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## **Unit - 3 □ Regulatory Affairs & Legal Provision**

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### **3.1 The Private Security Agencies (Regulation) Act, 2005**

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[With effect from 15th March, 2006]

An Act to provide for the regulation of private security agencies and for matters connected there with or incidental there to.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

**1. Short title, extent and commencement. -**

- (i) This Act may be called the Private Security Agencies (Regulation) Act, 2005.
- (ii) It extends to the whole of India except the State of Jammu and Kashmir.
- (iii) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

**2. Definitions. - In this Act, unless the context otherwise requires, -**

- (a) "armoured car service" means the service provided by deployment of armed guards along with armoured car and such other related services which may be notified by the Central Government or as the case may be, the State Government from time to time;
- (b) "Controlling Authority" means the Controlling Authority appointed under sub-section (1) of section 3;
- (c) "License" means a license granted under sub-section (5) of section 7;
- (d) "Notification" means a notification published in the Official Gazette;
- (e) "Prescribed" means prescribed by rules made under this Act;
- (f) "Private security" means security provided by a person, other than a public servant, to protect or guard any person or property or both and includes provision of armoured car service;
- (g) "Private security agency" means a person or body of persons other than a Government agency, department or organisation engaged in the business of providing private security service including training to private security guards or their supervisor or providing private security guards to any industrial or business undertaking or a company or any other person or property;
- (h) "Private security guard" means a person providing private security with or without arm to another person or property or both and includes a supervisor;
- (i) "State Government", in relation to a Union territory, includes the Administrator of that Union territory appointed by the President under Article 239 of the Constitution.

**3. Appointment of Controlling Authority.-**

- (A) The State Government shall by notification, designate an officer not below the rank of a Joint Secretary in the Home Department of the State or an equivalent

officer to be the Controlling Authority, for the purposes of this Act.

- (B) The State Government may, for efficient discharge of functions by the Controlling Authority, provide it with such other officers and staff as that Government considers necessary.

**4. Persons or Private Security Agency not to engage or provide private security guard without license** — No person shall carry on or commence the business of private security agency, unless he holds a license issued under this Act :

Provided that the person carrying on the business of private security agency, immediately before the commencement of this Act, may continue to do so for a period of one year from the date of such commencement and if he has made an application for such license within the said period of one year, till the disposal of such application:

Provided further that no private security agency shall provide private security abroad without obtaining permission of the Controlling Authority, which shall consult the Central Government before according such permission.

**5. Eligibility for license.**— An application for issue of a license under this Act shall only be considered from a person after due verification of his antecedents.

**6. Persons not eligible for license. -**

- (1) A person shall not be considered for issue of a license under this Act, if he has been—
- (a) Convicted of an offence in connection with promotion, formation or management of a company (any fraud or misfeasance committed by him in relation to the company), including, an undischarged insolvent; or
  - (b) Convicted by a competent court for an offence, the prescribed punishment for which is imprisonment of not less than two years; or
  - (c) Keeping links with any organisation or association which is banned under any law on account of their activities which pose threat to national security or public order or there is information about such a person indulging in activities which are prejudicial to national security or public order; or
  - (d) Dismissed or removed from Government service on grounds of misconduct or moral turpitude.
- (2) A company, firm or an association of persons shall not be considered for issue of a license under this Act, if it is not registered in India, or having a proprietor or a majority shareholder, partner or director, who is not a citizen of India.

**7. Application for grant of license.-**

- a) An application for grant of license to a private security agency shall be made to the Controlling Authority in such form as may be prescribed.
- b) The applicant shall submit an affidavit incorporating the details in relation to provisions contained in section 6, ensure the availability of the training for its private security guards and supervisors required under sub-section (2) of section 9, fulfillment of conditions under section 11 and of cases registered with police or pending in a court of law involving the applicant.
- c) Every application under sub-section (1) shall be accompanied by a fee of-
  - a. Rupees five thousand if the private security agency is operating in one district of a state;
  - b. Rupees ten thousand if the agency is operating in more than one but up to five districts of a State; and
  - c. Rupees twenty-five thousand if it is operating in the whole State.
- d) On receipt of an application under sub-section (1), the Controlling Authority may, after making such inquiries as it considers necessary and obtaining no objection certificate from the concerned police authority, by order in writing, either grant a license or refuse to grant the same within a period of sixty days from the date of receipt of application with complete particulars and the prescribed fee :

**Provided that no order of refusal shall be made unless -**

- a. The applicant has been given a reasonable opportunity of being heard; and
  - b. The ground on which licence is refused is mentioned in the order.
- e) A license granted under this section -
- a. Shall be valid for a period of five years unless the same is cancelled under sub-section (1) of section 13;
  - b. May be renewed from time to time after the expiry of five years, for a further period of five years on payment of such fee as may prescribed; and
  - c. Shall be subject to such conditions as may be prescribed.

**8. Renewal of licence.-**

- (1) An application for renewal of licence shall be made to the Controlling Authority, not less than forty-five days before the date of expiry of the period of validity thereof, in such form as may be prescribed and shall be accompanied by the

requisite fee and other documents required under sections 6, 7 and 11 of this Act.

- (2) The Controlling Authority shall pass an order on application for renewal of licence within thirty days from the date of receipt of application complete in all respects.
- (3) On receipt of an application under sub-section (1), the Controlling Authority may, after making such inquiries as he considers necessary and by order in writing, renew the licence or refuse to renew the same:

Provided that no order of refusal shall be made except after giving the applicant a reasonable opportunity of being heard.

**9. Conditions for commencement of operation and engagement of supervisors.-**

- (A) Every private security agency shall, within six months of obtaining the licence, commence its activities.
- (B) Every private security agency shall ensure imparting of such training and skills to its private security guards and supervisors as may be prescribed:

Provided that the person carrying on the business of private security agency, before the commencement of this Act, shall ensure the required training to its security guards and supervisors within a period of one year from the date of such commencement.

- (C) Every private security agency shall, within sixty days from the date of issue of the licence, employ such number of supervisors, as may be prescribed.
- (D) A private security agency shall not employ or engage a person as a supervisor unless he fulfills the conditions specified in sub-section (1) of section 10.
- (E) While engaging a supervisor of private security guards, every private security agency shall give preference to a person who has experience of serving in the Army, Navy, Air Force, any other Armed forces of the Union or State Police including armed constabularies and Home Guards for a period of not less than three years.

**10. Eligibility to be a private security guard.-**

1. A private security agency shall not employ or engage any person as a private security guard unless he -
  - a. Is a citizen of India or a citizen of such other country the Central Government may, by notification in the official Gazette, specify;
  - b. Has completed eighteen years of age but has not attained the age of sixty-five years;

- c. Satisfies the agency about his character and antecedents in such manner as may be prescribed;
  - d. Has completed the prescribed security training successfully;
  - e. Fulfils such physical standards as may be prescribed; and
  - f. Satisfies such other conditions as may be prescribed.
2. No person who has been convicted by a competent court or who has been dismissed or removed on grounds of misconduct or moral turpitude while serving in any of the armed forces of the Union, State Police Organisations, Central or State Governments or in any private security agency shall be employed or engaged as a private security guard or a supervisor.
  3. Every private security agency may, while employing a person as a private security guard, give preference to a person who has served as a member in one or more of the following, namely :-
    - a. Army;
    - b. Navy;
    - c. Air Force;
    - d. Any other armed forces of the Union;
    - e. Police, including armed constabularies of States; and
    - f. Home Guards.

**11. Conditions of licence. -**

1. The State Government may frame rules to prescribe the conditions on which licence shall be granted under this Act and such conditions shall include requirements as to the training which the licensee is to undergo, details of the person or persons forming the agency, obligation as to the information to be provided from time to time to the Controlling Authority regarding any change in their address, change of management and also about any criminal charge made against them in the course of their performance of duties of the private security agency or as the case may be, a private security guard employed or engaged by them.
2. The State Government may make provision in the rules to verify about imparting of required training by the private security agency under sub-section (2) of section 9 and to review continuation or otherwise of licence of such private security agency which may not have adhered to the condition of ensuring the required training.

## **12. Licence to be exhibited.-**

Every private security agency shall exhibit its licence or copy thereof in a conspicuous place of its business.

## **13. Cancellation and suspension of licence.-**

1. The Controlling Authority may cancel any licence on any one or more of the following grounds, namely:-
  - a. That the licence has been obtained on misrepresentation or suppression of material fact;
  - b. That the licence holder has used false document or photographs;
  - c. That the licence holder has violated provisions of the Act or the rules made there under or any of the conditions of the licence;
  - d. That the licence holder has misused information obtained by him during the discharge of his duties as the private security agency to any industrial or business undertaker or a company or any other person;
  - e. That the licence holder by using any letter-head, advertisement or any other printed matter or in any other manner represented that the private security agency is an instrumentality of the Government or such agency is or has been using a name different from that for which licence has been granted;
  - f. That the licence holder is or has been impersonating or permitting or aiding or abetting anybody to impersonate as a public servant;
  - g. That the private security agency had failed to commence its activities or to engage a supervisor within had failed to commence its activities or engage a supervisor within the specified time period;
  - h. That the licence holder is or has willfully failed refused to render services agreed to any person;
  - i. That the licence holder has done act is in of a court order or order of a awful authority or is or been advising, encouraging assisting any person to violate any such order;
  - j. That the licence holder has violated the provisions of the Acts given in the Schedule which may be modified by the Central Government, by notification in the Official Gazette;
  - k. That there have been repeated instances when the private security guard or

guards provided by the private security agency-

- i. Failed to provide private security or were guilty of gross negligence in not providing such security;
  - ii. Committed a breach of trust or misappropriated the property or a part thereof which they were supposed to protect;
  - iii. Were found habitually drunk or indisciplined;
  - iv. Were found to be involved in committing crimes; or
  - v. had connived or abetted a crime against the person or property placed under their charge; or
1. That the licence holder has done any act which poses a threat to national security, or did not provide assistance to the police or other authority in the discharge of its duties or acted in a manner prejudicial to national security or public order or law and order.
  2. Where the Controlling Authority, for reasons to be recorded in writing, is satisfied that pending the question of canceling of licence on any of the grounds mentioned in sub-section
  3. Above, it is necessary to do so, that Controlling Authority may, by order in writing, suspend the operation of the licence for such period not exceeding thirty days as may be specified in the order and require the licence holder to show cause, within fifteen days from the date of issue of such order, as to why the suspension of the licence should not be extended till the determination of the question of cancellation.
  4. Every order of suspending or cancelling of a licence shall be in writing and shall specify the reasons for such suspension or cancellation and a copy thereof shall be communicated to the person affected.
  5. No order of cancellation of licence under sub-section (1) shall be made unless the person concerned has been given a reasonable opportunity of being heard.

