CENTRAL ORDINANCES

1996 - 2000

Min. of Law & Justice
comm. Sec.
CENTRAL ORDINANCES—1996.

1. The Industrial Disputes (Amendment) Ordinance, 1996.
2. The Employees Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996.
3. The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.
7. The Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996.
10. The Telecom Regulatory Authority of India Ordinance, 1996.
15. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996.
17. The Depositories (Second) Ordinance, 1996.
18. The Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996.
20. The Telecom Regulatory Authority of India (Second) Ordinance, 1996.
21. Corrigenda to Ordinances 2, 3, 4, 11, 12, 13, 15, 17, 18 & 20 of 1996.
22. The Representation of the People (Amendment) Ordinance, 1996.
24. The Industrial Disputes (Amendment) Third Ordinance, 1996.
25. The Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Third Ordinance, 1996.
26. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996.
30. The Supreme Court and High Court Judges (Conditions of Service) Amendment Third Ordinance, 1996.
32. The Income-tax (Second Amendment) Ordinance, 1996.

11. The High Court and Supreme Court Judges (Conditions of Service) Amendment Ordinance, 1998.

1999

5. The Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999.
8. The Representation of the People (Amendment) Ordinance, 1999.

2000

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  
New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)  

THE INDUSTRIAL DISPUTES (AMENDMENT) ORDINANCE, 1996

No. 1 of 1996.

Promulgated by the President in the Forty-sixth year of the Republic of India.

An Ordinance further to amend the Industrial Disputes Act, 1947.

WHEREAS the Industrial Disputes (Amendment) Ordinance, 1995, further to amend the Industrial Disputes Act, 1947, was promulgated by the President on the 11th day of October, 1995;

AND WHEREAS the Industrial Disputes (Amendment) Bill 1995 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill has been passed by the Council of States and is pending in the House of the people;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;
NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Industrial Disputes (Amendment) Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of October, 1995.

2. In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act), in clause (a), in sub-clause (i),—

(i) for the words and figures "the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948", the words and figures "the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956" shall be substituted;

(ii) the words and figures "the Indian Airlines" and "Air India" Corporations established under section 3 of the Air Corporations Act, 1953 shall be omitted;

(iii) for the words and figures "the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959", the words and figures "the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956" shall be substituted;

(iv) for the words and figures "the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971", the words and figures "the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994" shall be substituted;

(v) for the words "a banking or an insurance company", the words "an air transport service, or a banking or an insurance company" shall be substituted.

3. (1) The Industrial Disputes (Amendment) Ordinance, 1995 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA,

President.

K.L. MOHANPURIA,

Secy. to the Govt. of India.
THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1996

No. 2 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 has been introduced in Parliament but has not yet been passed;

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995, to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 17th October, 1995;

AND WHEREAS the said Bill with the amendments for replacing the said Ordinance has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996.

(2) It shall be deemed to have come into force on the 16th day of November, 1995.

2. In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words “family pension fund”, the words “pension fund” shall be substituted.

3. In section 2 of the principal Act,—

(a) clauses (gg) and (ggg) shall be omitted;

(b) after clause (k), the following clauses shall be inserted, namely:—

'(kA) “pension Fund” means the Employees' Pension Fund established under sub-section (2) of section 6A;

(kB) “Pension Scheme” means the Employees' Pension Scheme framed under sub-section (1) of section 6A;';

(c) after clause (l), the following clause shall be inserted, namely:—

'(ll) “superannuation”, in relation to an employee who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.”.

4. In the principal Act, for the words “Family Pension”, wherever they occur, the word “Pension” shall be substituted.

5. For sections 6A and 6B of the principal Act, the following section shall be substituted, namely:—

"6A. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

(a) Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower’s pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6 there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension scheme,—

(a) such sums from the employer’s contribution under section 6, not exceeding eight and one-third per cent. of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

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

6. In section 6C of the principal Act,—

(a) clause (3) shall be omitted;

(b) clause (b) of sub-section (4) shall be omitted.

7. In section 17 of the principal Act,—

(a) for sub-section (1c), the following sub-section shall be substituted, namely:—

“(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act.”;

(b) in sub-section (6), the words as well “as the employees’ contribution” shall be omitted.

8. For Schedule III to the principal Act, the following Schedule shall be substituted, namely:—

“SCHEDULE III
[See section 6A(5)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME

1. The employees or class of employees to whom the Pension Scheme shall apply.
2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Ordinance.

5. The regulation of the period of service for which no contribution is received.

6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.

9. (1) the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
CORRIGENDA

In the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 (Ord. 13 of 1995) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 17th October, 1995 (Issue No. 61).

1. At page 1,
   (i) In the long title, for “Miscellaneous,” read “and Miscellaneous”;
   (ii) In the last line, for “inot”, read “into”.

2. At page 2,—
   (i) In line 13, for “relaton”, read “relation”;
   (ii) In line 24, for “establishment”, read “establishment”.

3. At page 4, in line 37, for “establishments”, read “establishments”.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)

THE BUILDING AND OTHER CONSTRUCTION WORKERS
(REGULATION OF EMPLOYMENT AND CONDITIONS OF
SERVICE) ORDINANCE, 1996
No. 3 of 1996

Promulgated by the President in the Forty-sixth Year of the
Republic of India.

An Ordinance to regulate the employment and conditions of
service of building and other construction workers and to provide
for their safety, health and welfare measures and for other matters
connected therewith or incidental thereto.

WHEREAS the Building and Other Construction Workers (Regulation of
Employment and Conditions of Service) Ordinance, 1995 to provide for the
aforesaid matters was promulgated by the President on the 3rd November, 1995;

AND WHEREAS the Building and Other Construction Workers (Regulation of
Employment and Conditions of Service) Bill, 1995 was introduced in the House
of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS it is considered necessary in the interest of the welfare of the
workers engaged in the building and other construction works to give them
social security;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following ordinance:

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.

(2) It extends to the whole of India.

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

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

Explanation.—For the purposes of sub-clause (ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) "beneficiary" means a building worker registered under section 12;

(c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of section 18;

(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses...
tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

(c) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity, or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;

(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;

(h) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;

(i) "employer", in relation to an establishment, means the owner thereof and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(k) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;

(l) "notification" means a notification published in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government;

(n) "wages" shall have the same meaning as assigned to it in clause(vi) of section 2 of the payment of Wages Act, 1936.
(2) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II

THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

3. (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The Central Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the Central Government;

(b) the Director-General—member ex officio;

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2) the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

4. (1) The State Government shall constitute a committee to be called the State Building and other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The State Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the State Government;

(b) a member to be nominated by the Central Government;

(c) the Chief Inspector—member, ex officio;

(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.
5. (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Ordinance.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER III
REGISTRATION OF ESTABLISHMENTS

6. The appropriate Government may, by order notified in the Official Gazette,—

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Ordinance; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

7. (1) Every employer shall,—

(a) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and

(b) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every Application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffectual and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

9. (1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:
Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

10. No employer of an establishment to which this Ordinance applies shall,—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

CHAPTER IV

REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

11. Subject to the provisions of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

12. (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.
13. (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

14. (1) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.—For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

15. Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work under taken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

16. (1) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensum, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

17. When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.
CHAPTER V

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

18. (1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the ...... (name of the State) Building and other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

19. (1) The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The Secretary of the Board shall be its chief executive officer.

(3) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

20. (1) The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

21. No act or proceedings of a Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

22. (a) The Board may—

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;
(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

23. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

24. (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

(a) any grants and loans made to the Board by the Central Government under section 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting—

(a) expenses of the Board in the discharge of its functions under section 22; and

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on objects and for purposes authorised by this Ordinance.
(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that year.

25. The Board shall prepare in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

26. The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

27. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Ordinance shall be the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Ordinance.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

(5) The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

CHAPTER VI

HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

28. (1) The appropriate Government may, by rules,—

(a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals,

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely:

(a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

(c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) persons engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

29. (1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to overtime wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

30. (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

(3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

31. No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

32. (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.
34. (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

35. (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—
(a) provide adequate accommodation;
(b) be adequately lighted and ventilated;
(c) be maintained in a clean and sanitary condition;
(d) be under the charge of women trained in the care of children infants.

36. Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

37. The appropriate Government may, by rules, require the employer—
(a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;
(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER VII

SAFETY AND HEALTH MEASURES

38. (1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.
39. (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

40. (1) The appropriate Government may, after previous publication, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(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 safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or other such means of support;

(b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;

(d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

(e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(i) the safeguarding of machinery including the fencing of every flywheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
(j) the safe handling and use of plant, including tools and equipment operated by compressed air;

(k) the precautions to be taken in case of fire;

(l) the limits of weight to be lifted or moved by workers;

(m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments;

(q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;

(r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;

(s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in any building or other construction work;

(t) the provision and maintenance of medical facilities for building workers;

(u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

41. The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

CHAPTER VIII
INSPECTING STAFF

42. (1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the State Government is the appropriate Government.
(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

43. (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

(4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant, issued under section 94 of the said Code.

CHAPTER IX

SPECIAL PROVISIONS

44. An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

45. (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.
(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

46. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

CHAPTER X

Penalties and Procedure

47. (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:
Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

48. Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

49. (1) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

50. (1) Whoever contravenes any other provision of this Ordinance or any rules made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(2) A penalty under sub-section (1) may be imposed—

(a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

(b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

(a) informing him of the grounds on which it is proposed to impose a penalty; and

(b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.
(4) Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;
(b) requiring the discovery and production of any document;
(c) requisitioning any public record or copy thereof from any court or office;
(d) receiving evidence on affidavits; and
(e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

51. (1) Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

(a) where the penalty has been imposed by the Director-General, to the Central Government;
(b) where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

52. Where any penalty imposed on any person under section 50 is not paid,—

(i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or
(ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or
(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.
53. (1) Where an offence under this Ordinance 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 Ordinance 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 any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

54. (1) No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or

(b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or

(c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

55. No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

CHAPTER XI

MISCELLANEOUS

56. A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem necessary.

57. Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

58. The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.
59. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this ordinance or any rule or order made thereunder.

(2) No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Ordinance or any member of such Board or any officer or employee of the Government or the Board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

60. The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

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

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

62. (1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

(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 number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3 or, as the case may be, under sub-section (3) of section 4;

(b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;

(c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;

(d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

(e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

(f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;

(g) the document and the fee which shall accompany the application, under sub-section (3) of section 12;

(h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;
(i) the benefits which may be given under sub-section (2) of section 14;

(j) the form in which register of beneficiaries shall be maintained under section 15;

(k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;

(l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;

(m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quantum necessary for the transaction of business;

(n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;

(o) the limits of grants-in-aid payable to the local authorities and employers under sub-clause (b) of sub-section (3) of section 22;

(p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

(q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

(r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (4), of section 27;

(s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;

(t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;

(u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;
Repeal and saving.

(v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-sections (3) of section 30;

(w) the types of latrines and urinals required to be provided under section 33;

(x) the first-aid facilities which are to be provided under section 36;

(y) the canteen facilities which are to be provided under clause (a) of section 37;

(z) the welfare measures which are to be provided under clause (b) of section 37;

(za) the number of representatives of the employer and the building workers under sub-section (1) of Section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;

(zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;

(zc) the rules to be made for the safety and health of building workers under section 40;

(ze) the powers that may be exercised by an Inspector under clause (c) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(zd) the date on or before which wages shall be paid to a building worker under section 45;

(zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46;

(zg) any other matter which is required to be or may be prescribed.

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

(4) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be 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.

63. (1) The Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1995, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ORDINANCE, 1996

No. 4 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.

Whereas the Building and Other Construction Workers' Welfare Cess Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 3rd November, 1995;

And whereas the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not yet been passed;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;
NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

2. In this Ordinance, unless the context otherwise requires,—

(a) “Board” means a Building and Other Construction Workers’ Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996;

(b) “Fund” means the Building and Other Construction Workers’ Welfare Fund constituted by a Board;

(c) “prescribed” means prescribed by rules made under this Ordinance;

(d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

3. (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, and to the State Governments such sum of money, not exceeding one per cent, of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Ordinance including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

4. (1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

5. (1) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.
(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

7. Any officer or authority of the State Government specially empowered in this behalf by that Government may—

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(b) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance; and

(c) exercise such other powers as may be prescribed.

8. If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

10. Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

11. (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

12. (1) Whoever, being under an obligation to furnish a return under this Ordinance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.
(2) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

13. (1) Where an offence under this Ordinance 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 exercised all due diligence to prevent the commission of such offence.

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

Explanation—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 7;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
15. (1) The Building and other Construction Workers' Welfare Cess Ordinance, 1995, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHAPURIA,
Secy. to the Govt. of India.
EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

PUBLISHED BY AUTHORITY

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 5th January, 1996/Pausa 15, 1917

THE COAL MINES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1996

No. 5 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance further to amend the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

WHEREAS the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Bill, 1995 has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

This Ordinance may be called the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996.
Amendment of long title of Act 46 of 1948.

Amendment of section 2.

Substitution of references to certain expressions by certain other expressions.

Substitution of new section for section 3E.

Coal Mines Pension Scheme.

2. In the long title to the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as the principal Act), for the words “Family Pension Scheme”, the words “Pension Scheme” shall be substituted.

3. In section 2 of the principal Act,—

(a) clause (ee) shall be omitted;

(b) after clause (g), the following clauses shall be inserted, namely:—

‘(h) “Pension Fund” means the Pension Fund established under sub-section (2) of section 3E;

(i) “Pension Scheme” means the Coal Mines Pension Scheme framed under sub-section (1) of section 3E;

(j) “superannuation”, in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment.’.

4. In the principal Act, for the expressions “Family Pension”, “Family Pension Fund”, “Family Pension Scheme” and “Coal Mines Family Pension Scheme”, wherever they occur, the expressions “Pension”, “Pension Fund”, “Pension Scheme” and “Coal Mines Pension Scheme” shall respectively be substituted.

5. For section 3E of the principal Act, the following section shall be substituted, namely:—

“3E. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(b) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums, not exceeding one-fourth, of the amount payable to the Fund under sub-section (I) of section 10D as the employer’s contribution as well as the employees’ contribution, as may be specified in the Pension Scheme;

(b) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify;

(c) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and

(d) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.
The Pension Fund shall vest in and be administered by the Board in such manner as may be specified in the Pension Scheme.

Any Scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule.

6. For section 4 of the principal Act, the following section shall be substituted, namely:

"4. For the purposes of the Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund within the meaning of Part A of the Fourth Schedule to that Act."

7. In section 10 of the principal Act, in sub-section (2B),

(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

(b) for the word and figures "section 98", the word and figures "section 94" shall be substituted.

8. In section 11 of the principal Act, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted.

9. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:

"THE SECOND SCHEDULE
(See section 3E(5))

MATTERS TO BE PROVIDED FOR IN THE COAL MINES PENSION SCHEME

1. The employees or class of employees to whom the Coal Mines Pension Scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 3E as it stood before the commencement of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution and employees' contribution to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The Central Government's contribution and other contributions to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

5. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 3E as it stood before the commencement of the amending Ordinance.

