by the concerned Ministries or Departments, non-Governmental organisations and other stakeholders to address the issues relating to the welfare of the senior citizens and that periodical review of the same is conducted.".

Amendment of section 22.

23. In section 22 of the principal Act, for sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*2*) In every police station, at least one officer, not below the rank of Assistant Sub-Inspector possessing aptitude, appropriate training and orientation shall be designated as the Nodal Officer for senior citizens to deal with issues relating to parents and senior citizens.

(*3*) The State Government shall constitute a Special Police Unit for senior citizens in each district to co-ordinate the functions of police in respect of parents and senior citizens and such Unit shall be headed by a police officer not below the rank of Deputy Superintendent of Police and consist of the Nodal Officers for senior citizens designated under sub-section (*2*) and two social workers having experience of working in the field of senior citizens, of whom one shall preferably be a woman.".

Amendment of section 23.

24. In section 23 of the principal Act, for the words "senior citizen", wherever they occur, the words "parent or senior citizen" shall be substituted.

Insertion of new section 23A.

25. After section 23 of the principal Act, the following section shall be inserted, namely:—

Other welfare measures for senior citizens.

"23A. (*1*) The Central Government and the State Government shall take suitable measures to create more accessible and age-friendly environment, transportation, information and communications and other public facilities including separate queues for senior citizens.

(*2*) The State Government shall establish and maintain helpline for safety and security of senior citizens having one common number across the nation and it shall be linked to healthcare facilities, police department and other related agencies.

(*3*) The Government may undertake welfare measures for the benefit of senior citizens and any benefit for elderly persons made available by the Government or semi-Government or organisation shall also be available to senior citizens who are sixty years and above:

Provided that the provisions of this section shall not have any effect on any benefits extended by the Government or semi-Government or organisations to any person below sixty years.".

Substitution of new section for section 24.

26. For section 24 of the principal Act, the following section shall be substituted, namely:—

Abuses and abandonement of senior citizen.

'24. Whoever, having the care or protection of a parent or senior citizen, intentionally abuses or abandons such parent or senior citizen, shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to six months or with fine up to ten thousand rupees or with both.

Explanation.—For the purposes of this section, the term "abuse" includes physical abuse, verbal and emotional abuse and economic abuse, neglect and abandonment causing assault, injury, physical or mental suffering.".

Insertion of new sections 28A and 28B.

27. After section 28 of the principal Act, the following sections shall be inserted, namely:—

Obligation of State Government to place details of registered institutions on website.

"28A. The details of the institutions registered under sub-section (*3*) of section 19 or, as the case may be, under sub-section (*3*) of section 20A shall be made available by the State Government by placing it on the website of concerned Department of that State.

Accreditation of institutions.

28B. The institutions registered under sub-section (*3*) of section 20A shall be accredited for quality of services by accreditation agencies authorised under any law for the time being in force.".

Substitution of new section for section 29.

28. For section 29 of the principal Act, the following section shall be substituted, namely:—

Power to remove difficulties.

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

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Act, 2019.

(*2*) Every order made under sub-section (*1*) shall, as soon as may be after it is made, be laid before each House of Parliament.".

Amendment of section 32.

29. In section 32 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be inserted, namely:—

"Provided that the Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.";

(*b*) in sub-section (*2*),—

(*i*) for clause (*a*), the following clauses shall be substituted, namely:—

"(*a*) the manner of nominating Conciliation Officer under sub-section (*6*) of section 6;

(*aa*) the manner of holding inquiry under section 5 subject to such rules as may be prescribed under sub-section (*1*) of section 8;";

(*ii*) after clause (*d*), the following clauses shall be inserted, namely:—

"(*da*) the manner of designating Registration Authority under sub-section (*3*) of section 19;

(*db*) the procedure for cancellation or withholding of registration of institutions under sub-section (*4*) of section 19;

(*dc*) the minimum standards for the establishment and maintenance of Senior Citizens' Care Homes and Multi-Service Day Care Centres and for the food, infrastructure, medical facilities, recreation, staff, safety and security and other matters under sub-section (*5*) of section 19;".