#### **14. Appeals.-**

1. Any person aggrieved by an order of the Controlling Authority refusing the licence under sub-section (4) of section 7 or renewal under sub-section (3) of section 8 or order of suspension of licence under sub-section (2) of section 13 or cancellation of licence under sub-section (1) of that section, may prefer an appeal against that order to the Home Secretary of the State Government within a period of sixty days of the date of such order:



Provided that an appeal may be admitted after the expiry of the said period of sixty days if the appellant satisfies the State Government that he has sufficient cause for preferring the appeal within that period.

2. Every appeal under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a copy of the order appealed against.
3. Before disposing of an appeal, the State Government shall give the appellant a reasonable opportunity of being heard.

**15. Register to be maintained by a private security agency.-**

1. Every private security agency shall maintain a register containing-
  - a. the names and addresses of the persons managing the private security agency;
  - b. the names, addresses, photographs and salaries of the private security guards and supervisors under its control;
  - c. the names and addresses of the persons whom it had provided private security guards or services; and
  - d. such other particulars as may be prescribed.
2. The Controlling Authority may call for such information as it considers necessary from any private security agency, supervisor or private security guard to ensure due compliance of the Act.

**16. Inspection of licence, etc.-**

The Controlling Authority or any other officer authorized by it in this behalf may at any reasonable time, enter the premises of the private security agency and inspect and examine the place of business, the records, accounts and other documents connected with the licence and may take copy of any document.

**17. Issue of photo identity card.-**

1. Every private security guard shall be issued a photo identity card, by the private security agency employing or engaging the guard.
2. The photo identity card under sub-section (1) shall be issued in such form as may be prescribed.
3. Every private security guard or supervisor shall carry on his person the photo identity card issued under sub-section (1) and shall produce it on demand for inspection by the Controlling Authority or any other officer authorized by it in this behalf.

**18. Disclosure of information to unauthorized person.-**

1. Any person who may be or has been employed or engaged as a private security guard by the private security agency shall not divulge to anyone other than the employer, or in such manner and to such person as the employer directs, any information acquired by him during such employment with respect to the work which he has been assigned by such employer, except such disclosure as may be required under this Act or in connection with any inquiry or investigation by the police or as may be required by an authority or process of law.
2. All private security guards of a private security agency shall render necessary assistance to the police or to such authority in the process of any investigation pertaining to the activities of that agency.
3. If violation of any law is noticed by any private security guard during the course of discharge of his duties, he shall bring it to the notice of his superior, who in turn shall inform the police either through his employer or agency or on his own.

**19. Delegation.-**

The State Government may, by notification, direct that any power or function (except the powers to make rules under section 25)

1. Which may be exercised or performed by it, or
2. Which may be exercised or performed by the Controlling Authority, under this Act, may, in relation to such matter and subject to such conditions, if any, as may be specified in the notification, be also exercised or performed by such officer or authority subordinate to the Government or officer subordinate to the Controlling Authority, as may be specified in such notification.

**20. Punishment for contravention of certain provisions.-**

1. Any person who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twenty-five thousand rupees, or with both.
2. Any person or private security agency who contravenes, the provisions of sections 9, 10 and 12 of the Act, shall be punishable with a fine which may extend to twenty-five thousand rupees, in addition to suspension or cancellation of the licence.

**21. Penalty for unauthorized use of certain uniforms.-**

If any private security guard or supervisor wears the uniform of the Army, Air force, Navy or any other armed forces of the Union or Police or any dress having the appearance

or bearing any the distinctive marks or that uniform, he and the proprietor of the private security agency shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

## **22. Offences by companies.-**

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

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

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

Explanation. - For the purposes of this section-

- a. "company" means anybody corporate and includes a firm or other association of individuals; and
- b. "Director", in relation to a firm, means a partner in the firm.

## **23. Indemnity**

No suit, prosecution or other legal proceeding shall lie against the Controlling authority or any other officer authorized by it in respect of anything in good faith done intended to be done under this Act.

## **24. Framing of model rules for adoption by States.**

The Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Act, and where any such model rules have been framed the State Government shall, while making any rules in respect of that matter under section 25, so far as is practicable, conform to such model rules.

## **25. Power of State Government to make rules.-**

1. The State Government may, by notification, make rules for carrying out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the procedure for verification of character and antecedents under clause (c) of sub-section (1) of section 10; the type of training under clause (d) of sub-section (1) of section 10; the physical standard under clause (e) of sub-section (1) of section 10; and other conditions under clause (f) of sub-section (1) of section 10;
  - b. the number of supervisors to be employed under sub-section (3) of section 9;
  - c. the form of an application for grant of licence under sub-section (1) of section 7;
  - d. the form in which the licence to be granted under sub-section (4) of section 7 and conditions subject to which such licence to be granted under section 11;
  - e. the form of an application for renewal of licence under sub-section (1) of section 8;
  - f. the form under sub-section (2) of section 14 for preferring an appeal;
  - g. particulars to be maintained in a register under sub-section (1) of section 15;
  - h. the form in which photo identity card under sub-section (2) of section 17 be issued;
  - i. any other matter which is required to be, or may be, prescribed.
3. Every rule made by State Government under this section shall be laid, as soon as may after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.
4. In respect of Union territories, every rule made to carry out the provisions of the Act shall be laid before each House of Parliament and where there exists a legislative Assembly, before that Assembly.

### **THE SCHEDULE**

**[See section 13(1) (i)]**

1. The payment of Wages Act, 1936 (4 of 1936(4 of 1936)).

2. The Industrial Disputer act, 1947 (14 of 1947).
3. The Minimum Wages Act, 1948 (11 of 1948).
4. The Employees Provident Fund and Miscellaneous Provision Act, 1952 (19 of 1952).
5. State Government of Bonus Act, 1965 (21 of 1965).
6. The Contract labour (Regulation and Abolition) Acts, 1970 (37 of 1970)
7. The payment of Gratuity Act, 1972 (39 of 1972)
8. The Equal Remuneration Act, 1976 (25 of 1976).
9. The Inter-State Migrant Workmen (regulation of Employment and conditions of Service) Act, 1979 (30 of 1979)

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## **3.2 The Private Security Agencies Central**

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[With effect from 26th April, 2006]

In exercise of the powers conferred by section 24 of the Private Security Agencies (Regulation) Act, 2005 (29 of 2005), the Central Government hereby makes the following rules, namely:-

### **Rules**

#### **1. Short title and commencement.-**

- a. These rules may be called the Private Security Agencies Central Model Rules, 2006.
- b. They shall come into force from the date of their publication in the Official Gazette.

#### **2. Definitions.-**

In these rules unless, the context otherwise requires,-

- a. "Act" means the Private Security Agencies (Regulation) Act, 2005;
- b. "Agency" means the Private Security Agency;
- c. "Controlling Authority" means, the Controlling Authority so declared under the Act;
- d. "From" means, a Form appended to these rules;
- e. "License" means a license granted under the Act;
- f. Words and expressions not defined in these regulations but defined in the Act, shall have the same meaning respectively assigned to them in the Act.

### **3. Verification of the antecedents of the applicants.-**

1. Every applicant while making an application to the Controlling Authority for the issue of a fresh license or renewal shall enclose the Form I for verification of his antecedents. If the application is a company, a firm or an association of persons, the application shall be accompanied by Form I for every proprietor or majority shareholder, partner or director of the company, as if they were also the applicants.
2. On receipt of such application the Controlling Authority shall make such inquiries, as it considers necessary to verify the contents of the application and the particulars of the applicant.
3. The Controlling Authority shall obtain a no-objection certificate from the District Superintendent of Police of the concerned District where the Agency intends to commence its activities. For this purpose it will send to him a copy of the application for license and its attachments for verification and report.
4. The District Superintendent of Police in addition to the causing of verification of antecedents of every individual in whose name the antecedent form is filled up, shall also furnish the following information:
  - a. Whether the applicant or the company earlier operated any Private Security Agency, either individually or in partnership of others and if so, the details thereof; and
  - b. Whether the applicant possesses any special qualification or skill, which may facilitate his operations of Private Security Agency.