6. The regulation of the period of service for which no contribution is received.

7. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

8. The manner in which the accounts of the Pension Fund shall be kept and investment of funds belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

9. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

10. The forms, registers and records to be maintained in respect of employees required for the administration of the Pension Scheme."
11. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, the amount of life assurance payable under the Pension Scheme and the manner of such payment.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses incurred in connection with the administration of the Pension Scheme may be paid by the Central Government to the Board.


15. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 7th January, 1996/Pausa 17, 1917 (Saka)

THE DEPOSITORIES ORDINANCE, 1996

No. 6 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

WHEREAS the Depositories Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 20th day of September, 1995;

AND WHEREAS the Depositories Bill, 1995, to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—
CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Depositories Ordinance, 1996.
(2) It extends to the whole of India.
(3) It shall be deemed to have come into force on the 20th day of September, 1995.

2. (1) In this Ordinance, unless the context otherwise requires,—
(a) “beneficial owner” means a person whose name is recorded as such with a depository:
(b) “Board” means Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
(c) “bye-laws” means bye-laws made by a depository under section 26;
(d) “Company Law Board” means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;
(e) “depository” means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
(f) “issuer” means any person making an issue of securities;
(g) “participant” means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
(h) “prescribed” means prescribed by rules made under this Ordinance;
(i) “record” includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;
(j) “registered owner” means a depository whose name is entered as such in the register of the issuer;
(k) “regulations” means regulations made by the Board;
(l) “security” means such security as may be specified by the Board;
(m) “service” means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts.

CHAPTER II
CERTIFICATE OF COMMENCEMENT OF BUSINESS

3. (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.
CHAPTER III
RIGHTS AND OBLIGATIONS OF DEPOSITORYs, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

4. (1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

6. (1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred to in sub-section (1) in its records, as the beneficial owner.

7. (1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

8. (1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

9. (1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

10. (1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

11. Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956.

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.
(2) Every beneficial owner shall give intimation of such pledge of hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

13. (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

15. The Bankers’ Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

16. (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

17. (1) Subject to the provisions of this Ordinance, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

CHAPTER IV
ENQUIRY AND INSPECTION

18. (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.
19. Save as provided in this Ordinance, if after making or causing to be made an
enquiry or inspection, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any depository or participant being conducted in
the manner detrimental to the interests of investors or securities market,
it may issue such directions—

(a) to any depository or participant or any person associated with the securities
market; or

(b) to any issuer,
as may be appropriate in the interest of investors or the securities market.

CHAPTER V

Penalty

20. Whoever contravenes or attempts to contravene or abets the contravention of the
provisions of this Ordinance or any regulations or bye-laws made thereunder shall be
punishable with imprisonment for a term which may extend to five years, or with fine, or
with both.

21. (1) Where an offence under this Ordinance 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 provided in this Ordinance, 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 an offence under
this Ordinance has been committed by a company and it is proved that the offence has been
committed with the consent or connivance of, or is attributable to any neglect on the part of,
any director, manager, secretary or other officer of the company, such director, manager,
secretary or other officer shall also be deemed to be guilty of the offence and shall be liable
to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other
association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER VI

Miscellaneous

22. (1) No court shall take cognizance of any offence punishable under this Ordinance
or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of
the first class shall try any offence punishable under this Ordinance.
23. (1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(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 time within which an appeal may be preferred under sub-section (1) of section 23;

(b) The form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) The procedure for disposing of an appeal under sub-section (4) of section 23.

25. (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) any other form in which record is to be maintained under clause (i) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of the section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.
26. (1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

27. Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the session in which such rule or regulation is made, both Houses agree in making any modification in, or different from, or annul such rule or regulation, no amendment or regulation so annulled or modified shall have any further force or effect.
Application of other laws not barred.
Removal of difficulties.

Amendments to certain enactments.
Repeal and saving.

Securities not liable to stamp duty.

successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

28. The provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

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

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein.

31. (1) The Depositories Ordinance, 1995 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

THE SCHEDULE
(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899
(2 of 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:—

'8A. Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Ordinance, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule 1 of this Act.

Explanation.—For the purposes of this section, the expressions “beneficial owner”, “depository” and “issuer” shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Ordinance, 1996.”.
1. In section 2, after clause (45A), the following clause shall be inserted, namely:

'(45B) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.'.

2. After section 2, the following section shall be inserted, namely:

"2A. Words and expressions used and not defined in this Act but defined in the Depositories Ordinance, 1996 shall have the same meanings respectively assigned to them in that Ordinance."

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company."

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:

"(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner."

5. In section 51, the following proviso shall be inserted, namely:

"Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs."

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository."

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:

'(14) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.'.

9. After section 111, the following section shall be inserted, namely:

"111A. (1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission of certain words and expressions. Rectification of register on transfer.
was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 113 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.".

11. In section 150, in sub-section (1), in clause (b), the words "distinguishing each share by its number" shall be omitted.

12. In section 152 in sub-section (1), in clause (b), the words "distinguishing each debenture by its number" shall be omitted.

13. After section 152, the following section, shall be inserted, namely:—

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Ordinance, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be for the purposes of this Act."

14. In Schedule II, in Part II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:—

"9A. The details of option to subscribe for securities to be dealt with in a depository.".

PART III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 of 1956)

AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:—

'(i) "spot delivery contract" means a contract which provides for—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

2. Section 22A shall be omitted.

PART IV
AMENDMENT TO THE INCOME TAX ACT, 1961
(43 of 1961)
AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:—

'(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Ordinance, 1996, and for the purposes of—

(i) section 48; and

(ii) proviso to clause (42A) of section 2.

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.— For the purposes of this sub-section, the expressions “beneficial owner”, “depository” and “security” shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Ordinance, 1996.'.

PART V
AMENDMENT TO THE REDEMPTION TRANSACTIONS (PROHIBITION) ACT, 1988
(45 of 1988)
AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:—

'(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by—

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Ordinance, 1996;

(ii) participant as an agent of a depository.

Explanation.— The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Ordinance, 1996.'.
PART VI
AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
(15 of 1992)

AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956”, the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956 or the Depositories Ordinance, 1996” shall be substituted.

2. In section 11, in clause (ba), for the words “depositories, custodians”, the words “depositories, participants, custodians” shall be substituted.

3. In section 12, in sub-section (1A), for the words, “depository, custodian”, at both the places where they occur, the words “depository, participant, custodian” shall be substituted.

4. In section 16, in sub-section (1), for the words “this Act”, the words and figures “this Act or the Depositories Ordinance, 1996” shall be substituted.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
THE SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT ORDINANCE, 1996

No. 7 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954.

Whereas Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

Preliminary

1. (1) This Ordinance may be called the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996.

(2) It shall come into force at once.
CHAPTER II

AMENDMENT OF THE SUPREME COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1958

2. In section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 (hereinafter in this Chapter referred to as the Supreme Court Judges Act), for the words "one hundred and fifty litres of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

3. In section 23B of the Supreme Court Judges Act, for the words "one thousand two hundred and fifty", and "seven hundred and fifty", the words "four thousand" and "three thousand" shall respectively be substituted.

CHAPTER III

AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

4. In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter in this Chapter referred to as the High Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

5. In section 22C of the High Court Judges Act, for the words "five hundred" and "three hundred", the words "three thousand" and "two thousand" shall respectively be substituted.

SHANKER DAYAL SHARMA,
President.

K. L. MOHAN PURIA,
Secy. to the Govt. of India.
The Gazette of India

EXTRAORDINARY

PART II—Section 1

PUBLISHED BY AUTHORITY

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 16th January, 1996/Pausa 26, 1917 (Saka)

THE ARBITRATION AND CONCILIATION ORDINANCE, 1996

No. 8 of 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.


And Whereas the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

And Whereas the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

And Whereas the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;
AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

AND WHEREAS a Bill to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto, has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 122 of the Constitution, the President is pleased to promulgate the following Ordinance:

PRELIMINARY

Short title, extent and commencement.

1. (1) This Ordinance may be called the Arbitration and Conciliation Ordinance, 1996.

(2) It extends to the whole of India:

Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation.—In this sub-section, the expression “international commercial conciliation” shall have the same meaning as the expression “international commercial arbitration” in clause (f) of sub-section (1) of section 2, subject to the modification that for the word “arbitration” occurring therein, the word “conciliation” shall be substituted.

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

PART I

ARBITRATION

CHAPTER I

General provisions

Definitions. 2. (1) In this Part, unless the context otherwise requires,—

(a) “arbitration” means any arbitration whether or not administered by permanent arbitral institution;

(b) “arbitration agreement” means an agreement referred to in section 7;

(c) “arbitral award” includes an interim award;

(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement.

(2) This Part shall apply where the place of arbitration is in India.

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,
that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

Receipt of written communications.

3. (1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

Waiver of right to object.

4. A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

Extent of judicial intervention.

5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

Administrative assistance.

6. In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

CHAPTER II

Arbitration agreement

Arbitration agreement.

7. (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—
(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it becomes decree of a Court, apply to a Court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

CHAPTER III

Composition of arbitral tribunal

10. (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.
11. (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (9), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.
(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has first been made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the "Chief Justice of India".

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (b) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

12. (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if:

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality,

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

13. (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. (1) The mandate of an arbitrator shall terminate if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

Jurisdiction of arbitral tribunals

16. (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

**CHAPTER V**

**Conduct of arbitral proceedings**

18. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.
21. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

22. (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

23. (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of those particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. (1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

27. (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same process to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like advantages, penalties and punishments by order of the Court on the representation of
the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER VI

Making of arbitral award and termination of proceedings

28. (1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under sub-clause (ii) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

29. (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute, and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.
31. (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,—

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify—

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation.—For the purpose of clause (a), "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and
Termination of proceedings.

32. (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

Correction and interpretation of award; additional award.

33. (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.
CHAPTER VII

Recourse against arbitral award

34. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is
appropriate and it is so requested by a party, adjourn the proceedings for a period of
time determined by it in order to give the arbitral tribunal an opportunity to resume
the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal
will eliminate the grounds for setting aside the arbitral award.

CHAPTER VIII

Finality and enforcement of arbitral awards

Finality of arbitral awards. 35. Subject to this Part an arbitral award shall be final and binding on the parties and
persons claiming under them respectively.

Enforcement. 36. Where the time for making an application to set aside the arbitral award under
section 34 has expired, or such application having been made, it has been refused, the
award shall be enforced under the Code of Civil Procedure, 1908 in the same manner
as if it were a decree of the Court.

CHAPTER IX

Appeals

Appealable orders. 37. (1) An appeal shall lie from the following orders (and from no others) to the
court authorised by law to hear appeals from original decrees of the Court passing the
order, namely:
   
   (a) granting or refusing to grant any measure under section 9;

   (b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie from an order granting or refusing to grant an interim
measure under section 17 to a Court.

(3) No second appeal shall lie from an order passed in appeal under this section, but
nothing in this section shall affect or take away any right to appeal to the Supreme
Court.

CHAPTER X

Miscellaneous

Deposits. 38. (1) The arbitral tribunal may fix the amount of the deposit or supplementary
deposit, as the case may be, as an advance for the costs referred to in sub-section (8)
of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the
arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the
parties:

Provided that where one party fails to pay his share of the deposit, the other party
may pay that share:

Provided further that where the other party also does not pay the aforesaid share in
respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate
the arbitral proceedings in respect of such claim or counter-claim, as the case may be.
(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an
accounting to the parties of the deposits received and shall return any unexpended
balance to the party or parties, as the case may be.

39. (1) Subject to the provisions of sub-section (2) and to any provision to the
contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the
arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment
of the costs demanded by it, the Court may, on an application in this behalf, order that
the arbitral tribunal shall deliver the arbitral award to the applicant on payment into
Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as
it thinks fit, further order that out of the money so paid into Court there shall be paid
to the arbitral tribunal by way of costs such sum as the Court may consider reasonable
and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees
demanded have been fixed by written agreement between him and the arbitral tribunal,
and the arbitral tribunal shall be entitled to appear and be heard on any such
application.

(4) The Court may make such orders as it thinks fit respecting the costs of the
arbitration where any question arises respecting such costs and the arbitral award
contains no sufficient provision concerning them.

40. (1) An arbitration agreement shall not be discharged by the death of any party
thereto either as respects the deceased or as respects any other party, but shall in such
event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by
whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which
any right of action is extinguished by the death of a person.

41. (1) Where it is provided by a term in a contract to which an insolvent is a party
that any dispute arising thereunder or in connection therewith shall be submitted to
arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or
against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the
commencement of the insolvency proceedings, become a party to an arbitration
agreement, and any matter to which the agreement applies is required to be determined
in connection with, or for the purposes of, the insolvency proceedings, then, if the case
is one to which sub-section (1) does not apply, any other party or the receiver may
apply to the judicial authority having jurisdiction in the insolvency proceedings for an
order directing that the matter in question shall be submitted to arbitration in accordance
with the arbitration agreement, and the judicial authority may, if it is of opinion that
having regard to all the circumstances of the case, the matter ought to be determined by
arbitration, make an order accordingly.

(3) In this section, the expression "receiver" includes an Official Assignee.

42. Notwithstanding anything contained elsewhere in this Part or in any other law for
the time being in force, where with respect to an arbitration agreement any application
under this Part has been made in a Court, that Court alone shall have jurisdiction over
the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Limitations. 43. (1) The Limitation Act, 1963, shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

PART II
ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER 1
New York Convention Awards

Definition. 44. In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

Power of judicial authority to refer parties to arbitration. 45. Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

When foreign award binding. 46. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
47. (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

48. (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(d) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.
Explanation.—Without prejudice to the generality of clause \( (b) \) of this sub-section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

\( (3) \) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause \( (e) \) of sub-section \( (1) \) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

49. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

\( 50. (f) \) An appeal shall lie from the order refusing to—

\( (a) \) refer the parties to arbitration under section 45;

\( (b) \) enforce a foreign award under section 48,

to the Court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

51. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

CHAPTER II

Geneva Convention Awards

53. In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

\( (a) \) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

\( (b) \) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

\( (c) \) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the
country in which it was made.

54. Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

55. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

56. (1) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court—

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

57. (1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

(a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or
if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India.

Explanation.—Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

(a) the award has been annulled in the country in which it was made;

(b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Enforcement of foreign awards.

58. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

Appealable orders.

59. (1) An appeal shall lie from the order refusing—

(a) to refer the parties to arbitration under section 54; and

(b) to enforce a foreign award under section 57,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Saving.

60. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.
PART III

CONCILIATION

61. (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. (1) Subject to sub-section (2),—

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(d) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.
65. (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation.—In this section and all the following sections of this Part, the term “conciliator” applies to a sole conciliator, two or three conciliators, as the case may be.