STATEMENT OF OBJECTS AND REASONS

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted on 29th December, 2007 to ensure need based maintenance for parents and senior citizens and their welfare. It's been more than a decade now that the Act is in place, serving the needy parents and senior citizens, with the active co-operation of the State Governments and Union territory Administrations.

2. However, with the gradual breakdown of joint family system in the society, number of cases of neglect, crime, exploitation and abandonment of parents and senior citizens are in the rise. Various High Courts have also issued orders directing the Government to review provisions of the Act.

3. After examining various provisions of the Act, the Group of Secretaries have made recommendations to extend all the benefits to senior citizens of uniform age, to enhance maintenance amount for senior citizens and standardisation of homecare services. Besides, petitions and representations have been received from individuals and institutions requesting to make certain modifications in the Act, including to bring daughter-in-law and son-in-law within the ambit of the definition of 'children', to provide punishment for abuse of parents and senior citizens. It is, therefore, decided to revise various provisions of the said Act and to incorporate new provisions therein to make the Act more comprehensive and helpful to the greying population.

4. The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019 seeks to —

(*a*) expand the scope of the Act by modifying the definitions of 'children', 'parents', 'maintenance', 'welfare' and 'senior citizens', to enable parents and senior citizens to lead a life of dignity;

(*b*) enlarge the mode of submission of application for maintenance by the parents or senior citizens;

(*c*) provide for expeditious disposal of maintenance applications with special preference to the applications of senior citizens above eighty years of age, so as to enable parents or senior citizens to receive necessary relief;

(*d*) remove the upper limit of rupees ten thousand as monthly maintenance amount that may be awarded by the Tribunal;

(*e*) extend the right to file appeal to children and relatives also who are aggrieved by the order of the Maintenance Tribunal, if they continue to pay the maintenance amount as ordered by the Maintenance Tribunal;

(*f*) provide for registration of Senior Citizens' Care Homes, Multi-Service Day Care Centre for Senior Citizens and Institutions providing Homecare Services for Senior Citizens and their minimum standards;

(*g*) constitute Special Police Unit for Senior Citizens in each district and appoint Nodal Officers for Senior Citizens in every Police Station;

(*h*) maintain Helpline for senior citizens; and

(*i*) provide stringent punishment to those who abuse or abandon parents or senior citizens.

5. The Bill seeks to achieve the above objects.

NEW DELHI; THAAWARCHAND GEHLOT.

The 6*th December*, 2019.

Notes on clauses

Clause 3 of the Bill provides for definitions of certain expressions including "children", "maintenance", "parent", etc.

Clause 4 of the Bill seeks to substitute a new section for section 4 which provides for maintenance of parents and senior citizens and obligation of children and relatives to maintain them.

Clause 5 of the Bill seeks to amend section 5 to expand the mode of filing application before the Tribunal for maintenance.

Clause 6 of the Bill seeks to amend section 6 *inter alia* to empower the Tribunal to refer the proceedings to the Conciliation Officers.

Clause 7 of the Bill seeks to amend section 7 to substitute the words 'order for maintenance' with the words 'application filed'.

Clause 8 of the Bill seeks to amend section 8 to substitute the words 'the Code' with the words' the Code of Criminal Procedure, 1973'.

Clause 9 of the Bill proposes to substitute a new section for section 9 which provides manner of determining maintenance by the Tribunal.

Clause 10 of the Bill seeks to substitute sub-section (*1*) of section 10 to provide for making alteration in the order for maintenance passed by the Tribunal.

Clause 11 of the Bill seeks to amend section 11 to provide for the enforcement of order of maintenance.

Clause 12 of the Bill seeks to amend section 12 so as to insert a proviso therein to enable the parent or senior citizen to withdraw the application pending before any court and to file the same before the Tribunal and such application shall be deemed to have been filed from the date when such application was filed before the court.

Clause 13 of the Bill seeks to amend section 13 to substitute the words 'within thirty days' with the words 'within fifteen days'.

Clause 14 of the Bill seeks to amend section 16 to enable the children or relatives of parent or senior citizens to file appeal against the order of the Tribunal.