### **4. Verification of character and antecedents of the private security guard and supervisor.-**

1. Before any person is employed or engaged as a security guard or supervisor, the Agency shall satisfy itself about the character and antecedents of such person in any one or more of the following manner:-
  - a. by verifying the character and antecedents of the person by itself;
  - b. by relying upon the character and antecedent verification certificate produced by the person:

Provided that the character and antecedent certificate shall be valid and the Agency does not have any adverse report regarding the person's character and antecedents from any other source; as prescribed herein under, produce by the person provided it is valid and the Agency does not have any adverse report

- regarding the person's character and antecedents from any other source;
- c. by relying on the report received from the police authorities signed under the authority of the District Superintendent of police or an officer of the equivalent or higher rank.
  2. The person desirous of getting employed or engaged as security guard or supervisor shall submit Form II to the Agency. If the person has stayed in more than one District during the last five years, the number of forms will be as many as Districts.
  3. The Agency shall cause an inquiry into the correctness of the particulars filled in either by itself or by sending the form to the respective District Superintendent of Police.
  4. The State Government may prescribe the form and the manner in which the fee is to be deposited for the service of character and antecedent verification by police.
  5. The police will establish identity of the individual and verify the character and antecedents of the person by making a visit to the locality where the person claims to have resided or residing and ascertain his identity and reputation from the respectable residents of the locality. They will also consult the police station record of the concerned police station and other records at the District Police Headquarter before preparing the character and antecedents verification report. This report will contain the comments of the police on every claim of the person in character and antecedents Form and also a general report about his activities including means of livelihood in the period of verification. The police will specifically state if there is a criminal case registered against the person at any point of time or if he has ever been convicted of criminal offence punishable with imprisonment.
  6. The police will specifically comment if the engaging or employing the person under verification by the Private Security Agency will pose a threat to National Security.
  7. The police authorities shall ensure that character and antecedent verification report is issued within ninety days of the receipt of the character and antecedent form.
  8. The report of the police regarding character and antecedents of a person will be graded as confidential. It is addressed in named cover to a designated officer of the Security Agency requesting for character and antecedents.
  9. Character and antecedent's verification report once issued will remain valid for three years.
  10. On the basis of police verification and the basis of their own verification, the

Agency shall issue in Form III a Character certificate and this certificate will not be taken back by such Agency even if the person ceases to be the employee of that Agency.

**5. Security training.-**

1. The Controlling Authority shall frame the detailed training syllabus required for training the security guards. This training shall be for a minimum period of hundred hours of classroom instruction and sixty hours of field training, spread over at least twenty working days. The ex-servicemen and former police personnel shall however be required to attend a condensed course only, of minimum forty hours of classroom instructions and sixteen hours of field training spread over at least seven working days.
2. The training will include the following subjects, namely:-
  - a. Conduct in public and correct wearing of uniform;
  - b. Physical fitness training;
  - c. Physical security, security of the assets, security of the building or apartment, personnel security, household security;
  - d. Fire fighting;
  - e. Crowd control;
  - f. Examining identification papers including identity cards, passports and smart cards;
  - g. Should be able to read and understand English alphabets and Arabic numerals as normally encountered in the identification documents, arms licence, travel documents and security inspection sheet;
  - h. Identification of improvised explosive devices;
  - i. First-aid;
  - j. Crisis response and disasters management;
  - k. Defensive driving
  - l. Handling and operation of non-prohibited weapons and firearms (optional);
  - m. Rudimentary knowledge of Indian Penal Code, right to private defence, procedure for lodging first information report in the police station, Arms Act(only operative sections); Explosives Act (operative sections);
  - n. Badges of rank in police and military forces;



- o. Identification of different types of arms in use in public and Police;
  - p. Use of security equipments and devices (for example: security alarms and screening equipments); and
  - q. Leadership and management (for supervisors only).
3. The security guard will have to successfully undergo the training prescribed by the competent Authority. On completion of the training each successful trainee will be awarded a certificate in Form IV by the training institute or organization.
  4. The competent Authority will inspect the functioning of training facility from time to time either by itself or through its own officers. Normally such inspection will be conducted at least two times every year.
  5. All the Agencies shall submit a list of successful trainees to the Controlling Authority in the manner prescribed by it.
  6. Standard of physical fitness for security guards.-
    1. A person shall be eligible for being engaged or employed as security guard if he fulfills the standards of physical fitness as specified below:-
      1. Height, 160 cms (for Female 150 cms), weight according to standard table of height and weight, chest 80 cms with an expansion of 4 cms (for females no minimum requirement for chest measurement).
      2. Eye sight: Far sight vision 6/6, near vision 0.6/0.6 with or without correction, free from colour blindness should be able to identify and distinguish colour display in security equipment and read and understand display in English alphabets and Arabic numerals.
      3. Free from knock knee and flat foot and should be able to run one kilometer in six minutes.
      4. Hearing: Free from defect; should be able to hear and respond to the spoken voice and the alarms generated by security equipments.
      5. The candidate should have dexterity and strength to perform searches, handle objects and use force for restraining the individuals in case of need.
    2. A candidate should be free from evidence of any contagious or infectious disease. He should not be suffering from any disease which is likely to be aggravated by service or is likely to render him unfit for service or endanger the health of the public.

3. Agency shall ensure that every security guard working for it undergoes a medical examination after every twelve months from his last such examination so as to ensure his continued maintenance of physical standard as prescribed for the entry level.

**7. Provision for supervisors.-**

1. There shall be one supervisor to supervise the work of not more than fifteen private security guards.
2. In case the private security guards are on security duty in different premises and it is not practical to supervise their work by one supervisor, the Agency shall depute more number of supervisors so that at least for every six private security guards there is one supervisor available for assistance, advice and supervision.

**8. Manner of Making Application For Grant Of Licence.-**

1. Every application by an Agency for the grant of a licence under clause (1) of section 7 of the Act, shall be made to the Controlling Authority in the format prescribed in Form V.
2. Every application referred to in sub-rule (1) shall be accompanied by a demand draft or banker's cheque showing the payment of fees as prescribed under clause (3) of section 7, payable to the Controlling Authority of the State concerned where the application is being made.
3. Every application referred to in sub-rule (1) shall be either personally delivered to the Controlling Authority or sent to him by registered post. On receipt of the application referred to in sub-rule (1), the Controlling Authority shall after nothing there on the date of receipt by him of the application, grant an acknowledgment to the applicant.

**9. Grant of licence.-**

1. The Controlling Authority, after receiving an application under sub-rule (1) of rule 8 shall grant a licence to the private security agency in Form VI after completing all the formalities and satisfying itself about the suitability of the applicant and also the need for granting the licence for the area of operation applied for.
2. The Controlling Authority either by itself or through its officers may verify the training and skills imparted to the private security guards and supervisors of any private security agency.
3. The Controlling Authority may review the continuation or otherwise of licence of

such security agencies which may not adhered to the conditions of ensuring the required training.

**10. Conditions for grant of licence.-**

1. The licence shall successfully undergo a training relating to the private security as prescribed by the Controlling Authority within the time frame fixed by it.
2. The licence shall intimate the name, parentage, date of birth, permanent address, and address for correspondence and the principle profession of each person forming the Agency within fifteen days of receipt of the license to the Controlling Authority.
3. The license shall inform the Controlling Authority regarding any change in the address of persons forming the Agency, change of management within seven days of such change.
4. The license shall immediately intimate to the Controlling Authority about any criminal charge framed against the persons forming the Agency or against private security guard or supervisor engaged or employed by the Agency, in the course of their performance of duties as private security agency. A copy of such communication shall also be sent to the officer in charge of the police station where the person charged against resides.
5. Every license shall abide by the requirements of physical standards for the private security guards and their training as prescribed in these rules as the condition on which the licence is granted.
6. Save as provided in these rules, the fees paid for the grant of licence shall be non-refundable.

**11. Renewal of licence.-**

1. Every Agency shall apply to the Controlling Authority for renewal of the licence.
2. The fees chargeable for renewal of the licence shall be the same as for the grant thereof.

**12. Conditions for renewal of licence.-**

The renewal of the licence will be granted subject to the following conditions:-

- I. The applicant continues to maintain his principle place of business in the jurisdiction of the Controlling Authority.
- II. The applicant continues to ensure the availability of the training for its private security guards and superiors required under sub-section (2) of section 5 of the Act.

III. The applicant continues to adhere to the license conditions.

IV. The police have no objection to the renewal of the license to the applicant.

The form for application of renewal of licence will be same as the form for the application for original licence.

**13. Appeals and procedure.-**

1. Every appeal under sub-section (1) of section 14 of the Act shall be preferred in Form VII signed by the aggrieved person or his authorized advocate and presented to the appellate officer in person or sent to him by registered post.
2. The Controlling Authority may prescribe a fee for the appeal to be filed under section 14 of the Act and the manner in which such fee will be paid.

**14. Register to be maintained by the Agency.-**

The register required to be maintained under the Act by the Agency shall be in Form VIII.

**15. Photo identity card.-**

1. Every photo-identity card issued by the Agency under sub-section (2) of section 17 shall be in Form IX.
2. The photo-identity card shall convey a full-face image in colour, full name of the private security guard, name of the Agency and the identification number of the individual to whom the photo identity card is issued.
3. The photo-identity card shall clearly indicate the individual's position in the Agency and the date up to which the photo-identity card is valid.
4. The photo-identity card shall be maintained up to date and any change in the particulars shall be entered therein.
5. The photo-identity card issued to the private security guard will be returned to the Agency issuing it, once the private security guard is no longer engaged or employed by it.
6. Any loss or theft of photo-identity card will be immediately brought to the notice of the Agency that issued it.

**16. Other conditions.-**

1. Notwithstanding whether the Agency mandates its private security guards to put on uniform while on duty or not, every private security agency will issue and make it obligatory for its security guards to put on:
  - a. an arm badge distinguishing the Agency;

- b. shoulder or chest badge to indicate his position in the organization;
  - c. whistle attached to the whistle cord and to be kept in the left pocket;
  - d. shoes with eyelet and laces;
  - e. a headgear which may also carry the distinguishing mark of the Agency.
2. The clothes worn by the private security guard while on active duty shall be such that they do not hamper in his efficient performance. In particular they will neither be too tight nor too loose as to obstruct movement or bending of limbs.
  3. Every private security guard will carry a notebook and a writing instrument with him.
  4. Every private security guard while on active security duty will wear and display photo-identity card issued under section 17 of the Act, on the outer most garment above waist level on his person in a conspicuous manner.