66. The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

67. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that
71. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings. Co-operation of parties with conciliator.

72. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute. Suggestions by parties for settlement of dispute.

73. (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations. Settlement agreement.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement. Status and effect of settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. Confidentiality.

74. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30. Confiden-
tiality.

75. Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. Termination of conciliation proceedings.

76. The conciliation proceedings shall be terminated—

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
Resort to arbitral or judicial proceedings.

77. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs. 78. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits. 79. (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

Role of conciliator in other proceedings. 80. Unless otherwise agreed by the parties,—

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Admissibility of evidence in other proceedings. 81. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

PART IV

SUPPLEMENTARY PROVISIONS.

82. The High Court may make rules consistent with this Ordinance as to all proceedings before the Court under this Ordinance.

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

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(ii) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. (i) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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


(ii) Notwithstanding such repeal,—

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Ordinance came into force unless otherwise agreed by the parties but this Ordinance shall apply in relation to arbitral proceedings which commenced on or after this Ordinance comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Ordinance, be deemed respectively to have been made or issued under this Ordinance.
THE FIRST SCHEDULE

(See section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
(a) the duly authenticated original award or a duly certified copy thereof;

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.
ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.
ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:—

(a) with respect of those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.
ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:—

(a) signatories and ratifications in accordance with article VIII;
(b) accessions in accordance with article IX;
(c) declarations and notifications under articles I, X and XI;
(d) the date upon which this Convention enters into force in accordance with article XII;
(e) denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article XIII.

THE SECOND SCHEDULE

(See section 53)

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:—

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.
3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE

(See section 53)

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th,
1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary:

(a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

(a) that the award has been annulled in the country in which it was made;

(b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.
Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:—

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph (1) and paragraph (2) (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and Non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or Non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.
Article 10.—The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every Non-Member State which signs the same.

SHANKER DAYAL SHARMA,

President.

A.C.C. UNNI,

Additional Secretary to the Govt. of India.
THE CONSTITUTION (SCHEDULED TRIBES) ORDER
(AMENDMENT) ORDINANCE, 1996

No. 9 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the inclusion of Koch-Rajbongshi in the list of Scheduled Tribes specified in relation to the State of Assam.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996.

(2) It shall come into force at once.
Amendment of the Constitution (Scheduled Tribes) Order, 1950.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in “Part II.—Assam”, under the Heading “11. In the State of Assam excluding the autonomous districts:—”, after item 9 and the entry relating thereto, the following item and entry shall be added, namely:

“10. Koch-Rajbongshi.”

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
THE TELECOM REGULATORY AUTHORITY OF INDIA ORDINANCE, 1996

No. 10 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Telecom Regulatory Authority of India Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall come into force at once.
2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the day with effect from which the Authority is established under sub-section (1) of section 3;

(b) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority appointed under sub-section (3) of section 3;

(d) "Fund" means the Fund constituted under sub-section (1) of section 22;

(e) "member" means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Ordinance;

(h) "regulations" means regulations made by the Authority under this Ordinance;

(i) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(2) Words and expressions used and not defined in this Ordinance but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the meanings respectively assigned to them in those Acts.

(3) Any reference in this Ordinance to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

CHAPTER II

TELECOM REGULATORY AUTHORITY OF INDIA

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Ordinance, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not exceeding four members, to be appointed by the Central Government.
4. (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary, or the posts of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

5. (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be,—

(a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;

(b) if he has been the Chief Justice of a High Court, the same as that of the Chief Justice of the High Court:

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court or a Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson or of the member shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or
(b) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

(a) be ineligible for further employment either under the Government of India or under the State Government; or

(b) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject matter of consideration before the Authority.

Powers of Chairperson and Vice-Chairperson.

6. (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

Removal of members from office in certain circumstances.

7. (1) The Central Government may remove from office any member, who—

(a) has been adjudged as insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

Meetings.

8. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.
(4) The Authority may make regulations for the transaction of business at its meetings.

9. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. *(1)* The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

*(2)* The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section *(1)* shall be such as may be determined by regulations.

**CHAPTER III**

**POWERS AND FUNCTIONS OF THE AUTHORITY**

11. *(1)* Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;

*(h)* render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

*(i)* levy fees at such rates and in respect of such services as may be determined by regulations;

*(j)* ensure effective compliance of universal service obligations;

*(k)* perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary, to carry out the provisions of this Ordinance.
(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and outside India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every director, manager, secretary or other officer, if such service provider is a company; or

(b) every partner, manager, secretary or other officer, if such service provider is a firm; or

(c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b), shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary, for proper functioning by service providers.

13. The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.
CHAPTER IV

SETTLEMENT OF DISPUTES

14. (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court on any matter relating to—

(i) technical compatibility and inter-connections between service providers;

(ii) revenue sharing arrangements between different service providers;

(iii) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matter relating to—

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or a National Consumer Disputes Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

15. (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation.—For the purposes of this sub-section, the expression "aggrieved person" means—

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit.
(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

16. (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

18. Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

19. Every order made by the Authority under this Ordinance or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.
20. If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine, or with both.

CHAPTER V
FINANCE, ACCOUNTS AND AUDIT

21. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Ordinance.

22. (1) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

(a) all grants, fees and charges received by the Authority under this Ordinance; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the expenses of the Authority in the discharge of its functions under this Ordinance; and

(c) the expenses on objects and for purposes authorised by this Ordinance.

23. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such auditor shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.
24. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

25. (1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

26. All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code.

27. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

28. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of the Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

29. If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.
30. (1) Where an offence under this Ordinance 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 provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

31. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

32. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulations under section 35) as it may deem necessary.

33. (1) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Ordinance.

34. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(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 salary and allowances payable to and the other conditions of service of the members under sub-section (6) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;
(d) the period within which an application is to be made under sub-section (1) of section 15;

(e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(f) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-sections (1) and (2) of section 24;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

35. (1) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other terms and conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) levy of fees under clause (i) of sub-section (1) of section 11.

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

37. The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 and, in particular, nothing in this Ordinance shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.
38. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power to remove difficulties.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
An Ordinance to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.


AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;

AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;
AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

AND WHEREAS the Arbitration and Conciliation Bill, 1995 to provide for the aforesaid matters was introduced in the Council of States but could not be passed;

AND WHEREAS the Arbitration and Conciliation Ordinance, 1996 to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 16th day of January, 1996 and was brought into force on the 25th day of January, 1996;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

PRELIMINARY

Short title, extent and commencement. 1. (1) This Ordinance may be called the Arbitration and Conciliation Second Ordinance, 1996.

(2) It extends to the whole of India:

Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation.—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (f) of sub-section (I) of section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.

(3) It shall be deemed to have come into force on the 25th day of January, 1996.

PART I

ARBITRATION

CHAPTER I

General provisions

Definitions. 2. (1) In this Part, unless the context otherwise requires,—

(a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(b) "arbitration agreement" means an agreement referred to in section 7;

(c) "arbitral award" includes an interim award;
(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement.

(2) This Part shall apply where the place of arbitration is in India.

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorize any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,
that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

3. (1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

4. A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

6. In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

CHAPTER II
Arbitration agreement

7. (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—
(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

CHAPTER III
Composition of arbitral tribunal

10. (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.
11. (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to—

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the
parties where the parties belong to different nationalities.

(10) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to “Chief Justice” in those sub-sections shall be construed as a reference to the “Chief Justice of India”.

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to “Chief Justice” in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

12. (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

13. (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. (1) The mandate of an arbitrator shall terminate if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

15. (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

CHAPTER IV

Jurisdiction of arbitral tribunals

16. (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

CHAPTER V

Conduct of arbitral proceedings

18. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.
21. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

22. (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

23. (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. (1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

27. (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of
the arbitral tribunal as they would incur for the like offences in suits tried before the
Court.

(6) In this section the expression "Processes" includes summonses and commissions
for the examination of witnesses and summonses to produce documents.

CHAPTER VI

Making of arbitral award and termination of proceedings

28. (1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral
tribunal shall decide the dispute submitted to arbitration in accordance with the
substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of
law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given
country shall be construed, unless otherwise expressed, as directly referring to the
substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under sub-clause (ii) by the parties, the
arbitral tribunal shall apply the rules of law it considers to be appropriate given
all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur
only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the
contract and shall take into account the usages of the trade applicable to the transaction.

29. (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than
one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its
members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of
the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to
courage settlement of the dispute and, with the agreement of the parties, the arbitral
tribunal may use mediation, conciliation or other procedures at any time during the
arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal
shall terminate the proceedings and, if requested by the parties and not objected to by
the arbitral tribunal, record the settlement in the form of an arbitral award on agreed
terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31
and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any
other arbitral award on the substance of the dispute.
31. (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,—

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify—

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation.—For the purpose of clause (a), "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and
32. (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.
CHAPTER VII

Recourse against arbitral award

34. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanations.—Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is
appropriate and it is so requested by a party, adjourn the proceedings for a period of
time determined by it in order to give the arbitral tribunal an opportunity to resume the
arbitral proceedings or to take such other action as in the opinion of arbitral tribunal
will eliminate the grounds for setting aside the arbitral award.

CHAPTER VIII

Finality and enforcement of arbitral awards

35. Subject to this Part an arbitral award shall be final and binding on the parties and
persons claiming under them respectively.

36. Where the time for making an application to set aside the arbitral award under
section 34 has expired, or such application having been made, it has been refused, the
award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as
if it were a decree of the Court.

CHAPTER IX

Appeals

37. (1) An appeal shall lie from the following orders (and from no others) to the
Court authorised by law to hear appeals from original decrees of the Court passing the
order, namely:—

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie from an order granting or refusing to grant an interim
measure under section 17 to a Court.

(3) No second appeal shall lie from an order passed in appeal under this section, but
nothing in this section shall affect or take away any right to appeal to the Supreme
Court.

CHAPTER X

Miscellaneous

38. (1) The arbitral tribunal may fix the amount of the deposit or supplementary
deposit, as the case may be, as an advance for the costs referred to in sub-section (5)
of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the
arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the
parties:

Provided that where one party fails to pay his share of the deposit, the other party
may pay that share:

Provided further that where the other party also does not pay the aforesaid share in
respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate
the arbitral proceedings in respect of such claim or counter-claim, as the case may be.
Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

39. (1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

40. (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

41. (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvent proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvent proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvent proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.
the arbitral proceedings and all subsequent applications arising out of that agreement and
the arbitral proceedings shall be made in that Court and in no other Court.

Limitations. 43. (1) The Limitation Act, 1963, shall apply to arbitrations as it applies to
proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963, an arbitration shall
be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides
that any claim to which the agreement applies shall be barred unless some step to
commence arbitral proceedings is taken within a time fixed by the agreement, and a
dispute arises to which the agreement applies, the Court, if it is of opinion that in the
circumstances of the case undue hardship would otherwise be caused, and
notwithstanding that the time so fixed has expired, may on such terms, if any, as the
justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the
commencement of the arbitration and the date of the order of the Court shall be excluded
in computing the time prescribed by the Limitation Act, 1963, for the commencement
of the proceedings (including arbitration) with respect to the dispute so submitted.

PART II

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER 1

New York Convention Awards

Definition. 44. In this Chapter, unless the context otherwise requires, "foreign award" means an
arbitral award on differences between persons arising out of legal relationships, whether
contractual or not, considered as commercial under the law in force in India, made on
or after the 11th day of October, 1960—

(a) in pursuance of an agreement in writing for arbitration to which the
Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that
reciprocal provisions have been made may, by notification in the Official Gazette,
declare to be territories to which the said Convention applies.

Power of judicial authority to refer parties to arbitration. 45. Notwithstanding anything contained in Part I or in the Code of Civil Procedure,
1908, a judicial authority, when seized of an action in a matter in respect of which the
parties have made an agreement referred to in section 44, shall, at the request of one of
the parties or any person claiming through or under him, refer the parties to arbitration,
unless it finds that the said agreement is null and void, inoperative or incapable of
being performed.

When foreign award binding. 46. Any foreign award which would be enforceable under this Chapter shall be treated
as binding for all purposes on the persons as between whom it was made, and may
accordingly be relied on by any of those persons by way of defence, set off or
otherwise in any legal proceedings in India and any references in this Chapter to
enforcing a foreign award shall be construed as including references to relying on an
award.
47. (1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

48. (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the scope of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.
Explanation.—Without prejudice to the generality of clause (b) of this sub-section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

49. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

50. (1) An appeal shall lie from the order refusing to—
   (a) refer the parties to arbitration under section 45;
   (b) enforce a foreign award under section 48,
   to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

51. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

CHAPTER II

Geneva Convention Awards

53. In this Chapter “foreign award” means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the
country in which it was made.

54. Notwithstanding anything contained in Part I or I of the Code of Civil Procedure, 1908, a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

55. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

56. (1) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court—

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (b) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

57. (1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

(a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or
if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India.

Explanation.—Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

(a) the award has been annulled in the country in which it was made;

(b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

58. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

59. (1) An appeal shall lie from the order refusing—

(a) to refer the parties to arbitration under section 54; and

(b) to enforce a foreign award under section 57,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

60. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.
CONCILIATION

61. (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. (1) Subject to sub-section (2),—

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.
65. (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation.—In this section and all the following sections of this Part, the term “conciliator” applies to a sole conciliator, two or three conciliators as the case may be.

66. The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Role of conciliator.

67. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

68. In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that
information to the other party.

71. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

73. (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

75. Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

76. The conciliation proceedings shall be terminated—

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
Resort to arbitral or judicial proceedings.

77. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

Costs.

78. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(a) the fees and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits.

79. (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

Role of conciliator in other proceedings.

80. Unless otherwise agreed by the parties,—

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Admissibility of evidence in other proceedings.

81. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
(b) admissions made by the other party in the course of the conciliation proceedings;

c) proposals made by the conciliator;

d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

PART IV

SUPPLEMENTARY PROVISIONS

82. The High Court may make rules consistent with this Ordinance as to all proceedings before the Court under this Ordinance.

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

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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


(2) Notwithstanding such repeal,—

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Ordinance came into force unless otherwise agreed by the parties but this Ordinance shall apply in relation to arbitral proceedings which commenced on or after this Ordinance comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Ordinance, be deemed respectively to have been made or issued under this Ordinance.
Repeal of Ord. 8 of 1996.

86. (1) The Arbitration and Conciliation Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Ordinance.
THE FIRST SCHEDULE

(See section 44)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or may arise between them in respect of defined legal relationships, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, ineffectual or incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application,
(a) the duly authenticated original award or a duly certified copy thereof;

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

**ARTICLE V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.

**ARTICLE VI**

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.


ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneve Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.
ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:—

(a) with respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.
ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) signatures and ratifications in accordance with article VIII;
(b) accessions in accordance with article IX;
(c) declarations and notifications under articles I, X and XI;
(d) the date upon which this Convention enters into force in accordance with article XII;
(e) denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article XIII.