Clause 15 of the Bill seeks to amend section 18 to provide for appointment of the Maintenance Officer.

Clause 16 of the Bill seeks to amend heading of chapter III as 'Establishment and Management of Senior Citizens' Care Homes and Multi Service day Care Centres for Senior Citizens.

Clause 17 of the Bill seeks to substitute section 19 with a new section to provide for setting up and management of Senior Citizens' Care Homes and Multi Service day Care Centres for Senior Citizens'.

Clause 18 of the Bill seeks to amend heading of chapter IV to substitute the word 'Medical' with the word 'Healthcare'.

Clause 19 of the Bill seeks to substitute section 20 with a new section to provide for the healthcare of senior citizens and for homecare services for senior citizens.

Clause 20 of the Bill seeks to amend heading of Chapter V as 'Protection of Life and Property of senior citizens and other welfare measures'.

Clause 21 of the Bill seeks to amend section 21 to provide for giving wide publicity to the provisions of the Act and measures for the well-being of the senior citizens and also to sensitise the officers of the Central Government and the State Government.

Clause 22 of the Bill seeks to insert a new section 21A to provide for Action Plan for Senior Citizens.

Clause 23 of the Bill seeks to amend section 22 to provide for designation of Nodal Officer for senior citizens to deal with issues relating to parents and senior citizens in every police stations and to constitute a Special Police Unit for senior citizens in each district to coordinate the functions of police in respect of parents and senior citizens.

Clause 24 of the Bill seeks to amend section 23 to substitute the words 'senior citizens', wherever they occur, with the words 'parent or senior citizen'.

Clause 25 of the Bill seeks to insert a new section 23A to provide for other welfare measures for senior citizens.

Clause 26 of the Bill seeks to substitute section 24 with a new section to provide punishment for the abuse or abandonment of parent or senior citizen.

Clause 27 of the Bill seeks to insert new sections 28A and 28B to provide for obligation of State Governments to place details of registered institutions on website and accreditation of institutions, respectively.

Clause 28 of the Bill seeks to substitute a new section for section 29 to provide for power to remove difficulties.

Clause 29 of the Bill seeks to amend section 32 to empower the Central Government to frame model rules and to empower the State Government to make rules in respect of certain matters.

FINANCIAL MEMORANDUM

Clause 17 of the Bill seeks to substitute a new section for section 19 which provides for establishment or maintenance of Senior Citizens' Care Homes for providing residential facilities for the care of senior citizens or Multi-Service Day Care Centre for Senior Citizens for providing day care facilities for senior citizens.

Clause 19 of the Bill seeks to substitute new sections 20 and 20A for section 20. Section 20A provides for provisioning of homecare services to senior citizens who suffer from difficulties in performing activities of daily life due to any physical or mental impairment.

Clause 25 of the Bill seeks to insert a new section 23A which provides for creating more accessible and age-friendly environment, transportation, information and communications and other public facilities for senior citizens and for establishing and maintaining Helpline for safety and security of senior citizens.

Since these provisions will be implemented in a phased manner mostly by the State Government, it is not possible at this stage to estimate the full financial burden likely to be incurred. Further, there would be no additional requirement of fund from the Consolidated Fund of India at present. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (*a*) of clause 29 of the Bill seeks to insert a proviso in sub-section (1) of section 32 to empower the Central Government to frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.

Sub-clause (*b*) of clause 29 of the Bill seeks to amend sub-section (2) of section 32 to empower the State Government to make rules to provide for (*i*) the manner of nominating Conciliation Officer under sub-section (*6*) of section 6; (*ii*) the manner of designating Registration Authority under sub-section (*3*) of section 19; (*iii*) the procedure for cancellation or withholding of registration of institutions under sub-section (*4*) of section 19; (*iv*) the minimum standards for the establishment and maintenance of Senior Citizens' Care Homes and Multi-Service Day Care Centres for senior citizens and for the food, infrastructure, medical facilities, recreation, staff, safety and security and other matters under sub-section (*5*) of section 19.

The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

SNEHLATA SHRIVASTAVA
Secretary General

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