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### **3.3 The Private Security Agencies**

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(Regulation) Act, 2005

#### **Statement of Objects and Reasons**

1. Due to increase in the number of business establishments and increasing demands for security, there has been a proliferation of private security agencies in the recent years. The growing tendency to hire security guards from private sources by industrial or business undertakings has led to coming up of large number of private security agencies all over the country. Though these private security agencies have helped in meeting the security needs of business establishment, there has been a growing concern about the manner of functioning of these agencies, many of which seem to conduct their operations without due care for verifying the antecedents of the personnel employed as private security guards and supervisors.
2. Private multi- national security agencies have also established their branches in the country, which unless properly regulated, may have serious security implications. Unless suitable safeguards are devised, these developments are likely to have wide ranging security implications, which may not be in national interest. There is also a danger of the employees of the private security agencies encroaching upon the duties of the police, using weapons in an illegal manner and wearing uniforms which resemble those of the police. In many instances, personnel employed by these agencies have also been involved in criminal activities.

3. For all these reasons, Union Government has been considering to regulate the functioning of these private security agencies, so that they are run within legal parameters and are accountable to a regulatory mechanism. In view of above, it is proposed to regulate the private security agencies through an Act which provides for a Controlling Authority to be appointed by the State Governments for the purpose of granting licences and also to make holding of licences mandatory for the carrying on of business of security agencies and other related matters.
4. The Bill to achieve the above objects.

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### **3.4 The West Bengal Private Security Agencies (Regulation) Rules, 2007**

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[With effect from 8th May, 2007]

In exercise of the power conferred by section 25 of the Private Security Agencies (Regulation) Act, 2005 (29 of 2005), the Governor is pleased hereby to make following rules, namely:-

#### **Rules**

##### **1. Short title and commencement.-**

1. These rules may be called the West Bengal Private Security Agencies (Regulation) Rules, 2007
2. They shall come into force on the date of their publication in the Official Gazette.

##### **2. Definitions.-**

1. In these rules, unless there is anything repugnant in the subject or context.-
  - a. "The Act" means the Private Security Agencies (Regulation) Act, 2005;
  - b. "Agency" means the Private Security Agencies;
  - c. "Form" means a Form appended to these rules.
2. Words and expressions not defined in these rules but defined in the Act, shall have the same meaning respectively assigned to them in the Act.
3. Verification of the antecedents of the applicants.-
  1. Every applicant while making an application to the Controlling Authority for the issue of a fresh licence or renewal shall enclose Form I for verification of his antecedents. If the applicant is a company, a firm or an association of persons, the application shall be accompanied by Form I for every proprietor, majority

shareholder, partner and director of the company, as if they were also the applicants.

2. On receipt of application under sub-rule (1) of this rule, the Controlling Authority shall make such inquiries, as it considers necessary to verify the contents of the application and the particulars of the applicant.
3. The Controlling Authority shall obtain a no objection certificate from the Superintendent of Police of the concerned District, or in case of Kolkata from the Commissioner of Police, Kolkata or an officer authorized by him not below the rank of Deputy Commissioner of Police, as the case may be, where the applicant intends to commence its activities. For the purpose, the Controlling Authority shall send to him a copy of the application for licence and its attachments for verification and report.
4. The Superintendent of Police, or Commissioner of Police, Kolkata or an officer authorized by him not below the rank of Deputy commissioner of Police, as the case may be, in addition to the causing of verification of antecedents of every individual in whose name the antecedent form is filled up, shall also furnish the following information:-
  - a. whether the applicant under sub-rule (1) of this rule earlier operated any Agency, either individually or in partnership of others and if so, the details thereof; and
  - b. whether the applicant possesses any special qualification or skill, which may facilitate his operations of Agency.

**4. Verification of character and antecedents of the private security guard and supervisor.-**

1. Before any person is employed or engaged as a security guard or supervisor, the Agency shall satisfy itself about the character and antecedents of such person in any one or more of the following manners:-
  - a. by verifying the character and antecedent of the person by itself;
  - b. by relying upon the character and antecedent verification certificate produced by the person:

Provided that the character and antecedent certificate shall be valid if the Agency does not have any adverse report regarding the person's character and antecedents from any other source as prescribed here in under;

- c. by relying on the report received from the police authorities signed under the authority of the Superintendent of Police or an officer of the equivalent or higher rank of the concerned district or the commissioner of Police, Kolkata or an officer not below the rank of Deputy Commissioner of Police, as the case may be.
2. The person desirous of getting employed or engaged as security guard or supervisor shall submit Form II to the Agency. If the person has stayed in more than one district during the last five years, the number of Forms will be as many as districts.
3. The police will establish identity of the individual and verify the character and antecedents of the person by making a visit to the locality where the person claims to have resided or residing and ascertain his identity and reputation from the respectable residents of the locality. They will also consult the police station record of the concerned police station and other records at the Police Headquarter before preparing the character and antecedents verification report. This report will contain the comments of the police on every claim of the person in character and antecedent from and also a general report about his activities including means of livelihood in the period of verification. The police will specifically state if there is a criminal case registered against the person at any point of time or if he has been convicted of criminal offence punishable with imprisonment.
4. The police will specifically comment if the engaging or employing the person under verification by the Agency will pose a threat to National Security.
5. The police authorities shall ensure that character and antecedent verification report is issued within ninety day of the receipt of the character and antecedent Form.
6. The report of the police regarding character and antecedents of a person will be graded as confidential. It will be addressed in named cover to a designated officer of the Agency requesting for character and antecedents.
7. Character and antecedents verification report once issued will remain valid for three years.
8. On the basis of verification, the Agency shall issue in Form III a character and antecedent certificate and this certificate will not be taken back by such Agency even if the person ceases to be the employee of that Agency.

## **5. Security training.**

1. The Controlling Authority shall frame the detailed training syllabus required for



training the security guard and Supervisor. This training shall be for a minimum period of hundred hours of classroom instruction and sixty hours of field training, spread over at least twenty working days. The ex-servicemen and former police personnel shall be required to attend a condensed course only, of minimum forty hours of class-room instructions and sixteen hours of field training spread over at least seven working days.

2. The training shall include the following subjects, namely:-
  - a. Conduct in public and correct wearing of uniform;
  - b. Physical fitness training;
  - c. Physical security, security of the assets, security of the building or apartment, personnel security, household security;
  - d. Fire fighting;
  - e. Crowd control;
  - f. Examining identification papers including identity cards, passports and smart cards;
  - g. Should be able to read and understand English alphabets and Arabic numerals as normally encountered in the identification documents, arms licence, travel documents and security inspection sheet;
  - h. Identification of improvised explosive devices and knowledge of preliminary step to handle the situation;
  - i. First-aid
  - j. Crisis response and disasters management;
  - k. Defensive driving (compulsory for the driver of Armoured vehicle and optional for others);
  - l. Rudimentary knowledge of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 including knowledge of sections 37 and 39 of the Code of Criminal Procedure, 1973 regarding aid Magistrate and police, right to private defence, procedure for lodging first information report in the police station, the Arms Act, 1959 (only operative sections), Explosives Act (operative sections);
  - m. Badge of rank in police and military forces;
  - n. Preliminary knowledge to protect the scene of crime till the arrival of police and collecting of evidence in the scene of crime;

- o. Knowledge regarding possible modes of collection of intelligence by foreign nationals;
  - p. Knowledge of Article 51A of Constitution of India regarding Fundamental duties;
  - q. Identification of different types of arms in use in public and police;
  - r. Use of security equipment and devices (for example; security alarms and screening equipment);and
  - s. Leadership and management (for supervisors).
3. The private Security guard and supervisor will have to successfully undergo the training prescribed under sub-rule (2). On completion of the training each successful trainee shall be awarded a certificate in Form IV by the training institute or organization.
  4. The private security guard and supervisor will have to undertaken refresher course training for fifty hours biennially.
  5. The Controlling Authority shall inspect the functioning of training facility from time to time either by himself or through the officers authorized by him in this behalf.

**6. Standard of physical fitness for security guards and supervisor.-**

1. A person shall be eligible for being engaged or employed as security guard or Supervisor if he fulfils the standards of physical fitness as specified below:-
  - a. Height, 160 cms. (for female 150 cms), weight according to standard table of height and weight, Chest 80 cms. With an expansion of 4 cms. (for females no requirement of chest measurement) :
  - b. Provided that a person belonging to the Gorkhas or Nepalties or Sikkimese or Scheduled Castes or Scheduled Tribes is eligible for relaxation of height by 5 cms.
  - c. Eye sight: Far sight vision 6/6, near vision 0.6/0.6 with or without correction, free from colour blindness, shall be able to identity and distinguish colour display in security equipment and read and understand display in English alphabets and Arabic numerals,
  - d. Free from knock knee and flat feet and shall be able to run one kilometer in six minutes,

- e. Hearing: Free from defect; shall be able to hear and respond to the spoken voice and the alarms generated by security equipment,
  - f. The candidate shall have dexterity and strength to perform searches, handle objects and use force for restraining the individuals in case of need.
2. A candidate shall be free from contagious or infectious disease. He shall not be suffering from any disease which is likely to be aggravated by service or is likely to render him unfit for service or endanger the health of the public.