THE SECOND SCHEDULE

(See section 53)

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.
3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement of the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE
(See section 53)

CONVENTION OF THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th,
1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary:—

(a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

(a) that the award has been annulled in the country in which it was made;

(b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantees as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.
Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article I (d), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article I, paragraph (1) and paragraph (2) (a) and (e), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and Non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or Non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.
Article 10.—The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every Non-Member State which signs the same.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  

New Delhi, the 26th March, 1996/Chaitra 6, 1918 (Saka)  

THE COAL MINES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1996  

No. 12 of 1996  

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

WHEREAS the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Bill, 1995 has been introduced in Parliament but has not yet been passed;

AND WHEREAS for giving effect to the provisions of the said Bill, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

AND WHEREAS the said Bill for replacing the said Ordinance has not yet been passed

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996.
Amendment of long title of Act 46 of 1948.

Amendment of section 2.

Substitution of references to certain expressions by certain other expressions.

Substitution of new section for section 3E.

Coal Mines Pension Scheme.

2. In the long title to the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as the principal Act), for the words “Family Pension Scheme”, the words “Pension Scheme” shall be substituted.

3. In section 2 of the principal Act,—

(a) clause (ee) shall be omitted;

(b) after clause (g), the following clauses shall be inserted, namely:

“(h) “Pension Fund” means the Pension Fund established under sub-section (2) of section 3E;

(i) “Pension Scheme” means the Coal Mines Pension Scheme framed under sub-section (1) of section 3E;

(j) “superannuation”, in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment.”.

4. In the principal Act, for the expressions “Family Pension”, “Family Pension Fund”, “Family Pension Scheme” and “Coal Mines Family Pension Scheme”, wherever they occur, the expressions “Pension”, “Pension Fund”, “Pension Scheme” and “Coal Mines Pension Scheme” shall respectively be substituted.

5. For section 3E of the principal Act, the following section shall be substituted, namely:

“3E. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(b) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums, not exceeding one-fourth, of the amount payable to the Fund under sub-section (1) of section 10D as the employer’s contribution as well as the employees’ contribution, as may be specified in the Pension Scheme;

(b) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify;

(c) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and

(d) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.
Any Scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule.

6. For section 4 of the principal Act, the following section shall be substituted, namely:

"4. For the purposes of the Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund within the meaning of Part A of the Fourth Schedule to that Act."

7. In section 10 of the principal Act, in sub-section (2B),

(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;
(b) for the word and figures "section 98", the word and figures "section 94" shall be substituted.

8. In section 11 of the principal Act, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted.

9. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:

"THE SECOND SCHEDULE
[See section 3E(5)]

MATTERS TO BE PROVIDED FOR IN THE COAL MINES PENSION SCHEME

1. The employees or class of employees to whom the Coal Mines Pension Scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 3E as it stood before the commencement of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution and employees' contribution to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The Central Government's contribution and other contributions to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

5. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 3E as it stood before the commencement of the amending Ordinance.

6. The regulation of the period of service for which no contribution is received.

7. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

8. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

9. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

10. The forms, registers and records to be maintained in respect of employees required for the administration of the Pension Scheme."
11. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, the amount of life assurance payable under the Pension Scheme and the manner of such payment.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses incurred in connection with the administration of the Pension Scheme may be paid by the Central Government to the Board.


15. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.


(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President,

K.L. MOHANPURIA,
Secy. to the Govt. of India.
THE INDUSTRIAL DISPUTES (AMENDMENT) SECOND ORDINANCE, 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India

No. 13 of 1996.

An Ordinance further to amend the Industrial Disputes Act, 1947.

WHEREAS the Industrial Disputes (Amendment) Ordinance, 1995, further to amend the Industrial Disputes Act, 1947, was promulgated by the President on the 11th day of October, 1995;

AND WHEREAS the Industrial Disputes (Amendment) Bill, 1995 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill has been passed by the Council of States but could not be passed by the House of the People;

AND WHEREAS the President promulgated the Industrial Disputes (Amendment) Ordinance, 1996 to give continued effect to the provisions of the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;
NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Industrial Disputes (Amendment) Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of October, 1995.

2. In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act), in clause (a), in sub-clause (i)—

(i) for the words and figures "the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948", the words and figures "the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956" shall be substituted;

(ii) the words and figures "or the "Indian Airlines" and "Air India" Corporations established under section 3 of the Air Corporations Act, 1953" shall be omitted;

(iii) for the words and figures "the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959", the words and figures "the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956" shall be substituted;

(iv) for the words and figures "the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971", the words and figures "the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994" shall be substituted;

(v) for the words "a banking or an insurance company", the words "an air transport service, or a banking or an insurance company" shall be substituted.

3. (1) The Industrial Disputes (Amendment) Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAI SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
EXTRAORDINARY
PART II—Section I
PUBLISHED BY AUTHORITY

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) SECOND ORDINANCE, 1996

No. 14 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 was introduced in Parliament;

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995, to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 17th day of October, 1995;

AND WHEREAS the said Bill has not been passed;

AND WHEREAS the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 for replacing the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 has not yet been passed;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 16th day of November, 1995.

2. In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words “family pension fund”, the words “pension fund” shall be substituted.

3. In section 2 of the principal Act,—

(a) clauses (gg) and (ggg) shall be omitted;

(b) after clause (k), the following clauses shall be inserted, namely:

(kA) “pension Fund” means the Employees’ Pension Fund established under sub-section (2) of section 6A;

(kB) “Pension Scheme” means the Employees’ Pension Scheme framed under sub-section (1) of section 6A;

(c) after clause (l), the following clause shall be inserted, namely:

(ll) “superannuation”, in relation to an employee who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years;”.

4. In the principal Act, for the words “Family Pension”, wherever they occur, the word “Pension” shall be substituted.

5. For sections 6A and 6B of the principal Act, the following section shall be substituted, namely:

“6A. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees’ Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower’s pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme, —

(a) such sums from the employer’s contribution under section 6, not exceeding eight and one-third per cent. of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;
(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

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

6. In section 6C of the principal Act,—

(a) clause (3) shall be omitted;

(b) clause (b) of sub-section (4) shall be omitted.

7. In section 17 of the principal Act,—

(a) for sub-section (1C), the following sub-section shall be substituted, namely:

"(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act;"

(b) in sub-section (6), the words as well "as the employees' contribution" shall be omitted.
8. For Schedule III to the principal Act, the following Schedule shall be substituted, namely:—

"SCHEDULE III
[See section 6A(5)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME

1. The employees or class of employees to whom the Pension Scheme shall apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Ordinance.

5. The regulation of the period of service for which no contribution is received.

6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme."

9. (1) the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA
President.

K. L. MOHANPURIA
Secy. to the Govt. of India.
The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996

An Ordinance to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

Whereas the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 was promulgated by the President on the 3rd day of November, 1995;

and whereas the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

and whereas to give effect to the provisions of the said Bill, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

and whereas the Bill to replace the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 has not been passed;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the first day of March, 1996.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) “appropriate Government” means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

Explanation.—For the purposes of sub-clause (ii), “public sector undertaking” means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) “beneficiary” means a building worker registered under section 12;

(c) “Board” means a Building and Other Construction Workers’ Welfare Board constituted under sub-section (1) of section 18;

(d) “building or other construction work” means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such
other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

(e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity, or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;

(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment and includes a sub-contractor;

(h) "Director-General" means the Director-General of Inspection appointed under sub-section (I) of section 42;

(i) "employer", in relation to an establishment, means the owner thereof, and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(k) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (I) of section 24;

(l) "notification" means a notification published in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government;

(n) "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936.
(2) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II

THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

3. (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The Central Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the Central Government;

(b) the Director-General—member ex officio;

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

4. (1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The State Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the State Government;

(b) a member to be nominated by the Central Government;

(c) the Chief Inspector—member, ex officio;

(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.
5. (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Ordinance.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER III
REGISTRATION OF ESTABLISHMENTS

6. The appropriate Government may, by order notified in the Official Gazette,—

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Ordinance; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

7. (1) Every employer shall,—

(a) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and

(b) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every Application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

9. (1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:
Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

10. No employer of an establishment to which this Ordinance applies shall,—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

CHAPTER IV
REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

11. Subject to the provisions of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

12. (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.
13. (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

14. (1) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.—For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

15. Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

16. (1) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensum, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

17. When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.
CHAPTER V
BUILDING AND OTHER CONSTRUCTION WORKERS’ WELFARE BOARDS

18. (1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the .... (name of the State) Building and other Construction Workers’ Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

19. (1) The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The Secretary of the Board shall be its chief executive officer.

(3) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

20. (1) The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

21. No act or proceedings of a Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

22. (1) The Board may—

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;
(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

23. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

24. (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

(a) any grants and loans made to the Board by the Central Government under section 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting—

(a) expenses of the Board in the discharge of its functions under section 22; and

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on objects and for purposes authorised by this Ordinance.
No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that year.

25. The Board shall prepare in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

26. The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

27. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Ordinance shall be the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Ordinance.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

(5) The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

CHAPTER VI

HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

28. (1) The appropriate Government may, by rules,—

(a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals,

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely:—

(a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

(c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

29. (1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, “ordinary rates of wages” means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

30. (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

(3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

31. No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

32. (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked “Drinking Water” in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.
Accommodation.  

34. (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

Creches.  

35. (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—

(a) provide adequate accommodation;

(b) be adequately lighted and ventilated;

(c) be maintained in a clean and sanitary condition;

(d) be under the charge of women trained in the care of children infants.

First-aid.  

36. Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

Canteens, etc.  

37. The appropriate Government may, by rules, require the employer—

(a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed a canteen for the use of the workers;

(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER VII
SAFETY AND HEALTH MEASURES

38. (1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.
39. (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

40. (1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(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 safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

(b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;

(d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

(e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(h) the measures to be taken during stacking or unstacking, stowing or unstowage of materials or goods or handling in connection therewith;

(i) the safeguarding of machinery including the fencing of every flywheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
Framing of model rules for safety measures.

Appointent of Director-General, Chief Inspector and Inspectors.

41. The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

CHAPTER VIII

INSPECTING STAFF

42. (1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the State Government is the appropriate Government.
THE GAZETTE OF INDIA EXTRAORDINARY

(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

43. (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power, to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

44. An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

(1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.
(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

46. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

CHAPTER X
Penalties and Procedure

47. (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:
Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

48. Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

49. (1) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

50. (1) Whoever contravenes any other provision of this Ordinance or any rules made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(2) A penalty under sub-section (1) may be imposed—

(a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

(b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

(a) informing him of the grounds on which it is proposed to impose a penalty; and

(b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.
(4) Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;
(b) requiring the discovery and production of any document;
(c) requisitioning any public record or copy thereof from any court or office;
(d) receiving evidence on affidavits; and
(e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

51. Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

(a) where the penalty has been imposed by the Director-General, to the Central Government;
(b) where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

52. Where any penalty imposed on any person under section 50 is not paid,—

(i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or
(ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or
(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.
53. (1) Where an offence under this Ordinance 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 Ordinance 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 any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

54. (1) No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector, or

(b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or

(c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

55. No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

CHAPTER XI

MISCELLANEOUS

56. A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem necessary.

57. Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

58. The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.
59. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

(2) No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Ordinance or any member of such Board or any officer or employee of the Government or the board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

60. The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

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

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

62. (1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

(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 number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3 or, as the case may be under sub-section (3) of section 4;

(b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;

(c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;

(d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

(e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

(f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;

(g) the document and the fee which shall accompany the application under sub-section (3) of section 12;

(h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;
(i) the benefits which may be given under sub-section (2) of section 14;

(j) the form in which register of beneficiaries shall be maintained under section 15;

(k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;

(l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;

(m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;

(n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;

(o) the limits of grants-in-aid payable to the local authorities and employers under sub-clause (b) of sub-section (p) of section 22;

(p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

(q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

(r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor’s report shall be furnished under sub-section (4), of section 27;

(s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;

(t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;

(u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;

(v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;

(w) the types of latrines and urinals required to be provided under section 33;

(x) the first-aid facilities which are to be provided under section 36;

(y) the canteen facilities which are to be provided under clause (a) of section 37;

(z) the welfare measures which are to be provided under clause (b) of section 37;

(aa) the number of representatives of the employer and the building workers under sub-section (1) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;
(zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (I) of section 39;

(zc) the rules to be made for the safety and health of building workers under section 40;

(zd) the powers that may be exercised by an Inspector under clause (c) of sub-section (I) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(ze) the date on or before which wages shall be paid to a building worker under section 45;

(zf) the matters which are required to be prescribed under clause (i) of sub-section (I) of section 46;

(zg) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in or annulling all or any part of the rule, such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be 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.

63. (1) The Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provision of this Ordinance.

SHANKER DAYAL SHARMA
Preiden.

K.L. MOHANPURIA
Secy. to the Govt. of India
THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS SECOND ORDINANCE, 1996
No. 16 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996.

Whereas the Building and Other Construction Workers' Welfare Cess Ordinance, 1995, was promulgated by the President on the 3rd day of November, 1995;

And Whereas the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

And Whereas, to give effect to the provisions of the said Bill with certain modifications, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 27th March, 1996/Chaitra 7, 1918

SHARMA
President

ANUPRIA
vt. of Inda
AND WHEREAS the Bill to replace the said Building and Other Construction Workers' Welfare Cess Ordinance, 1996 has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Second Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall come into force on the 3rd day of November, 1995.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996;

(b) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(c) "prescribed" means prescribed by rules made under this Ordinance;

(d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

3. (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996, and to the State Governments such sum of money, not exceeding one per cent, of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Ordinance including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

4. (1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.
5. (1) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

7. Any officer or authority of the State Government specially empowered in this behalf by that Government may—

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(b) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance, and

(c) exercise such other powers as may be prescribed.

8. If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess.

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

10. Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

11. (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.
Penalty.

12. (1) Whoever, being under an obligation to furnish a return under this Ordinance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

Offences by companies.

13. (1) Where an offence under this Ordinance 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 exercised all due diligence to prevent the commission of such offence.

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

Explanation—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Power to ‘make rules’.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 7;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

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

15. (1) The Building and other Construction Workers’ Welfare Cess Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHAPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)

New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)

THE DEPOSITORIES (SECOND) ORDINANCE, 1996

No. 17 OF 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for regulation of depositories in securities and for matters connected therewith and incidental thereto.

WHEREAS the Depositories Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 20th day of September, 1995:

AND WHEREAS the Depositories Bill, 1995, was introduced in the House of the People to replace the said Ordinance;

AND WHEREAS the said Bill had been passed by the House of the People but could not be passed by the Council of States;

AND WHEREAS the President promulgated the Depositories Ordinance, 1996 to give continued effect to provisions of the said Ordinance;
AND whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the said Ordinance,

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Depositories (Second) Ordinance, 1996.
(2) It extends to the whole of India.
(3) It shall be deemed to have come into force on the 20th day of September, 1995.

2. (1) In this Ordinance, unless the context otherwise requires,—
(a) "beneficial owner" means a person whose name is recorded as such with a depository;
(b) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
(c) "bye-laws" means bye-laws made by a depository under section 26;
(d) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;
(e) "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
(f) "issuer" means any person making an issue of securities;
(g) "participant" means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
(h) "prescribed" means prescribed by rules made under this Ordinance;
(i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;
(j) "registered owner" means a depository whose name is entered as such in the register of the issuer;
(k) "regulations" means the regulations made by the Board;
(l) "security" means such security as may be specified by the Board;
(m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

CERTIFICATE OF COMMENCEMENT OF BUSINESS

3. (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.
(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.
(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.
CHAPTER III

RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

4. (1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

6. (1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred to in sub-section (1) in its records, as the beneficial owner.

7. (1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

8. (1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

9. (1) All securities held by a depository shall be dematerialised and shall be in a fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 shall apply to the securities held by a depository on behalf of the beneficial owners.

10. (1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

11. Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956.

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.
(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

13. (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security, he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee as the case may be.

15. The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository or if it were a bank as defined in section 2 of that Act.

16. (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

17. (1) Subject to the provisions of this Ordinance, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

CHAPTER IV

ENQUIRY AND INSPECTION

18. (1) The Board on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.
19. Save as provided in this Ordinance, if after making or causing to be made an
enquiry or inspection, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any depositary or participant being conducted in
the manner detrimental to the interests of investors or securities market,
it may issue such directions—

(a) to any depository or participant or any person associated with the securities
market; or
(b) to any issuer,
as may be appropriate in the interest of investors or the securities market.

CHAPTER V

PENALTY

20. Whoever contravenes or attempts to contravene or abets the contravention of the
provisions of this Ordinance or any regulations or bye-laws made thereunder shall be
 punishable with imprisonment for a term which may extend to five years, or with fine, or
with both.

21. (1) Where an offence under this Ordinance 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 provided in this Ordinance, 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 an offence under
this Ordinance has been committed by a company and it is proved that the offence has been
committed with the consent or connivance of, or is attributable to any neglect on the part of,
any director, manager, secretary or other officer of the company, such director, manager,
secretary or other officer shall also be deemed to be guilty of the offence and shall be liable
to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other
association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER VI

MISCELLANEOUS

22. (1) No court shall take cognizance of any offence punishable under this Ordinance
or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of
the first class shall try any offence punishable under this Ordinance.
23. (1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(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 time within which an appeal may be preferred under sub-section (1) of section 23;

(b) The form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) The procedure for disposing of an appeal under sub-section (4) of section 23.

25. (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may, by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) any other form in which record is to be maintained under clause (i) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (f) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.
26. (1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

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

28. The provisions of this Ordinance shall be in addition to, and not, in derogation of,
any other law for the time being in force relating to the holding and transfer of securities.

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

Provided that no order shall be made under this section after the expiry of a period
of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is
made, before each House of Parliament.

30. The enactments specified in the Schedule to this Ordinance shall be amended
in the manner provided therein.

31. (1) The Depositories Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the
said Ordinance shall be deemed to have been done or taken under the corresponding
provisions of this Ordinance.

THE SCHEDULE
(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 of 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:—

8A. Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities in one or more depositories
shall, in respect of such issue, be chargeable with duty on the total amount of
security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section
(3) of section 14 of the Depositories (Second) Ordinance, 1996, on such
certificate duty shall be payable as is payable on the issue of duplicate certificate
under this Act;

(c) transfer of registered ownership of shares from a person to a
depository or from a depository to a beneficial owner shall not be liable to any
stamp duty;

(d) transfer of beneficial ownership of shares, such shares being shares
of a company dealt with by a depository shall not be liable to duty under article
62 of Schedule I of this Act.

Explanation.—For the purposes of this section, the expressions
"beneficial owner", "depository" and "issuer" shall have the meanings respec-
tively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2
of the Dépositories (Second) Ordinance, 1996."
AMENDMENTS
TO THE COMPANIES ACT, 1956
(1 of 1956)

AMENDMENTS

1. In section 2, after clause (45A), the following clause shall be inserted, namely:—

'(45B) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.'.

2. After section 2, the following section shall be inserted, namely:—

"2A. Words and expressions used and not defined in this Act but defined in the Depositories (Second) Ordinance, 1996 shall have the same meanings respectively assigned to them in that Ordinance."

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company."

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

"(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.".

5. In section 51, the following proviso shall be inserted, namely:—

"Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs."

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository."

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely:—

'(14) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.'

9. After section 111, the following section shall be inserted, namely:—

"111A. (1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of
transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the securities and Exchange Board of India Act, 1992 or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities."

11. In section 150, in sub-section (1), in clause (b), the words "distinguishing each share by its number" shall be omitted.

12. In section 152 in sub-section (1), in clause (b), the words "distinguishing each debenture by its number" shall be omitted.

13. After section 152, the following section, shall be inserted, namely:—

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories (Second) Ordinance, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be for the purposes of this Act."

14. In Schedule II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:—

"9A. The details of option to subscribe for securities to be dealt with in a depository."
2. Section 2A shall be omitted.

PART IV

AMENDMENT TO THE INCOME TAX ACT, 1961

(43 OF 1961)

AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:

'(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories (Second) Ordinance, 1996, and for the purposes of—

(i) section 48; and

(ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.—For the purposes of this sub-section, the expressions “beneficial owner”, “depository” and “security” shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories (Second) Ordinance, 1996.'.

PART V

AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

(45 OF 1988)

AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:

'(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as a registered owner under sub-section (1) of section 10 of the Depositories (Second) Ordinance, 1996;

(ii) participant as an agent of a depository.

Explanation.—The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories (Second) Ordinance, 1996.'.
PART VI
AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
(15 OF 1992)
Amendments

1. In section 2, in sub-section (2), for the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956", the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956 or the Depositories (Second) Ordinance, 1996" shall be substituted.

2. In section 11, in clause (ba), for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section (1A), for the words "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section (1), for the words "this Act", the words and figures "this Act or the Depositories (Second) Ordinance, 1996" shall be substituted.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)

THE SUPREME COURT AND HIGH COURT JUDGES
(CONDITIONS OF SERVICE) AMENDMENT
SECOND ORDINANCE, 1996

(No. 18 of 1996)

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954.

WHEREAS the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 11th day of January, 1996;

AND whereas the Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND whereas Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;
NOW, THEREFORE, in exercise of powers conferred by clause (1) of article 23 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I
Preliminary

1. (1) This Act may be called the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of January, 1996.

CHAPTER II
Amendment of the Supreme Court Judges (Conditions of Service) Act, 1958

2. In section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 (hereinafter in this Chapter referred to as the Supreme Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

Amendment of section 23A.

3. In section 23B of the Supreme Court Judges Act, for the words "one thousand two hundred and fifty", and "seven hundred and fifty", the words "four thousand" and "three thousand" shall respectively be substituted.

CHAPTER III
Amendment of the High Court Judges (Conditions of Service) Act, 1954

4. In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act), for the words "one hundred and fifty litres of petrol every month or the actual consumption of petrol", the words "two hundred litres of fuel every month or the actual consumption of fuel" shall be substituted.

Amendment of section 22B.

5. In section 22C of the High Court Judges Act, for the words "five hundred" and "three hundred", the words "three thousand" and "two thousand" shall respectively be substituted.

Amendment of section 22C.

Repeal and saving.

6. (1) The Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Supreme Court Judges Act and the High Court Judges Act, as amended by the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of the respective Act aforesaid as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)

New Delhi, the 27th March, 1996/Chaitra 7, 1918 (Saka)

THE CONSTITUTION (SCHEDULED TRIBES) ORDER  
(AMENDMENT) SECOND ORDINANCE, 1996  
(No. 19 of 1996)

Promulgated by the President in the Forty-seventh Year of the Republic of  
India.

An Ordinance to provide for the inclusion of Koch-Rajbongshi in the list of Scheduled  
Tribes specified in relation to the State of Assam.

WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996 to  
provide for the aforesaid matter was promulgated by the President on the 27th day of January,  
1996;

AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1996 was  
troduced in the house of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances  
exist which render it necessary for him to take immediate action;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996.

   (2) It shall be deemed to have come into force on the 27th day of January, 1996.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as the principal Order), in “PART II—Assam”, under the heading “II. In the State of Assam excluding the autonomous districts:—”, after item 9 and the entry relating thereto, the following item and entry shall be added, namely:

   “10. Koch-Rajbongshi.”.

3. (1) The Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996, is hereby repealed.

   (2) Notwithstanding such repeal, anything done or any action taken under the principal Order, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Order, as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President,

K.L. MOHANPURIA,
Secy. to the Govt. of India.
THE TELECOM REGULATORY AUTHORITY OF INDIA
(SECOND) ORDINANCE, 1996

No. 20 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

WHEREAS the Telecom Regulatory Authority of India Ordinance, 1996 is provide for the aforesaid matters was promulgated by the President on the 27th day of January, 1996;

And whereas the Telecom Regulatory Authority of India Bill, 1996 was introduced in the House of the People to replace the said Ordinance but has not been passed;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action,
CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Telecom Regulatory Authority of India (Second)
Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 27th day of January, 1996.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the day with effect from which the Authority is
established under sub-section (1) of section 3;

(b) “Authority” means the Telecom Regulatory Authority of India established
under sub-section (1) of section 3;

(c) “Chairperson” means the Chairperson of the Authority appointed under
sub-section (3) of section 3;

(d) “Fund” means the Fund constituted under sub-section (1) of section 22;

(e) “member” means a member of the Authority appointed under sub-section
(3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(f) “notification” means a notification published in the Official Gazette;

(g) “prescribed” means prescribed by rules made under this Ordinance;

(h) “regulations” means regulations made by the Authority under this Ordinance;

(i) “telecommunication service” means service of any description (including
electronic mail, voice mail, data services, audio tex services, video tex services, radio
paging and cellular mobile telephone services) which is made available to users by
means of any transmission or reception of signs, signals, writing, images and sounds
or intelligence of any nature, by wire, radio, visual or other electro-magnetic means.

(2) Words and expressions used and not defined in this Ordinance but defined in
the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the
meanings respectively assigned to them in those Acts.

(3) Any reference in this Ordinance to a law which is not in force in the State of
Jammu and Kashmir shall in relation to that State be construed as a reference to the
corresponding law, if any, in that State.

CHAPTER II
TELECOM REGULATORY AUTHORITY OF INDIA

3. (1) With effect from such date as the Central Government may, by notification,
appoint, there shall be established, for the purposes of this Ordinance, an Authority to be
called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual
succession and a common seal, with power, subject to the provisions of this Ordinance, to
acquire, hold and dispose of property, both movable and immovable, and to contract, and
shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not
exceeding four members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

4. (1) The Chairperson shall be a person who is or has been a Judge of the Supreme
Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has held the post of Secretary or Additional Secretary,
or the posts of Additional Secretary and Secretary to the Government of India or any equivalent
post in the Central Government or the State Government for a period of three years.
5. (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as member.

(5) The salary, allowances and other conditions of service of the Chairperson shall be—

(a) if he has been a Judge of the Supreme Court, the same as that of a Judge of the Supreme Court;

(b) if he has been the Chief Justice of a High Court, the same as that of the Chief Justice of the High Court;

Provided that in the case of an appointment of a person as a Chairperson who has retired as a Judge of the Supreme Court or a Chief Justice of a High Court and who is in receipt of or has received or has become entitled to receive any retirement benefits by way of pension, gratuity or other forms of retirement benefits, the pay of such person shall be reduced by the gross amount of pension and pension equivalent of gratuity or any other form of retirement benefits, if any, drawn or to be drawn by him.

(6) The salary and allowances payable and other conditions of service of the members shall be such as may be prescribed.

(7) The salary, allowances and other conditions of service of the Chairperson or of the member shall not be varied to his disadvantage after appointment.

(8) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(9) The Chairperson or any other member ceasing to hold office as such, shall—

(a) be ineligible for further employment either under the Government of India or under the State Government; or

(b) not hold any appointment in any private company in telecom sector in relation to which any matter has been the subject-matter of consideration before the Authority.

6. (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

7. (1) The Central Government may remove from office any member, who—

(a) has been adjudged as insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
Meetings

Vacancies, etc., not to invalidate proceedings of Authority.

Officers and other employees of Authority.

Functions of Authority.

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such ground or grounds, to be removed.

8. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, the Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

9. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

POWERS AND FUNCTIONS OF THE AUTHORITY

11. (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(a) ensure technical compatibility and effective inter-relationship between different service providers;

(b) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(c) ensure compliance of licence conditions by all service providers;

(d) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(e) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(f) protect the interest of the consumers of telecommunication service;

(g) settle disputes between service providers;
(h) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(i) levy fees at such rates and in respect of such services as may be determined by regulations;

(j) ensure effective compliance of universal service obligations;

(k) perform such other functions including such administrative and financial functions as may be entrusted to it by the Government or as may be necessary to carry out the provisions of this Ordinance.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify the rates at which the telecommunication services within India and outside India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every director, manager, secretary or other officer, if such service provider is a company; or

(b) every partner, manager, secretary or other officer, if such service provider is a firm; or

(c) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a) and (b), shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary, for proper functioning by service providers.

13. The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.
CHAPTER IV

SETTLEMENT OF DISPUTES

14. (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such dispute shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member:

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court on any matter relating to—

(i) technical compatibility and inter-connections between service providers; or

(ii) revenue sharing arrangements between different service providers; or

(iii) quality of telecommunication service and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matters relating to—

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (I) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or a National Consumer Disputes Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

15. (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation.—For the purposes of this sub-section, the expression “aggrieved person” means—

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.
16. (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavit;
(d) issuing commissions for the examination of witnesses or documents;
(e) reviewing its decisions;
(f) dismissing an application for default or deciding it ex parte;
(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

18. Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

19. Every order made by the Authority under this Ordinance or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be a decree of the civil court and shall be executable in the same manner as a decree of that court.

20. If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with imprisonment for a term which may extend to two years, or fine, or with both.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

21. The Central Government may, after due appropriation made by Parliament by law in that behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

22. (1) There shall be constituted a fund to be called the Telecom Regulatory Authority of India General Fund and there shall be credited thereto—

(a) all grants, fees and charges received by the Authority under this Ordinance; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.
(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the expenses of the Authority in the discharge of its functions under this Ordinance, and

(c) the expenses on objects and for purposes authorized by this Ordinance.

23. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such auditor shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be, after it is received, before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

25. (1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.
26. All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code.

27. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

28. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

29. If any person violates directions of the Authority such person shall be punished in the case of first offence with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both and in case of a second or subsequent offence, with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees for each day of default.