**7. Provision for supervisors.**

1. There shall be one supervisor to supervise the work of not more than fifteen private security guards.
2. In case the private security guards are on security duty in different premises and it is not practical to supervise their work by one supervisor, the Agency shall depute more number of supervisors so that at least for every six private security guards there is one supervisor if available for assistance, advice and supervision.

**8. Manner of making application for grant of licence.-**

1. Every application under sub-section (1) of section 7 of the Act shall be made to the Controlling Authority in the format prescribed in Form V.
2. Every application referred to in sub-rule (1) shall be accompanied by receipted challan in T.R. Form under head of Account "018-Fees under the Private Security Agencies (Regulation) Act, 2005, for regulating the functioning of Security Agencies" with detailed heads "13-Licence Fees" and "16-Other Fees" sub-ordinate to the Receipt Head of Account "0070-Other Administrative Services-60-Other Services-800-Other Receipts Including Census" showing the payment of fees as prescribed under sub-section (3) of section 7 of the Act.
3. Every application referred sub-rule (1) shall be either personally delivered to the Controlling Authority shall after noting thereon the date of receipt by him of the application, grant an acknowledgement to the applicant.
4. On receipt of the application referred to in sub-rule (1), the Controlling Authority shall after noting there on the date of receipt by him of the application, grant an acknowledgement to the applicant.

**9. Grant of licence.-**

1. The Controlling Authority, after receiving an application under sub-rule (1) of rule 8 of these rules shall grant a licence in Form VI after completing all the formalities

and satisfying himself about the suitability of the applicant under the provisions of the Act and also the need for granting the licence for the area of operation applied for.

2. The Controlling Authority either by himself or through the officers authorized by him in this behalf may verify the training and skills imparted to the private security guards and supervisors of any Agency.
3. The Controlling Authority may review the continuation or otherwise of licence of such security agencies which may not have adhered to the conditions of ensuring the required training.

**Note:** In the name of the Private Security Agency, no words like, "Indian", "National" or any other such words which give the impression of any Government patronage can be used.

#### **10. Conditions for grant of licence.-**

1. The licence shall undergo training to get themselves acquainted with the knowledge and the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, within the time frame fixed by the Controlling Authority.
2. The licence shall intimate the name, parentage, date of birth, permanent address, address for correspondence and the principal profession of each person forming the Agency within fifteen days of receipt of the licence to the Controlling Authority.
3. The licence shall inform the Controlling Authority regarding any change in the address of persons forming the Agency, change of management within seven days of such change.
4. The licence shall immediately intimate to the Controlling Authority about any criminal charge framed against the persons forming the Agency or against the Private Security guard or Supervisor engaged or employed by the Agency, in the course of their performance of duties. A copy of such communication shall also be sent to the officer in charge of the police station where the person charged against resides.
5. Every licence shall abide by the requirements of physical standards for the private security guards and supervisor and their training as prescribed in these rules as the condition on which the licence is granted.

#### **11. Conditions for the renewal of licence.-**

The renewal of the licence under section 8 of the Act will be granted subject to the following conditions:-

- I. The applicant continues to maintain his principal place of business in the jurisdiction of the Controlling Authority;
- II. The applicant continues to ensure the availability of the training for its private security guards and supervisors required under sub-section (2) of section 9 of the Act;
- III. The applicant continues to adhere to the conditions of the licence;
- IV. The police have no objection to the renewal of the licence to the applicant.
- V. The Form for application of renewal of licence shall be in the format prescribed in Form V.

**12. Appeals and procedure.-**

Every appeal under sub-section (1) of section 14 of the Act shall be preferred in Form VII signed by the aggrieved person and presented to the Home Secretary of the State Government being the appellate authority in person or sent to him by registered post.

**13. Register to be maintained by the Agency.-**

The register required to be maintained under the Act by the Agency shall be in Form VIII.

**14. Photo identity card.**

1. Every photo identity card issued by the Agency under sub-section (2) of section 17 of the Act shall be in Form IX.
2. The photo identity card shall convey a full-face image in colour, full name of the private security guard or Supervisor, name of the Agency and the identification number of the individual to whom the photo identity card is issued.
3. (c)The photo identity card shall clearly indicate the individual's position in the Agency and the date up to which the photo identity card is valid.
4. The photo identity card shall be maintained up to date and any change in the particulars shall be entered therein.
5. The photo identity card issued to the private security guard and the Supervisor will be returned to the Agency issuing it, once the private security guard or the Supervisor is no longer engaged or employed by it.
6. Any loss or theft of photo identity card will be immediately brought to the notice of the Agency that issues it.

### **15. Other conditions.-**

1. Every Agency shall issue and make it obligatory for its security guards to put on:-
  - a. An arm badge distinguishing the Agency;
  - b. Shoulder or chest badge to indicate his position in the organization;
  - c. Whistle attached to the whistle cord and to be kept in the left pocket;
  - d. Shoes with eyelet and laces;
  - e. A headgear which may also carry the distinguishing mark of the Agency.
2. The clothes worn by the private security guard and Supervisor while on duty shall be such that they do not hamper in his efficient performance. In particular they will neither be too tight nor too loose as to obstruct movement or bending of limbs.
3. Every private security guard and Supervisor will carry a notebook and a writing instrument with him.
4. Every private security guard and Supervisor while on security duty will wear and display photo identity card issued under section 17 of the Act, on the outermost garment above waist level on his person in a conspicuous manner.

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## **3.5 Employees' Provident Funds & Misc. Provisions Act, 1952**

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### **Object of the Act**

To provide wider terminal benefits to the Workers on completion of their employment.

### **Applicability**

Every specified factory OR establishment in which 20 or more persons are employed.

Any factory or Establishment can also voluntarily cover under the Act, even if the number of employees are less than 20.

### **Eligibility**

- ❖ Any person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment and drawing salary upto Rs.6,500/- p.m. (Basic + DA).
- ❖ Any disabled employee appointed after 1.4.2008 drawing salary upto Rs.25,000/-
- ❖ Any international worker (irrespective of salary limit)

### **Payment of Contribution**

The employer shall pay the contribution payable to the EPF, DLI and Employees'

Pension Fund in respect of the member of the Employees' Pension Fund employed by him directly by or through a contractor.

- ❖ It shall be the responsibility of the principal employer to pay the contributions payable to the EPF, DLI and Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.

### **Rates of Contribution**

- ❖ Employer - 12%
- ❖ Employee - 12%
- ❖ Govt. - 1.16%

<b>SCHEME</b>	<b>EMPLOYEE'S</b>	<b>EMPLOYER'S</b>	<b>CENTRAL GOVT'S</b>
Provident Fund Scheme	12%	Amount > 8.33% (in case where contribution is 12% of 10%) 10% (in case of Certain Establishments as per details given earlier)	NIL
Insurance Scheme	NIL	0.5	NIL
Pension Scheme	NIL	8.33% (Diverted out of Provident Fund (12))	1.16%

- ❖ The employer also will pay administrative charges @ 1.11% on maximum limit of Rs.6500 whereas an exempted establishment will pay inspection charges @ 0.005% on the total wages paid.

### **Benefits**

- ❖ Withdrawal of accumulated amount with interest on exit from employment.
- ❖ Advances in severely restricted circumstances like buying house, marriage/education, etc.
- ❖ Pension to the employees under Employees' Pension Scheme a
- ❖ Insurance under Employees' Deposit Linked Insurance Scheme.

### **Damages on Delayed Payment**

- ❖ Less than 2 months ....@ 5% per annum
- ❖ Two months and above but less than upto four months .... @10% per annum
- ❖ Four months and above but less than upto six months .... @ 15% per annum
- ❖ Six months and above ....@ 25% per annum
- ❖ Simple Interest @12% p.a. on delayed payment of contribution.

### **Penal Provision**

- ❖ For contraventions of Provisions of the Act, imprisonment upto 3 years and fine upto Rs.10,000/-.
- ❖ For repeated contraventions of the Act, imprisonment upto 5 years and fine upto Rs.25,000/-.

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## **3.6 Employees' State Insurance Act, 1948 & Scheme**

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### **Object of the Act**

To provide social insurance for the employees.

### **Applicability of the Act & Scheme**

Is extended in area-wise to factories employing 10 or more persons and establishments employing 20 or more person.

### **Coverage of employees**

Employees drawing gross wages upto Rs.15000/- per month, engaged either directly or through contractor

### **Rate of Contribution of the wages**

Employers' 4.75%

Employees' 1.75%

### **Manner and Time Limit for making Payment of contribution**

The total amount of contribution (employee's share and employer's share) is to be deposited with the authorised bank through a challan in the prescribed form in quadruplicate on or before 21ST of month following the calendar month in which the wages fall due.



### **Benefits to the employees under the Act**

Medical, sickness, extended sickness for certain diseases, enhanced sickness, dependents maternity, besides funeral expenses, rehabilitation allowance, medical benefit to insured person and his or her spouse.

### **Wages for ESI Contributions**

To be deemed as wages

- ❖ Basic pay
- ❖ Dearness allowance
- ❖ House rent allowance
- ❖ City compensatory allowance
- ❖ Overtime wages (but not to be taken into account for determining the coverage of an employee)
- ❖ Payment for day of rest
- ❖ Production incentive
- ❖ Bonus other than statutory bonus
- ❖ Night shift allowance
- ❖ Heat, Gas & Dust allowance
- ❖ Payment for unsubstituted holidays
- ❖ Meal/food allowance
- ❖ Suspension allowance
- ❖ Lay off compensation
- ❖ Children education allowance (not being reimbursement for actual tuition fee)

### **NOT to be deemed as wages**

- ❖ Contribution paid by the employer to any pension/provident fund or under ESI Act.
- ❖ Sum paid to defray special expenses entailed by the nature of employment -
- ❖ Daily allowance paid for the period spent on tour.
- ❖ Gratuity payable on discharge.
- ❖ Pay in lieu of notice of retrenchment compensation
- ❖ Benefits paid under the ESI Scheme.