30. (1) Where an offence under this Ordinance 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 provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

31. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

32. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulation under section 35) as it may deem necessary.

33. (1) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court shall try any offence punishable under this Ordinance.

Exemption from tax on wealth and income.

Delegation.

Cognizance of offences.
34. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(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 salary and allowances payable to and the other conditions of service of the members under sub-section (6) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;

(d) the period within which an application is to be made under sub-section (1) of section 15;

(e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(f) the time within which and the form and manner in which returns and reports are to be made to the Central Government under sub-sections (1) and (2) of section 24;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

35. (1) The Authority may, with the previous approval of the Central Government, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other terms and conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) levy of fees under clause (i) of sub-section (1) of section 11.

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

37. The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Wireless Telegraphy Act, 1933 and, in particular, nothing in this Ordinance shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.
38. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

39. (1) The Telecom Regulatory Authority of India Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
CORRIGENDA

In the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 (Ord. No. 9),—

1. at page 2,—

(i) in line 7, for “substituted,” read “substituted.”;

(ii) in line 29, for “widower's”, read “widower’s”.

2. at page 3,—

(i) in line 27, for “clause”, read “sub-section”;

(ii) in line 39, for ‘as well’ as’, read “as well as”
CORRIGENDA

In the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 (Ord. 3 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, the 5th January, 1996 (Issue No. 10),—

1. at page 5, in line 15, after "to be", insert "the".

2. at page 6, in line 16, for "preferred", read "referred".

3. at page 7, in line 28, for "undertaken", read "undertaken".

4. at page 8, in line 4 from bottom, for "22. (a)", read "22. (f)".

5. at page 10, in line 18, for "be", read "have".

6. at page 13,—

(i) in line 13, for "appropriate", read "appropriate";

(ii) in line 29, for "explosive", read "explosives".

7. at page 14, in line 15, for "equipments", read "equipments".

8. at page 16, in line 3 from bottom, for "imprisonment", read "imprisonment".

9. at page 22, in line 3, for "sub-sections", read "sub-section".

CORRIGENDA

In the Building and other Construction Workers' Welfare Cess Ordinance, 1996 (Ord. 4 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 5th January, 1996 (Issue No. 11),—

1. at page 1, in line 8, for "Worker", read "Workers".

2. at page 2,—

(i) in line 43, for "officer or the", read "officer or";

(ii) in line 46, for "officer or the authority", read "officer or authority".

CORRIGENDA

In the Arbitration and Conciliation Second Ordinance, 1996 (Ord. 11 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 26th March, 1996 (Issue No. 26),—

1. at page 2, in line 11, for "Ordinance", read "Ordinances".

2. at page 16, in line 11, for "Coe", read "Code".

3. at page 18, in line 15, for "excluded", read "excluded".
CORRIGENDUM

In the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 (Ord. 12 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 26th March, 1996 (Issue No. 21), at page 1, in the heading, after "(AMENDMENT)", insert "SECOND".

CORRIGENDUM

In the Industrial Disputes (Amendment) Second Ordinance, 1996 (Ord. 13 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 22), at page 2, in line 18, for "Corporations", read "Corporation".

CORRIGENDA

In the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 24),—

1. at page 1, in the promulgation formula, for "Forty-seven", read "Forty-seventh".
2. at page 4, in line 19, for "clause (e)", read "clause (e)".
3. at page 6, in line 14, for "preferred", read "referred".
4. at page 10,—
   (i) in line 2, for "employees", read "employees";
   (ii) in line 18, for "be", read "have".
5. at page 12, in line 19, for "children infant,", read "children and infants,".
6. at page 21, in line 19,—
   (i) for "sub-clause", read "clause";
   (ii) for "sub-section (p)", read "sub-section (3)".

CORRIGENDA

In the Depositories (Second) Ordinance, 1996 (Ord. 17 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 26),—

1. at page 5, in line 13, for "contravene", read "contravene".
2. at page 10, in line 46, for "period", read "periods".
CORRIGENDA

In the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996 (Ord. 18 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 27),—

At page 2,—

(i) in line 1, for “of powers”, read “of the powers”;
(ii) in line 5, for “Act”, read “Ordinance”;
(iii) in line 11, omit “in this Chapter”.

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CORRIGENDA

In the Telecom Regulatory Authority of India (Second) Ordinance, 1996 (Ord. 20 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 27th March, 1996 (Issue No. 29),—

1. At page 2, in line 5, for “Act”, read “Ordinance”.
2. At page 6, in line 19, for “practice”, read “practices”.
3. At page 7, in line 39, for “Act.”, read “Ordinance.”.

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K. L. MOHANPURIA
Secy. to the Govt. of India
THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 1996

No. 21 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 1996.
(2) It shall come into force at once.

2. In the Representation of the People Act, 1951, in section 60, after clause (b), the following clause shall be inserted, namely:

"(c) any person, belonging to a class of persons, notified by the Election Commission in consultation with the Government, to give his vote by postal ballot at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

SHANKER DAYAL SHARMA,

President.

K.L. MOHANLAL

Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  

New Delhi, the 20th June, 1996/Jyaistha 30, 1918 (Sakal)  

THE COAL MINES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS (AMENDMENT) THIRD ORDINANCE, 1996  

No. 22 of 1996  

Promulgated by the President in the Forty-seventh Year of the Republic of India.  

An Ordinance further to amend the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.  

Whereas the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Bill, 1995 was introduced in Parliament:  

And Whereas for giving effect to the provisions of the said Bill, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;  

And Whereas for giving continued effect to the provisions of the said Ordinance, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 was promulgated by the President on the 26th day of March, 1996;  

And Whereas the said Bill has lapsed on the dissolution of the House of the People:
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Third Ordinance, 1996.

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

2. In the long title to the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as the principal Act), for the words “Family Pension Scheme”, the words “Pension Scheme” shall be substituted.

3. In section 2 of the principal Act,—

(a) clause (ee) shall be omitted;

(b) after clause (g), the following clauses shall be inserted, namely:—

'(h) “Pension Fund” means the Pension Fund established under sub-section (2) of section 3E;

(i) “Pension Scheme” means the Coal Mines Pension Scheme framed under sub-section (j) of section 3E;

(j) “superannuation”, in relation to an employee who is a member of a Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment;'

4. In the principal Act, for the expressions “Family Pension”, “Family Pension Fund”, “Family Pension Scheme” and “Coal Mines Family Pension Scheme”, wherever they occur, the expressions “Pension”, “Pension Fund”, “Pension Scheme” and “Coal Mines Pension Scheme” shall respectively be substituted.

5. For section 3E of the principal Act, the following section shall be substituted, namely:—

“3E. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(b) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees. 

(2) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums; not exceeding one-fourth, of the amount payable to the Fund under sub-section (f) of section 10D as the employer's contribution as well as the employees' contribution, as may be specified in the Pension Scheme;

(b) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify; and

(c) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and
(d) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(4) On the establishment of the Pension Fund the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

(5) The Pension Fund shall vest in and be administered by the Board in such manner as may be specified in the Pension Scheme.

(6) Any Scheme framed under the provisions of sub-section (4) may provide for all or any of the matters specified in the Second Schedule.

6. For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. For the purposes of the Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund within the meaning of Part A of the Fourth Schedule to that Act."

7. In section 10 of the principal Act, in sub-section (2B),—

(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

(b) for the word and figures "section 98", the word and figures "section 94" shall be substituted.

8. In section 11 of the principal Act, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted.

9. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

"THE SECOND SCHEDULE

[See section 3E(5)]

MATTERS TO BE PROVIDED FOR IN THE COAL MINES PENSION SCHEME

1. The employees or class of employees to whom the Coal Mines Pension Scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 3E as it stood before the commencement of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Third Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution and employees' contribution to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The Central Government's contribution and other contributions to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

5. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 3E as it stood before the commencement of the amending Ordinance.

6. The regulation of the period of service for which no contribution is received.

7. The manner in which employees' interest will be protected against default in payment of contribution by the employer."
8. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

9. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

10. The forms, registers and records to be maintained in respect of employees required for the administration of the Pension Scheme.

11. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, the amount of life assurance payable under the Pension Scheme and the manner of such payment.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses incurred in connection with the administration of the Pension Scheme may be paid by the Central Government to the Board.


15. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme."


(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 20th June, 1996/Jyaistha 30, 1918 (Saka)

THE INDUSTRIAL DISPUTES (AMENDMENT) THIRD ORDINANCE, 1996

No. 23 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Industrial Disputes Act, 1947.

WHEREAS the Industrial Disputes (Amendment) Ordinance, 1995, further to amend the Industrial Disputes Act, 1947, was promulgated by the President on the 11th day of October, 1995;

AND WHEREAS the Industrial Disputes (Amendment) Bill, 1995 was introduced in the Council of States to replace the said Ordinance;

AND WHEREAS the said Bill had been passed by the Council of States but had not been passed by the House of the People and has lapsed due to the dissolution of the House of the People;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the Industrial Disputes (Amendment) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;
AND WHEREAS for giving continued effect to the provisions of the Industrial Disputes (Amendment) Ordinance, 1956, the Industrial Disputes (Amendment) Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Industrial Disputes (Amendment) Second Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Industrial Disputes (Amendment) Third Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of October, 1995.

2. In section 2 of the Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act), in clause (a), in sub-clause (i),—

(i) for the words and figures "the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948", the words and figures "the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956" shall be substituted;

(ii) the words and figures "or the "Indian Airlines" and "Air India" Corporation established under section 3 of the Air Corporation Act, 1953" shall be omitted;

(iii) for the words and figures "the Oil and Natural Gas Commission established under section 3 of the Oil and Natural Gas Commission Act, 1959", the words and figures "the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956" shall be substituted;

(iv) for the words and figures "the International Airports Authority of India constituted under section 3 of the International Airports Authority Act, 1971", the words and figures "the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994" shall be substituted;

(v) for the words "a banking or an insurance company", the words "an air transport service, or a banking or an insurance company" shall be substituted.

3. (1) The Industrial Disputes (Amendment) Second Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA
President

K.L. MOHANPRADA
Secy. to the Govt. of India
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 20th June, 1996/Jyaistha 30, 1918 (Saka)

THE EMPLOYEES’ PROVIDENT FUNDS AND MISCCELLANEOUS PROVISIONS (AMENDMENT) THIRD ORDINANCE, 1996

No. 24 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1993 has been introduced in Parliament but has not yet been passed;

AND WHEREAS the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995, to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 17th October, 1995;

AND WHEREAS the said Bill has not been passed;

AND WHEREAS, for giving continued effect to the provisions of the said Ordinance the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

AND WHEREAS, for giving continued effect to the provisions of the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Third Ordinance, 1996.

(2) It shall be deemed to have come into force on the 16th day of November, 1995.

2. In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words "family pension fund", the words "pension fund" shall be substituted.

3. In section 2 of the principal Act,—

(a) clauses (gq) and (gqq) shall be omitted;

(b) after clause (i), the following clauses shall be inserted, namely:—

"(kA) "Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A;

(kB) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of section 6A."

(c) after clause (l), the following clause shall be inserted, namely:—

"(ll) "Superannuation", in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of the age of fifty-eight years.";

4. In the principal Act, for the words "Family Pension", wherever they occur, the word "Pension" shall be substituted.

5. For sections 6A and 6B of the principal Act, the following section shall be substituted, namely:—

"6A. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for—

(a) Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent. of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employee, as may be specified in the Pension Scheme;"
(b) such sums as are payable by the employers of exempted establishments under sub-section (5) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

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

6. In section 6C of the principal Act,—

(a) clause (3) shall be omitted;

(b) clause (b) of sub-section (4) shall be omitted.

7. In section 17 of the principal Act,—

(a) for sub-section (1C), the following sub-section shall be substituted, namely:

"(1C) The appropriate Government may, by notification in the Official Gazette, and subject to the condition on the pattern of investment of pension fund and such other conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other pension scheme or proposes to be members of such pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act;"

(b) in sub-section (6), the words "as well as the employees' contribution" shall be omitted.
8. For Schedule III to the principal Act, the following Schedule shall be substituted, namely:—

"SCHEDULE III
[See section 6A(5)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME

1. The employees or class of employees to whom the Pension Scheme shall apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Third Ordinance, 1996 (hereinafter, in this Schedule, referred to as the amending Ordinance) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Ordinance.

5. The regulation of the period of service for which no contribution is received.

6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme."
9. (1) The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA.
Secy. to the Govt. of India.
THE BUILDING AND OTHER CONSTRUCTION WORKERS
(REGULATION OF EMPLOYMENT AND CONDITIONS OF
SERVICE) THIRD ORDINANCE, 1996

No. 25 of 1996

Promulgated by the President in the Forty-seventh Year of the
Republic of India.

An Ordinance to regulate the employment and conditions of service of
building and other construction workers and to provide for their safety, health
and welfare measures and for other matters connected therewith or incident-
tal thereto.

WHEREAS the Building and Other Construction Workers (Regulation of Employment
and Conditions of Service) Ordinance, 1995 was promulgated by the President on the 3rd
day of November, 1995;

AND WHEREAS the Building and Other Construction Workers (Regulation of Employment
and Conditions of Service) Bill, 1995 was introduced in the House of the People to
replace the said Ordinance, but had not been passed;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the
Building and Other Construction Workers (Regulation of Employment and Conditions of
Service) Ordinance, 1996 was promulgated by the President on the 5th day of January,
1996;

AND WHEREAS for giving continued effect to the provisions of the Building and Other
Construction Workers (Regulation of Employment and Conditions of Service) Ordinance,
1996, the Building and Other Construction Workers (Regulation of Employment and Condi-
tions of Service) Second Ordinance, 1996 was promulgated by the President on 27th
day of March, 1996;
AND WHEREAS the said Bill has lapsed on the dissolution of the House of the People;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the first day of March, 1996.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

Explanation.—For the purposes of sub-clause (ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) "beneficiary" means a building worker registered under section 12;

(c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of section 18;

(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but
does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

(e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity,

or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;

(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;

(h) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;

(i) "employer", in relation to an establishment, means the owner thereof, and includes—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(k) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;

(l) "notification" means a notification published in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Ordinance by the Central Government or, as the case may be, the State Government.

(n) "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936.
(2) Any reference in this Ordinance to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II
THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

3. (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The Central Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the Central Government;

(b) the Director-General—member, ex officio;

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

4. (1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Ordinance as may be referred to it.

(2) The State Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the State Government;

(b) a member to be nominated by the Central Government;

(c) the Chief Inspector—member, ex officio;

(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.
5. (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising Government for making rules under this Ordinance.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER III

REGISTRATION OF ESTABLISHMENTS

6. The appropriate Government may, by order notified in the Official Gazette,—

(a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Ordinance; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Ordinance.