- ❖ Encashment of leave
- ❖ Payment of Inam which does not form part of the terms of employment.
- ❖ Washing allowance
- ❖ Conveyance Amount towards reimbursement for duty related journey

#### **Contribution period**

1ST April to 30TH September.

1ST October to 31ST March

#### **Contribution period**

If the person joined insurance employment for the first time, say on 5TH January, his first contribution period will be from 5TH January to 31ST March and his corresponding first benefit will be from 5TH October to 31ST December.

#### **Penal Provision**

- ❖ For contraventions of Provisions of the Act, imprisonment upto 2 years and fine upto Rs.5,000/-.
- ❖ For repeated contraventions of the Act, imprisonment upto 5 years and fine upto Rs.25,000/-.

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### **3.7 Factories Act, 1948**

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#### **Applicability of the Act**

To any premises where manufacturing activities are carried out with the aid of power and where 10 or more workers are/were working OR where manufacturing activities are carried out without the aid of power and where 20 or more workers are/were working.

#### **Employer to ensure health of workers pertaining to**

- ❖ Cleanliness Disposal of wastes and effluents
- ❖ Ventilation and temperature dust and fume
- ❖ Overcrowding Artificial humidification Lighting
- ❖ Drinking water Spittoons.

#### **Safety Measures**

- ❖ Facing of machinery

- ❖ Work on near machinery in motion.
- ❖ Employment prohibition of young persons on dangerous machines.
- ❖ Striking gear and devices for cutting off power.
- ❖ Self-acting machines.
- ❖ Casing of new machinery.
- ❖ Prohibition of employment of women and children near cotton-openers.
- ❖ Hoists and lifts.

### **Working Hours, Spread Over & Overtime of Adults**

- ❖ Weekly hours not more than 48 hours.
- ❖ Daily hours, not more than 9 hours.
- ❖ Intervals for rest at least ½ hour on working for 5 hours.
- ❖ Spreadover not more than 10½ hours.
- ❖ Overlapping shifts prohibited.
- ❖ Extra wages for overtime double than normal rate of wages.
- ❖ Restrictions on employment of women before 6AM and beyond 7 PM.

### **Welfare Measures**

- ❖ Washing facilities
- ❖ Facilities for storing and drying clothing
- ❖ Facilities for sitting
- ❖ First-aid appliances - one first aid box not less than one for every 150 workers.
- ❖ Canteens when there are 250 or more workers.
- ❖ Shelters, rest rooms and lunch rooms when there are 150 or more workers.
- ❖ Creches when there are 30 or more women workers.
- ❖ Welfare office when there are 500 or more workers.

### **Employment of Young Persons**

- ❖ Prohibition of employment of young children i.e. below 14 years.
- ❖ Adolescent workers (15 to 18 years of age) are permitted with less working hours and special conditions.

### **Annual Leave with Wages**

A worker having worked for 240 days @ one day for every 20 days of working.

### **Penal Provision**

- ❖ For contraventions of Provisions of the Act, imprisonment upto 7 years or fine upto Rs.2,00,000/-.
- ❖ For continuous contraventions of the Act, imprisonment upto 10 year and/or fine upto Rs.5,000/- per day

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## **3.8 Industrial Disputes Act, 1947**

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### **Object of the Act**

Provisions for investigation and settlement of industrial disputes and for certain other purposes.

### **Important Definition**

**Industry** — has attained wider meaning than defined except for domestic employment, covers from shops with nominal employees to big industrial units.

**Workman** — Includes almost all category of employees, except person doing Managerial and Administrative work, and also Supervisors earning wages more than Rs.10,000/- p.m.

### **Machinery to deal with Disputes**

**Works Committee**—Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems.

**Conciliation**-is an attempt by Govt. Official in helping to settle the disputes.

**Adjudication** - Labour Court, Industrial Tribunal or National Tribunal to hear and decide the dispute.

### **Persons Bound by Settlement**

- ❖ When in the course of conciliation proceedings etc., all persons working or joining subsequently.
- ❖ Otherwise than in course of conciliation, upon the parties to the settlement.

### **Period of Operation of Settlements and Awards**

- ❖ A settlement for a period as agreed by the parties, or
- ❖ Period of six months on signing of settlement.
- ❖ An award for one year after its enforcement.

### **Conditions for Laying off**

Failure, refusal or inability of an employer to provide work due to

- ❖ Shortage of coal, power or raw material.
- ❖ Accumulation of stocks.
- ❖ Breakdown of machinery.
- ❖ Natural calamity.

### **Lay off Compensation**

Payment of wages except for intervening weekly holiday compensation 50% of total or basic wages and DA for a period of lay off upto maximum 45 days in a year.

### **Notice of Change**

21 days notice to be given by an employer to workmen about changing the conditions of service as provided in IVth Schedule.

### **Prohibition of strikes & lock out**

- ❖ Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
- ❖ Within fourteen days of giving such notice.
- ❖ Before the expiry of the date of strike specified in any such notice as aforesaid.
- ❖ During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- ❖ During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- ❖ During the pendency of proceedings before a Labour Court, Tribunal or National
- ❖ Tribunal and two months, after the conclusion of such proceedings.
- ❖ During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A

- ❖ During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

#### **Prior Permission from the Govt.**

When there are more than 100 workmen (in UP 300 or more) during proceeding 12 months, prior permission to be obtained by the Employer for Lay Off, Retrenchment or Closure.

#### **Retrenchment of Workmen Compensation & Conditions**

No employees who has worked for 240 days in a year shall not be retrenched unless paid/given:

- ❖ Retrenchment compensation @ 15 days' wages for every completed year of service.
- ❖ Given One month's notice or wages in lieu thereof.
- ❖ Reasons for retrenchment
- ❖ Complying with principle of 'last come first go'.

#### **Notice for Closure of an Undertaking**

- ❖ 60 days' notice to the authorities for intended closure in prescribed form, when there are minimum 50 workers and less than 100 workers.
- ❖ To apply for Prior permission from Govt. atleast 90 days before the intended closure, when there are 100 or more workmen during preceding 12 months (in UP 300 or more workmen)

#### **Penal Provision**

- ❖ For breach of provisions of the Act, the employer shall be punishable with imprisonment upto 6 months and/or fine not exceeding Rs.5,000/-.
- ❖ On continuity of offence fine upto Rs.200/- per day.

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### **3.9 Payment of Bonus Act, 1965**

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#### **Object of the Act**

To provide certain statutory right to the employees to share the profit of the employer.

#### **Applicability of Act**

Every factory where in 10 or more persons are employed and Other establishments in which 20 or more persons are employed on any day during an accounting year.

Certain States like Maharashtra has made this Act applicable to all the Establishments employing minimum 10 employees.

### **Exemption for newly set up Establishments**

Newly set up establishment is exempted from paying bonus for the initial 5 years, provided no profit is made during these years. If the employer derives profit in any of the first five years, he has to pay bonus for that year.

### **Eligibility for Bonus**

- ❖ Employees (other than Apprentice) drawing salary (basic + DA) upto Rs.10,000/- p.m.
- ❖ An employee will be entitled only when he has worked for 30 working days in that financial year.

### **Benefits**

- ❖ Minimum Bonus is 8.33% of total salary earnings (basic + DA) for the financial year. (Calculation to be done as if the maximum salary were Rs.3,500/- p.m.)
- ❖ Maximum bonus is 20%

### **Disqualification & Deduction of Bonus**

On dismissal of an employee for

- ❖ Fraud; or
- ❖ riotous or violent behaviour while on the premises of the establishment; or
- ❖ theft, misappropriation or sabotage of any property of the establishment or
- ❖ Misconduct of causing financial loss to the Employer to the extent that bonus can be deducted for that year.

### **Time Limit for Payment of Bonus**

Within 8 months from the close of accounting year.

### **Set-off and Set-on**

As per Schedule IV. Sec. 15

### **Maintenance of Registers and Records**

- ❖ A register showing the computation of the allocable surplus , in Form 'A'.
- ❖ A register showing the set-on and set-off of the allocable surplus, in form 'B'.
- ❖ A register showing the details of the amount of bonus paid, in Form 'C'

**Filing of Return.**

Annual Return to be filed in form 'D' to the concerned Authority.

**Penal Provision**

For breach of provisions of the Act, the employer shall be punishable with imprisonment upto 6 months and/or fine not exceeding Rs.1,000.

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**3.10 Payment of Gratuity Act, 1972**

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**Object of the Act**

To provide certain reward to the employees for a long meritorious service, at the end of their services.

**Applicability**

Every factory, mine, oil field, plantation, port, railways, shop or establishment employing 10 or more employees

Once Act applies, it continues to apply even if employment strength falls below 10.

**Eligibility**

- ❖ Any person employed on wages/salary (irrespective of designation) and completed 5 years of continuous service (except in case of death), shall be eligible for gratuity at the end of their services.

**Benefits**

- ❖ 15 days wages (basic + DA) for every completed year of service.
- ❖ Maximum gratuity payable is Rs.10,00,000/-

**Calculation Method**

Gratuity = (Monthly salary /26) X 15 days X No. of year of service

**Forfeiture of Gratuity**

Gratuity can be forefeited on termination of an employee

- ❖ for moral turpitude or riotous or disorderly behaviour.
- ❖ Wholly or partially for wilfully causing loss, destruction of property etc.

**Display of Notice**

Certain notices & abstract of Act are to be displayed at conspicuous place at the main



entrance in English language or the language understood by majority of employees of the factory/establishment.