7. (1) Every employer shall,—

(a) in relation to an establishment to which this Ordinance applies on its commencement, within a period of sixty days from such commencement; and

(b) in relation to any other establishment to which this Ordinance may be applicable at any time after such commencement, within a period of sixty days from the date on which this Ordinance becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment;

Provided that the registering officer may entertain any such application after the expiry of the period aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every Application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Ordinance are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

9. (1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government.
Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

10. No employer of an establishment to which this Ordinance applies shall—

(a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

CHAPTER IV
REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

11. Subject to the provisions of this Ordinance, every building worker registered as a beneficiary under this Ordinance shall be entitled to the benefits provided by the Board from its Fund under this Ordinance.

12. (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Ordinance.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Ordinance and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Ordinance.

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final.

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.
13. (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereto and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Ordinance shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

14. (1) A building worker who has been registered as a beneficiary under this Ordinance shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year.

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.—For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

15. Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

16. (1) A building worker who has been registered as a beneficiary under this Ordinance shall, until he attains the age of sixty years, contribute to the Fund at such rate per month, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

17. When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.
CHAPTER V
BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

18. (1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the ... (name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Ordinance.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall be by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

19. (1) The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The Secretary of the Board shall be its chief executive officer.

(3) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

20. (1) The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

21. No act or proceedings of a Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board;

or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

22. (1) The Board may—

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years.
(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment;

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

23. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

24. (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers’ Welfare Fund and there shall be credited thereto—

(a) any grants and loans made to the Board by the Central Government under section 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting—

(a) expenses of the Board in the discharge of its functions under section 22;

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on objects and for purposes authorised by this Ordinance.

(3) No Board shall, in any financial year, incur expenses towards salaries, allow-
ances and other remuneration to its members, officers and other employees and for
ing the other administrative expenses exceeding five per cent. of its total expenses
that year.

25. The Board shall prepare in such form and at such time each financial year
may be prescribed, its budget for the next financial year, showing the estimated re-
and expenditure of the Board and forward the same to the State Government and
Central Government.

26. The Board shall prepare, in such form and at such time each financial year
may be prescribed, its annual report, giving a full account of its activities during
previous financial year, and submit a copy thereof to the State Government and the Cen-
tral Government.

27. (1) The Board shall maintain proper accounts and other relevant records
and prepare an annual statement of accounts in such form as may be prescribed in consulta-
with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed
him in connection with the auditing of the accounts of the Board under this Ordinance
be the same rights and privileges and the authority in connection with such audit and
Comptroller and Auditor-General of India has in connection with the auditing of the Gov-
ernment accounts and, in particular shall have the right to demand the production of book
accounts, connected vouchers and other documents and papers and to inspect any of the
offices of the Board under this Ordinance.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor
General of India annually and any expenditure incurred in connection with such audit shall
be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be
prescribed its audited copy of accounts together with the auditor’s report.

(5) The State Government shall cause the annual report and auditor’s report to be
laid, as soon as may be after they are received, before the State Legislature.

CHAPTER VI
HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING
WORKERS

28. (1) The appropriate Government may, by rules,—

(a) fix the number of hours of work which shall constitute a normal working
day for a building worker, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be
allowed to all building workers and for the payment of remuneration in respect of such
days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the
overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of
building workers, apply only to such extent, and subject to such conditions, as may be
prescribed, namely:—

(a) persons engaged on urgent work, or in any emergency which could not
have been foreseen or prevented;
(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

(c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) persons engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

29. (1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

30. (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

31. No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

32. (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.
34. (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purposes of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, retain the possession of such land in the same condition in which he received the same.

35. (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—

(a) provide adequate accommodation;

(b) be adequately lighted and ventilated;

(c) be maintained in clean and sanitary condition;

(d) be under the charge of women trained in the care of children and infants.

36. Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

37. The appropriate Government may, by rules, require the employer—

(a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers;

(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER VII

SAFETY AND HEALTH MEASURES

38. (1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.
39. (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1), the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

40. (1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(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 safety means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffoldings at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

(b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;

(d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

(e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(i) the safeguarding of machinery including the fencing of every flywheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
(j) the safe handling and use of plant, including tools and equipment operated by compressed air;

(k) the precautions to be taken in case of fire;

(l) the limits of weight to be lifted or moved by workers;

(m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(p) the standards to be complied with regard to scaffolding, ladders and stair-lifting appliances, ropes, chains and accessories, earth-moving equipments and floating operational equipments;

(q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operation, excavation, underground construction and handling materials;

(r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;

(s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in a building or other construction work;

(t) the provision and maintenance of medical facilities for building workers;

(u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

41. The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

CHAPTER VIII

INSPECTING STAFF

42. (1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Ordinance in the State and shall also exercise the powers of an Inspector under this Ordinance throughout the State in relation to establishments for which the State Government is the appropriate Government.
(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Ordinance and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Ordinance subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

43. (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Ordinance, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building worker or the other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Ordinance which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

(4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

CHAPTER IX

SPECIAL PROVISIONS

44. An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Ordinance relating to safety and for taking all practical steps necessary to prevent accidents.

45. (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.
(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or of the unpaid balance due in accordance with the provisions of the Workmen’s Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

46. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(2) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

CHAPTER X

Penalties and Procedure

47. (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both.
Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

48. Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

49. (1) Whoever obstructs an Inspector in the discharge of his duties under this Ordinance or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Ordinance in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Ordinance or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Ordinance shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

50. (1) Whoever contravenes any other provision of this Ordinance or any rule made thereunder or who fails to comply with any provision of this Ordinance or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

(2) A penalty under sub-section (1) may be imposed—

(a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

(b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

(a) informing him of the grounds on which it is proposed to impose a penalty;

(b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.
(4) Without prejudice to any other provision contained in this Ordinance, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses;
(b) requiring the discovery and production of any document;
(c) requisitioning any public record or copy thereof from any court or office;
(d) receiving evidence on affidavits, and
(e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Ordinance or any other law for any offence made punishable by this Ordinance or by that other law, as the case may be, or for being liable under this Ordinance or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice of the same offence.

51. Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

(a) where the penalty has been imposed by the Director-General, to the Central Government;

(b) where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that, the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

52. Where any penalty imposed on any person under section 50 is not paid,—

(i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or

(ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or

(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified therein and as if it were an arrear of land revenue.
53. (1) Where an offence under this Ordinance 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 Ordinance has been committed by a company and it is proved that the offence has been committed with the consent of 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 any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

54. (1) No court shall take cognizance of any offence punishable under this Ordinance except on a complaint—

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector;

(b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860, or

(c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

55. No court shall take cognizance of an offence punishable under this Ordinance unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

CHAPTER XI

MISCELLANEOUS

56. A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Ordinance as it may deem necessary.

57. Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

58. The provisions of the Workmen’s Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Ordinance applies had been included in the Second Schedule to that Act.
59. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

(2) No prosecution or other legal proceeding shall lie against the Government, an Board or Committees constituted under this Ordinance or any member of such Board or an officer or employee of the Government or the Board or any other person authorized by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made or issued thereunder.

60. The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Ordinance.

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

Provided that no such order shall be made in relation to any State after the expiry of two years from the date on which this Ordinance comes into force in that State.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

62. (1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Ordinance.

(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 number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (6) of section 3 or, as the case may be, under sub-section (J) of section 4;

(b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;

(c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;

(d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

(e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

(f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;

(g) the document and the fee which shall accompany the application under sub-section (3) of section 12;

(h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;
(i) the benefits which may be given under sub-section (2) of section 14;

(j) the form in which register of beneficiaries shall be maintained under section 15;

(k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;

(l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;

(m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;

(n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;

(o) the limits of grants-in-aid payable to the local authorities and employers under sub-clause (b) of sub-section (p) of section 22;

(p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

(q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

(r) the form of annual statement of accounts under sub-section (l), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (d), of section 27;

(s) the matters required to be provided under sub-section (l) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;

(t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (l) of section 30;

(u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;

(v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;

(w) the types of latrines and urinals required to be provided under section 33;

(x) the first-aid facilities which are to be provided under section 36;

(y) the canteen facilities which are to be provided under clause (a) of section 37;

(z) the welfare measures which are to be provided under clause (b) of section 37;

(zao) the number of representatives of the employer and the building workers under sub-section (l) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;
(zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;

(zc) the rules to be made for the safety and health of building workers under section 40;

(zd) the powers that may be exercised by an inspector under clause (e) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(ze) the date on or before which wages shall be paid to a building worker under section 45;

(zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46;

(zg) any other matter which is required to be or may be, prescribed.

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

(4) Every rule made by the State Government under this Ordinance shall be laid, as soon as may be 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.

63. (1) The Building and other Construction Workers’ (Regulation of Employment and Conditions of Service) Second Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 20th June, 1996/Jyaistha 30, 1918

THE BUILDING AND OTHER CONSTRUCTION WORKERS’ WELFARE CESS THIRD ORDINANCE, 1996

No. 26 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers’ Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996;

WHEREAS the Building and Other Construction Workers’ Welfare Cess Ordinance, 1995, was promulgated by the President on the 3rd day of November, 1995;

AND WHEREAS the Building and Other Construction Workers’ Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but had not been passed;

AND WHEREAS, for giving continued effect to the provisions of the said Ordinance with certain modifications, the Building and Other Construction Workers’ Welfare Cess Ordinance, 1996 was promulgated by the President on the 5th day of January, 1996;

AND WHEREAS, for giving continued effect to the provisions of the Building and Other Construction Workers’ Welfare Cess Ordinance, 1996, the Building and Other Construction Workers’ Welfare Cess Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

This Act may be called the Building and Other Construction Workers’ Welfare Cess Third Ordinance, 1996.

This Act shall come into force on the 1st day of July, 1996.
AND WHEREAS the said Bill has lapsed on the dissolution of the House of the People:

AND WHEREAS the Bill to replace the said Building and Other Construction Workers’ Welfare Cess Ordinance, 1996 has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Building and Other Construction Workers’ Welfare Cess Second Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 133 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Building and Other Construction Workers’ Welfare Cess Third Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

2. In this Ordinance, unless the context otherwise requires,—

(a) “Board” means a Building and Other Construction Workers’ Welfare Board constituted by a State Government under sub-section (1) of section 18A of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996;

(b) “Fund” means the Building and Other Construction Workers’ Welfare Fund constituted by a Board;

(c) “prescribed” means prescribed by rules made under this Ordinance;

(d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

3. (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996, at such rate not exceeding one per cent. of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to any building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996, and to the State Governments such sum of money, not exceeding one per cent. of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Ordinance including payment of such cess in advance, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

4. (1) Every employer shall furnish such return, to such officer or authority in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the authority shall give a notice requiring such person to furnish such return by such date as may be specified in the notice.
5. (1) The officer or authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

7. Any officer or authority of the State Government specially empowered in this behalf by that Government may—

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time at any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(b) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance; and

(c) exercise such other powers as may be prescribed.

8. Every employer or class of employers failing to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. If any amount of cess payable by any employer under section 3 is not paid within the specified period the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that default was for any good and sufficient reason, no penalty shall be imposed under this section.

10. Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

11. (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9, may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.
12. (1) Whoever, being under an obligation to furnish a return under this Ordonnance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being liable to pay cess under this Ordonnance, wilfully or unlawfully evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on complaint made by or under the authority of the Central Government.

13. (1) Where an offence under this Ordonnance 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 of which he exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordonnance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the time within which the cess shall be called under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority by whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 6;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section (3) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

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

15. (1) The Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

S:JANKER DAYAL SHARMA,
President.

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


(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

S.JANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
An Ordinance to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.


AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;
AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

AND WHEREAS the Arbitration and Conciliation Bill, 1995 to provide for the aforesaid matters was introduced in the Council of States has yet not been passed;

AND WHEREAS the Arbitration and Conciliation Ordinance, 1996 to give effect to the provisions of the said Bill with certain modifications was promulgated by the President on the 16th day of January, 1996 and was brought into force on the 25th day of January, 1996;

AND WHEREAS the Arbitration and Conciliation Second Ordinance, 1996 to give continued effect to the provisions of the said Ordinance was promulgated by the President on the 26th day of March, 1996;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Arbitration and Conciliation Second Ordinance 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

PRELIMINARY

1. (1) This Ordinance may be called the Arbitration and Conciliation (Third) Ordinance, 1996.

2. (1) It extends to the whole of India:

   Provided that Parts I, III and IV shall extend to the State of Jammu and Kashmir only in so far as they relate to international commercial arbitration or, as the case may be, international commercial conciliation.

Explanation.—In this sub-section, the expression "international commercial conciliation" shall have the same meaning as the expression "international commercial arbitration" in clause (f) of sub-section (1) of section 2, subject to the modification that for the word "arbitration" occurring therein, the word "conciliation" shall be substituted.

(3) It shall be deemed to have come into force on the 25th day of January, 1996.

PART I
ARBITRATION

CHAPTER I
General provisions

Definitions.

2. (1) In this Part, unless the context otherwise requires,—

   (a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

   (b) "arbitration agreement" means an agreement referred to in section 7;
(c) "arbitral award" includes an interim award;

(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement.

(2) This Part shall apply where the place of arbitration is in India.

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or
(b) in any other way refers to an agreement of the parties,

that agreement shall include any arbitration rules referred to in that agreement.

(7) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counter-claim, and where it refers to a defence, it shall also apply to a defence to that counter-claim.

3. (1) Unless otherwise agreed by the parties,—

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

4. A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

5. Notwithstanding anything contained in any other law for the time being in force in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

6. In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

CHAPTER II

Arbitration agreement

7. (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—
(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. (1) A judicial authority before which an action is brought is a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

9. A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a Court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

CHAPTER III

Composition of arbitral tribunal

10. (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.
11. (1) A person of any nationality may be an arbiter, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbiter or arbiters.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with the arbiter, each party shall appoint one arbiter, and the two appointed arbiters shall appoint the third arbiter who shall act as the presiding arbiter.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbiter within thirty days from the receipt of request to do so from the other party; or

(b) the two appointed arbiters fail to agree on the third arbiter within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbiter, if the parties fail to agree on the arbiter within thirty days from the receipt of a request from the other party to do so, the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbiters, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides otherwise for securing the appointment.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justice or the person or institution designated by him is final.

(8) The Chief Justice, or the person or institution designated by him, in appointing an arbiter, shall have due regard to—

(a) any qualifications required of the arbiter by the agreement of the parties; and

(b) other considerations as are likely to secure the appointment of an independent and impartial arbiter.

(9) In the case of appointment of sole or third arbiter in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbiter of a nationality other than the nationalities of the parties where the parties belong to different nationalities.
The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him.

Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to “Chief Justice” in those sub-sections shall be construed as a reference to the “Chief Justice of India”.

Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to “Chief Justice” in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court.

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

If a challenge under any procedure adopted upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
(5) Where an arbitral award is made under sub-section (4), the party challenging the
arbiter may make an application for setting aside such an arbitral
award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section
the Court may decide as to whether the arbiter who is challenged is entitled
to fees.