### **Nomination**

To be obtained by employer after expiry of one year's service, in Form 'F'

### **Penal Provision**

- ❖ Imprisonment upto 2 years or fine upto Rs.20,000 for avoiding to make payment by making false statement or representation.
- ❖ For other contraventions of the Act, imprisonment upto one year and/or fine upto Rs.10,000/-

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## **3.11 Payment of Wages Act, 1936**

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### **Object of the Act**

The main object of the Act is to regulate the payment of wages of certain classes of employed persons, avoid unnecessary delay in the payment of wages and to prevent unauthorised deductions from the wages.

### **Applicability of Act**

- ❖ Factories, industrial Establishments, Tramway service or motor transport service, Air transport service, Dock, Wharf or Jetty, Inland vessel, Mine, quarry or oil-field Plantation, Workshop, construction activities or other establishment etc.
- ❖ In the state of Maharashtra the Act is extended to Shops & commercial establishments.

### **Coverage of Employees**

The employees drawing average wage upto Rs.10,000/- p.m.

### **Time of payment of wages**

The wages of every person employed be paid:

- ❖ When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month.
- ❖ When more than 1000 workers, before the expiry of the 10 day of the following month.

### **Mode of Payment of Wages**

- ❖ All wages shall be paid in current coins or currency notes or in both.
- ❖ After obtaining the authorization, either by cheque or by crediting the wages in employee's bank Account
- ❖ Wages exceeding Rs.3000/- to be paid by cheque/through bank (Applicable in Maharashtra only)

### **Fines as prescribed by**

- ❖ Not to imposed unless the employer is given an opportunity to show cause To record in the register (Sec.8)

### **Deduction from wages**

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses, ESI contributions etc. can be made from the wages, in accordance with Section 7.

### **Maximum Deductions**

- ❖ The maximum permissible deductions is 50% of the wages
- ❖ In the event of deduction include payment to co-operative societies, the maximum permissible deduction is 75% of the wages.

### **Penal Provision**

- ❖ Penalties for breach of provisions are from Rs.200/- to Rs.1000/-.
- ❖ Repeat offences attract 1 month to 6 months imprisonment and fine from Rs.500/ - to Rs.3000/-
- ❖ Delayed wage payments attract penalty f Rs.100/- per day

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## **3.12 Minimum Wages Act, 1948**

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### **Object of the Act**

To fix minimum rates of wages in certain category of employments & industries.

### **Applicability of Act**

- ❖ The Act will be applicable to certain schedule of employment in respect of which Minimum rates of wages have been fixed by the Act.
- ❖ It is applicable to employees directly employed or employed through contractors, in such schedule of Industry.

### **Fixation of Minimum Rates of Wages**

The appropriate government to fix minimum rates of wages from time to time for various industries/schedule of employments.

Procedure for fixing and revising Minimum Rates of Wages

Appointing Committee issue of Notification etc.

### **Composition of Committee**

Representation of employer and employee in schedule employment in equal number and independent persons not exceeding 1/3rd or its total number one such person to be appointed by the Chairman.

### **Payment of Minimum Rates of Wages**

Employer to pay to every employee engaged in schedule employment at a rate not less than minimum rates of wages as fixed by Notification by not making deduction other than prescribed.

Minimum time rate wages for piece work

Not less than minimum rates wages as fixed.

### **Overtime**

For Overtime work, the wages to be paid at double the normal rate. (1½ times or for agriculture labour)

### **Maintenance of registers and records**

- ❖ Annual Returns
- ❖ Register for Overtime
- ❖ Register of Wages
- ❖ Wages slip
- ❖ Muster Roll

### **Penal Provision**

For breach of provisions of the Act, the employer shall be punishable with imprisonment upto 6 months and/or fine upto Rs.500/-.

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## **3.13 Employees' Compensation, Act, 1923**

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### **Object of the Act**

This Act earlier known as "Workmen's Compensation Act is introduced as a kind of Social Security Scheme for the workmen who suffer employment injury, occupational decease etc.

### **Applicability**

To those employers employing persons listed in Schedule II of the Act and to whom ESI Act, not applicable.

### **Coverage of Workmen**

All workers irrespective of their status or salaries either directly or through contractor or a person recruited to work abroad.

### **Eligibility**

Any workman who is injured by accident arising out of and in the course of his employment OR contracts occupational disease peculiar to his occupation.

### **Benefits**

- ❖ In case of death results from injury, 50% of monthly wages X relevant factor OR Rs.1,20,000/- whichever is more.
- ❖ In case of Permanent total disablement resulted from the injury, 60% of monthly wages X relevant factor OR Rs.1,40,000/- whichever is more
- ❖ Where permanent, partial disablement or temporary disablement results from injury, as per prescribed schedule.
- ❖ In case of death funeral expenses of Rs.5,000/-
- ❖ Relevant factor is based on the age of workman
- ❖ For the purpose of calculation of compensation, the monthly salary ceiling is Rs.8000/-, as per Central Govt. Notification dated 31.05.2010.
- ❖ In the event of death or in the event of any dispute, the compensation to be

deposited with the Commissioner within one month.

#### **When an employee is not liable for compensation**

- ❖ In respect of any injury which does result in the total or partial disablement of the workman for a period exceeding three days.
- ❖ In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-
- ❖ The workman having been at the time thereof under the influence of drink or drugs, or
- ❖ Willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- ❖ Willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

#### **Report of accident**

Report of fatal Accident and Serious Injury within 7 days to the Commissioner (not application when ESI Act applies).

#### **Bar upon contracting out**

- ❖ Any workman relinquishing his right for personal injury not permissible.
- ❖ Bar of benefit under other enactments :- When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

#### **Penal Provision**

In case of default by employer - 50% of the compensation amount + interest to be paid to the workman or his dependents as the case may be. Other offences attract fine upto Rs.5000/-

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### **3.14 Contract Labour (regularation & Abolition) Act, 1970**

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#### **Object of the Act**

To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

### **Applicability**

- ❖ Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- ❖ Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

### **Registration of Establishment**

Every Principal employer employing 20 or more workers through the contractor has to register with the Authority by paying prescribed fees.

### **Licensing of Contractor**

- ❖ Every Contractor engaging 20 or more workers should obtain License from the Authority by required fees and keeping specified Security Deposit.
- ❖ The License is issued for specified period.

### **Prohibition of Employment of Contract Labour**

Only by the appropriate Government through issue of notification after consultation with the Board (and not Courts) can order the prohibition of employment of contract labour.

### **Welfare measures to be taken by the Contractor**

- ❖ Canteen facility (if workers are 100 or more)
- ❖ First Aid facilities.
- ❖ Rest Rooms
- ❖ Drinking water, latrines and washing facilities.

### **Liability of Principal Employer**

- ❖ To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.
- ❖ Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.

### **Registers of Contractors**

By Principal employer

To maintain a register of contractor in respect of every establishment in prescribed form.

### **By Contractor**

- ❖ Maintain Muster Roll and a Register of Wages in Form XVI and Form XVII respectively when combined.
- ❖ Register or wage-cum-Muster Roll in prescribed Form
- ❖ Register of Deductions for damage or loss.
- ❖ Register or Fines
- ❖ Register of Advances
- ❖ Register of Overtime
- ❖ To issue wage slips to the workmen at least a day prior to the disbursement of wages.
- ❖ Obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of wages or Muster Roll-Cum-Wages Register.
- ❖ When covered by Payment of Wages Act, register and records to be maintained under the rules
- ❖ To display an abstract of the act and Rules in English and Hindi and in the language spoken by the Majority of workers in such forms as may be approved by appropriate authority.
- ❖ To display notices showing rates of wages, hours of work, wage period, dates of payment, names and addresses of the inspector and to send copy to the inspector and any change forthwith
- ❖ To issue an employment card to each worker in prescribed form.
- ❖ To issue service certificate to every workman on his termination in prescribed form.

### **Penal Provision**

- ❖ For contraventions of Provisions of the Act, imprisonment upto 3 months or fine upto Rs.1,000/-.
- ❖ For continuous contraventions of the Act, fine of Rs.100/- per day

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## **3.15 Industrial Employment (Standing Orders) Act, 1961**

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### **Object of the Act**

To standardize the service conditions of the workmen employed in any industrial establishment. The Act lay down uniformity in the serviceM conditions of the employees

in Industrial Establishments, so that the employer and the employees know in clear manner their rights and obligations.

### **Applicability of the Act**

- ❖ Every industrial establishment wherein 100 or more employees are employed. In many States like Maharashtra, the Act is made applicable if the number of employees is 50 or more.
- ❖ There are some establishments where this Act is not Applicable such as any establishment/industry covered by Bombay Industrial Relations Act, 1946, M.P. Industrial Employment (Standing Orders) Act, 1961 & Industrial Establishments employing persons covered by Civil Service Rules.

### **Matters to be provided in Standing orders**

- ❖ Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
- ❖ Shift working.
- ❖ Attendance and late coming.
- ❖ Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
- ❖ Requirement to enter premises by certain gates, and liability to search.
- ❖ Closing and re-opening of sections of the industrial establishments, and temporary stoppages of work and the right and liabilities of the employer and workmen arising therefrom.
- ❖ Termination of employment, and the notice thereof to be given by employer and workmen.
- ❖ Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

### **Additional Matters**

- ❖ Service Record
- ❖ Token tickets,
- ❖ Record of age,
- ❖ Fixing Age of retirement



- ❖ Medical Examination
- ❖ Secrecy
- ❖ Exclusive Service

### **Submissions of Draft Standing Orders**

The employer has to submit draft Standing orders for certification within six months from the date when the Act becomes applicable to an industrial establishment.

### **Temporary Application of Model Standing Orders**

Till the certification is done by the Certifying Officer, the Model Standing orders provided by the Rules shall be applicable to the Establishment.

### **Procedure for Certification of Standing Orders**

- ❖ The Draft Standing Order to be submitted to the Certifying Officer.
- ❖ The Certifying Officer has to forward a copy of draft standing orders to the trade union or in the absence of union, to the workmen of the industry.
- ❖ The trade union or the other representatives, as the case may be, are to be heard. (Sec.5)
- ❖ After hearing both the parties and after making necessary changes and amendment, the Certifying Officer shall certify the Standing order.

### **Date of commencement of Operation of Standing Orders**

On the date of expiry of 30 days from certification or on the expiry of 7 days from the Appellate order if any passed.

### **Display of Standing Orders**

The certified Standing Orders should be displayed in English language or in the language understood by majority of workmen on a notice board at or near the entrance of the Establishment.

### **Penal Provisions**

- ❖ For contraventions of provisions of the Act, a fine upto Rs. 5000/- can be imposed.
- ❖ For repeated or continuous contravention of the Act, further fine of Rs. 200/- per day can be imposed

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## 3.16 Mercantile Law or Commercial Law

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### Definitions :

**Proposal** - When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

**Promise** - When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. The person making the proposal is called the "promisor and the person accepting the proposal is called the promisee":

**Consideration** - When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise.

- ❖ It must move at the desire of the promisor
- ❖ It may move from promisee or any other person
- ❖ It may be act, abstinence,
- ❖ It may be past, present, future
- ❖ Need not be adequate
- ❖ It must be real and not illusory
- ❖ It must not be something which the promisor is already bound to do
- ❖ It must not be illegal / immoral
- ❖ Stranger to the Contract

**Agreement** - Every promise and every set of promises, forming the consideration for each other, is an agreement.

**Contract** - An agreement enforceable by law is a contract. An agreement not enforceable by law is said to be void.

**Sec 2(h) Contract** - An agreement enforceable by law is a contract.

**Sec 10:-**All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

### Kinds of Contract :

**Void contract** - A contract which ceases to be enforceable by law becomes void

when it ceases to be enforceable.

**Executed contract** - Where both the parties have performed their obligations, it is executed contract.

**Executory Contract** - Where neither of the parties have performed their obligations, i.e. both the parties are yet to perform their promises, the contract is executory.

**Implied Contract** - The terms of a contract are inferred from the conduct or dealings between the parties. When proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. Such implied promise leads to Implied Contract.

**Quasi Contract** - Certain relations resemble those created by a contract. Certain obligations which are not contracts in fact but are so in contemplation of law are Quasi Contracts.

**Contingent Contract** - It is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

**Voidable Contract** - A contract is voidable when one of the parties to the contract have not exercised their free consent.

**Speciality Contract** - It is a contract which is in writing, signed, sealed & delivered by the parties.

#### **Essential elements of a Valid Contract.**

1. Proposal & Acceptance.
2. Consideration.
3. Capacity of parties to contract.
4. Free Consent.
5. Agreement should not be expressly declared void.
6. Writing & Registration, if so required by law.
7. Legal Relationship.
8. Certainty.
9. Possibility of Performance.
10. Enforceable by law.

#### **Proposals :**

**Proposal** - When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

### **Essentials of Proposal:**

1. Beyond expression of willingness, there must be something in the nature of a request.
2. Proposer cannot dictate terms.
3. An offer must be intended to create & capable of creating legal relations.

### **Communication of proposals.**

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

**Eg -** A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

### **Acceptance**

When one person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

Proposal when accepted becomes promise.

The person making the proposal is called the Promisor and person accepting the proposal becomes Promisee.

### **Essentials of Acceptance.**

1. Acceptance must be absolute and unqualified.
2. It must be expressed in some usual & reasonable manner.
3. Mental Acceptance is not sufficient in Law.
4. Acceptance must be communicated to the offerer.
5. Acceptance must be by a certain person.
6. Acceptance must be given within a reasonable time.
7. Acceptance must be given before the offer lapses or is revoked or is withdrawn.
8. Acceptance of proposal is acceptance of all terms.

### **Communication of an acceptance**

The communication of an acceptance is complete, - as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the, knowledge, of the proposer.

**Eg :** B accepts A's proposal by a letter sent by post. The communication of the

acceptance is complete, as against A when the letter is posted as against B, when the letter is received by A.

### **Capacity of parties to Contract.**

An agreement becomes a contract if it is entered between the parties who are competent to Contract.

### **Every person is Competent to contract**

1. Who is of the age of majority according to the law.
2. Who is of sound mind.
3. Who is not disqualified by any law.

### **Free Consent**

"Free consent" - Consent is said to be free when it is not caused by -

- 1) coercion,
- 2) undue influence
- 3) fraud,
- 4) misrepresentation,
- 5) mistake.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

### **Coercion**

Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Eg** - A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

### **Undue influence**

A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

## **Fraud**

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract -

- 1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 2) The active concealment of a fact by one having knowledge or belief of the fact.
- 3) A promise made without any intention of performing.
- 4) Any other act fitted to deceive;
- 5) Any such act or omission as the law specially declares to be fraudulent.

## **Misrepresentation**

"Misrepresentation" means and includes -

- 1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.
- 2) any breach, of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him.
- 3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

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## **3.17 Right to Information**

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In modern India where politics plays a vital role, Corruption among the Public Officials is growing with a high speed day by day. To bring transparency and openness for the citizens to know about their Governmentary System and its administrative functions, the Government of India repealed 'Freedom of Information Act, 2002' and passed a new legislation 'Right To Information Act, 2005' called as one of the best transparency laws in the world.

The main aim of 'Right To Information Act, 2005' is to ensure accountability in the workings of every public authorities by providing access to information to the citizens and to bring reduction in corruption. As preamble itself speaks that the RTI Act was enacted to promote transparency and accountability in the working of every Public Authority in order to strengthen the core constitutional values of a democratic republic. One of the main purposes is also to make the government free from corruption and arbitrariness. This act

has its wider scope in the country like India where almost all the public officials are involved in the cases of corruption.

The Right and Duty/Obligation are correlated to each other. Every citizen of India has right to seek information from the public officer if needed, that is by filing a request or application and it is the duty of public officer to provide such an information without any failure. The right and duty are correlated to each other as two faces of the same coin. When the right is claimed by one person, the obligation arises on the other side.

'Right' means a well-founded claim which can always be implied by the nature of the human being. If the claim is founded or given by law, it is a legal right. Men are by their inherent nature moral and social beings, they have therefore mutual claim upon one another. Generally correlation of legal right is legal duty.

'Information' means only that information which is recorded in a material form not in a oral form and includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to private body which can easily be accessed by the public authority. Information asked should always be administrative in nature.

'Right To Information' is a statutory right conferred on the citizens of India which is equivalent to the right to freedom of speech and expression given under Article- 19(1) (a) of the Indian Constitution. Even Corporates and Associations can avail the information from the public authorities but only through the individuals who constitute their management. If the concerned public authority is failed in providing sufficient information then Public Information Officer can be penalized for such offence.

Public Authority means any authority or body or institution which is established by the government and set up under the Indian Constitution.

Procedure for obtaining information: The person, who is willing to obtain any information from the public officer, shall make a request to the Public Information Officer in writing under Form- A or through electronic means. For this he has to pay Rs: 20 by treasury challan and cash. Similarly a sum of Rs: 15 will be charged per hour, or any fraction thereof, to inspect the documents. The cost of photocopying one page has been fixed at Rs: 5, for computer printout Rs: 10 per page and for CDs and Floppies Rs: 100 per piece. The name of the person must be included while requesting for the information, though reason for requesting information need not be stated. Firstly the application should be filed before the Assistant Public Officer and he will transmit the application within 5 days to the Public Information Officer, who has to dispose the

application within 30 days. A prescribed fee as above stated should be paid to the public authority along with the application for seeking information. If the accurate information is not provided then complaint or application or appeal can be filed to Central/ State Information Commission. For First Appeal Rs: 40 and for Second Appeal Rs: 50 will also be charged. Public Information Officer is bound to find out sources and availability of the information. Frivolous information will not be entertained by the public authority.

Madhya Pradesh was the only first state in India to become actively engaged in securing the Right to Information for the public in October 1996. After which many states have brought out the act into force in the state.

**Exemption from disclosure of information:**

- a) Information which affect the sovereignty and integrity of India.
- b) Information which has been expressly forbidden by any court of law.
- c) Information, if disclosed will lead to breach of privilege of parliament.
- d) Information, if endangers lives of the whistle blowers.
- e) Information received in confidence from foreign countries.
- f) Information containing commercial and trade secrets.

If there is failure on the part of Public Information Officer in providing information and that too without any reasonable cause then penalty in the form of fine can be imposed which will be Rs: 250/- per day but should not extend to Rs/- 25000.

**Case Study:**

1. The Central Board of Secondary Education and Another V/S Aditya Bandopadhyay and Others (AIR 2011 SCW 4888)

According to this case question before the court was whether the answer book of a 'Student' is a document under 'Right to Information Act, 2005'. The Court held that when a candidate participate in an examination and submits its answer book containing answers to the examining body for evaluation and declaration of the result, the answer book is a document or record. The evaluated book of the Student is the opinion of the examiner and it can also be considered as 'information' under Section: 2 (f) & (i) of the Act.

2. Vijay Prakash V/S Union of India (AIR 2010 DEL 7)

According to this case it is stated that the disclosures of service records of a public servant sought by husband so as to establish his case in matrimonial proceedings. The court held that it shall not be permissible under Section: 8 of the 'Right to Information Act, 2005'