Failure or
impossibility to act.

14. (1) The mandate of an arbiter shall terminate if—

(a) he becomes de jure or de facto unable to perform his functions or for
reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of
his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause
of sub-section (1), a party may, unless otherwise agreed by the parties, apply to
the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbiter with
draws from his office or a party agrees to the termination of the mandate of an arbiter,
the Court shall not imply acceptance of the validity of any ground referred to in this section
or sub-section (3) of section 12.

Termination of mandate
and substitution of arbiter.

15. (1) In addition to the circumstances referred to in section 13 or section 14,
the mandate of an arbiter shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbiter terminates, a substitute arbiter shall
be appointed according to the rules that were applicable to the appointment of the arbiter
being replaced.

(3) Unless otherwise agreed by the parties, where an arbiter is replaced under sub-
section (2), any hearings previously held may be repeated at the discretion of a
new arbiter.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbiter
made prior to the replacement of an arbiter under this section shall not be invalid
solely because there has been a change in the composition of the arbiter tribunal.

CHAPTER IV

Jurisdiction of arbiter tribunals

16. (1) The arbiter tribunal may rule on its own jurisdiction, including ruling on any
objections with respect to the existence or validity of the arbitration agreement, and for
that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an
agreement independent of the other terms of the contract; and

(b) a decision by the arbiter tribunal that the contract is null and void shall not
entail ipso jure the invalidity of the arbitration clause.
(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2), or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

CHAPTER V

Conduct of arbitral proceedings

18. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

19. (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20. (1) The parties are free to agree on the place of arbitration.

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.
21. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Language.

22. (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.

(2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statements of claim and defence.

23. (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

Hearings and written proceedings.

24. (1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Default of a party.

25. Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without meaning that failure in itself as an admission of the allegations by the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. (1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

27. (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such processes, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of
the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CHAPTER VI
Making of arbitral award and termination of proceedings

28. (1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under sub-clause (ii) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide ex aequo et bono or as amiable compositur only if the parties have expressly authorised it to do so.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

29. (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

30. (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.
31. (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,—

(a) the costs of an arbitration shall be fixed by the arbitral tribunal;

(b) the arbitral tribunal shall specify—

(i) the party entitled to costs,

(ii) the party who shall pay the costs,

(iii) the amount of costs or method of determining that amount, and

(iv) the manner in which the costs shall be paid.

Explanation.—For the purpose of clause (a), "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and
(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

32. (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

33. (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other error of a similar nature occurring in the award,

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (3).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.
Recourse against arbitral award

34. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is
appropriate and it is so requested by a party, adjourn the proceedings for a period of
time determined by it in order to give the arbitral tribunal an opportunity to resume the
arbitral proceedings or to take such other action as in the opinion of arbitral tribunal
will eliminate the grounds for setting aside the arbitral award.

CHAPTER VIII

Finality and enforcement of arbitral awards

35. Subject to this Part an arbitral award shall be final and binding on the parties and
persons claiming under them respectively.

36. Where the time for making an application to set aside the arbitral award under
section 34 has expired, or such application having been made, it has been refused, the
award shall be enforced under the Code of Civil Procedure, 1908 in the same manner
as if it were a decree of the Court.

CHAPTER IX

Appeals

37. (1) An appeal shall lie from the following orders (and from no others) to the
Court authorised by law to hear appeals from original decrees of the Court passing the
order, namely:—

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie from an order granting or refusing to grant an interim
measure under section 17 to a Court.

(3) No second appeal shall lie from an order passed in appeal under this section, but
nothing in this section shall affect or take away any right to appeal to the Supreme
Court.

CHAPTER X

Miscellaneous

38. (1) The arbitral tribunal may fix the amount of the deposit or supplementary
deposit, as the case may be, as an advance for the costs referred to in sub-section (1)
of section 31, which it expects will be incurred in respect of the claim submitted to it.

Provided that where, apart from the claim, a counter-claim has been submitted to the
arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the
parties:

Provided that where one party fails to pay his share of the deposit, the other party
may pay that share:

Provided further that where the other party also does not pay the aforesaid share in
respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate
the arbitral proceedings in respect of such claim or counter-claim, as the case may be.
39. (1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

40. (1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

41. (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

42. Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over
the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Limitations. 43. (1) The Limitation Act, 1963, shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

PART II

ENFORCEMENT OF CERTAIN FOREIGN AWARDS

CHAPTER I

New York Convention Awards

Definition. 44. In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and

(b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

Power of judicial authority to refer parties to arbitration. 45. Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

When foreign award binding. 46. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
47.(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

48. (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—

(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.
Explanation.—Without prejudice to the generality of clause (b) of this sub-section, it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

49. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

50. (1) An appeal shall lie from the order refusing to—

(a) refer the parties to arbitration under section 45;

(b) enforce a foreign award under section 48,


51. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India any award or of availing himself in India of any award if this Chapter had not been enacted.

52. Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.

CHAPTER II

Geneva Convention Awards

53. In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

(a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and

(b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies.

and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the
country in which it was made.

54. Notwithstanding anything contained in Part I or in the Code of Civil Procedure, judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrator and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

55. Any foreign award which would be enforceable under this Chapter shall be treated as binding and may be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any reference in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

56. (1) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court—

(a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;

(b) evidence proving that the award has become final; and

(c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (b) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomat or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

57. (1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

(a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) the subject-matter of the award is capable of settlement by arbitration under the law of India;

(c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or
if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India.

Explanation.—Without prejudice to the generality of clause (e), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

(a) the award has been annulled in the country in which it was made;

(b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or that, being under a legal incapacity, he was not properly represented;

(c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Enforcement of foreign awards.

58. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

Appealable orders.

59. (1) An appeal shall lie from the order refusing—

(a) to refer the parties to arbitration under section 54; and

(b) to enforce a foreign award under section 57,

to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Saving.

60. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.
PART III

CONCILIATION

61. (1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

62. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

63. (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

64. (1) Subject to sub-section (2),—

(a) in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.
65. (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Explanation.—In this section and all the following sections of this Part, the term "conciliator" applies to a sole conciliator, two or three conciliators as the case may be.

66. The conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

67. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons thereof.

68. In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

69. (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

70. When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that.
information to the other party.

71. The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

72. Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

73. (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

74. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

75. Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

76. The conciliation proceedings shall be terminated—

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
77. The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

78. (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—

(a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;

(b) any expert advice requested by the conciliator with the consent of the parties;

(c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

79. (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.

(2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

80. Unless otherwise agreed by the parties,—

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

81. The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

(c) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

PART IV

SUPPLEMENTARY PROVISIONS

82. The High Court may make rules consistent with this Ordinance as to all proceedings before the Court under this Ordinance.

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

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

84. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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


(2) Notwithstanding such repeal,—

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Ordinance came into force unless otherwise agreed by the parties but this Ordinance shall apply in relation to arbitral proceedings which commenced on or after this Ordinance comes into force;

(b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Ordinance, be deemed respectively
86. (1) The Arbitration and Conciliation Second Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Ordinance.
THE FIRST SCHEDULE

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject-matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application,
(a) the duly authenticated original award or a duly certified copy thereof;

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

**ARTICLE V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that—

   (a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

   (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

   (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

   (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

   (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that—

   (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of that country; or

   (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

**ARTICLE VI**

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.
ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31st December, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is, or hereafter becomes, a member of any specialised agency of the United Nations, or which is, or hereafter becomes, a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of the notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.
ARTICLE XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) with respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.
ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) signatures and ratifications in accordance with article VIII;
(b) accessions in accordance with article IX;
(c) declarations and notifications under articles I, X and XI;
(d) the date upon which this Convention enters into force in accordance with article XII;
(e) denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article XIII.

THE SECOND SCHEDULE

(See section 53)

PROTOCOL ON ARBITRATION CLAUSES

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:

1. Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the Arbitral Tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.
3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The Tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Agreement one party to the Convention applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said Article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the Arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or becomes inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

6. The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the mentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

THE THIRD SCHEDULE
(See section 53)

CONVENTION OF THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Article 1.—(1) In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses opened at Geneva on September 24th,
1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said Award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

(2) To obtain such recognition or enforcement, it shall, further, be necessary:—

(a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable there to;

(b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appeal or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.—Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

(a) that the award has been annulled in the country in which it was made;

(b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.—If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1(a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.
Article 4.—The party relying upon an award or claiming its enforcement must supply, in particular:

(1) the original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (d), in the country in which it was made;

(3) when necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph (1) and paragraph (2) (a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translations must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.—The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.—The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923.

Article 7.—The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and Non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratification shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.—The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.—The present Convention may be denounced on behalf of any Member of the League or Non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notifications, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.
Article 10.—The present Convention does not apply to the colonies, protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounced the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applied to such denunciation.

Article 11.—A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every Non-Member State which signs the same.

SHANKER DAYAL SHARMA
President

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 21st June, 1996/Jyaistha 31, 1918 (Saka)

THE DEPOSITORIES (THIRD) ORDINANCE, 1996

No. 28 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for regulation of depositaries in securities and for matters connected therewith and incidental thereto.

WHEREAS the Depositories Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 20th day of September, 1995;

AND WHEREAS the Depositories Bill, 1995, was introduced in the House of the People to replace the said Ordinance;

AND WHEREAS the said Bill had been passed by the House of the People but could not be passed by the Council of States;

AND WHEREAS to give effect to the Depositories Ordinance, 1995, the Depositories Ordinance, 1996 was promulgated by the President on the 7th day of January, 1996;

AND WHEREAS to again give continued effect to the provisions of the Depositories Ordinance, 1996, the Depositories (Second) Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

AND WHEREAS the said Bill could not be passed by the Council of States and has lapsed on the dissolution of the House of the People;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give further continued effect to the provisions of the Depositories (Second) Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Depositories (Third) Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 20th day of September, 1996.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "beneficial owner" means a person whose name is recorded as such with a depository;

(b) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(c) "bye-laws" means bye-laws made by a depository under section 26;

(d) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;

(e) "depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (IA) of section 12 of the Securities and Exchange Board of India Act, 1992;

(f) "issuer" means any person making an issue of securities;

(g) "participant" means a person registered as such under sub-section (IA) of section 12 of the Securities and Exchange Board of India Act, 1992;

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;

(j) "registered owner" means a depository whose name is entered as such in the register of the issuer;

(k) "regulations" means the regulations made by the Board;

(l) "security" means such security as may be specified by the Board;

(m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.

(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

CERTIFICATE OF COMMENCEMENT OF BUSINESS

3. (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions:

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.
CHAPTER III

RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSuers AND BENEFICIAL OWNERS

4. (1) A depository shall enter into an agreement with one or more participants as
its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified
by the bye-laws.

5. Any person, through a participant, may enter into an agreement, in such form as
may be specified by the bye-laws, with any depository for availing its services.

6. (1) Any person who has entered into an agreement under section 5 shall surrender
the certificate of security, for which he seeks to avail the services of a depository, to the
issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall
cancel the certificate of security and substitute in its records the name of the depository as
a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the
name of the person referred in sub-section (1) in its records, as the beneficial owner.

7. (1) Every depository shall, on receipt of intimation from a participant, register
the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of
such security the depository shall inform the issuer accordingly.

8. (1) Every person subscribing to securities offered by an issuer shall have the
option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate
such depository the details of allotment of the security, and on receipt of such information
the depository shall enter in its records the name of the allottee as the beneficial owner of
that security.

9. (1) All securities held by a depository shall be dematerialised and shall be in a
fungible form.

(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the
Companies Act, 1956 shall apply to the securities held by a depository on behalf of the
beneficial owners.

10. (1) Notwithstanding anything contained in any other law for the time being in
force, a depository shall be deemed to be the registered owner for the purposes of effecting
transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered
owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected
to all the liabilities in respect of his securities held by a depository.

11. Every depository shall maintain a register and an index of beneficial owners in
the manner provided in section 150, section 151 and section 152 of the Companies Act,
1956.

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a
beneficial owner may with the previous approval of the depository create a pledge or
hypothecation in respect of a security owned by him through a depository.
(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

13. (1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security, he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner of the transferee, as the case may be.

15. The Bankers' Books Evidence Act, 1891 shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

16. (1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

17. (1) Subject to the provisions of this Ordinance, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

CHAPTER IV

Enquiry and Inspection

18. (1) The Board, on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing,—

(a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.
19. Save as provided in this Ordinance, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market,

the Board may issue such directions—

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

CHAPTER V

Penalty

20. Whoever contravenes or attempts to contravene, or abets the contravention of the provisions of this Ordinance or any regulations or bye-laws made thereunder shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

21. (1) Where an offence under this Ordinance 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 provided in this Ordinance, 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 an offence under this Ordinance 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, the director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER VI

Miscellaneous

22. (1) No court shall take cognizance of any offence punishable under this Ordinance or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.
23. (1) Any person aggrieved by an order of the Board made under this Ordinance, or the regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed.

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

24. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(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 time within which an appeal may be preferred under sub-section (1) of section 23;

(b) The form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) The procedure for disposing of an appeal under sub-section (4) of section 23.

25. (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Board may, by notification in the Official Gazette, make regulations consistent with the provisions of this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for:

(a) the form in which record is to be maintained under clause (l) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3:

(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fee payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuer under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities into the depository under sub-section (2) of section 17.
26. (1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Ordinance and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for—

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialisation of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;

(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

(p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

27. Every rule and every regulation made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the
28. The provisions of this Ordinance shall be in addition to, and not, in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

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

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

30. The enactments specified in the Schedule to this Ordinance shall be amended in the manner provided therein.

31. (1) The Depositories (Second) Ordinance, 1996 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

THE SCHEDULE

(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 of 1899)

AMENDMENT

After section 8, the following section shall be inserted, namely:

'8A. Notwithstanding anything contained in this Act,—

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories (Third) Ordinance, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

Explanation.—For the purposes of this section, the expressions "beneficial owner", "depository" and "issuer" shall have the meanings respectively assigned to them in clauses (a), (c) and (f) of sub-section (7) of section 2 of the Depositories (Third) Ordinance, 1996.'

transmission was delivered to the company, as the case may be, after such enquiry as the company thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or the Sick Industrial Companies (Special Provisions) Act, 1985.

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 113 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely:

"(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities."

11. In section 150, in sub-section (1), in clause (b), the words "distinguishing each share by its number" shall be omitted.

12. In section 152 in sub-section (1), in clause (b), the words "distinguishing each debenture by its number" shall be omitted.

13. After section 152, the following section, shall be inserted, namely:

"152A. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories (Third) Ordinance, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be for the purposes of this Act."

14. In Schedule II, in clause C, after sub-clause 9, the following sub-clause shall be inserted, namely:

"9A. The details of option to subscribe for securities to be dealt with in a depository."

PART III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 of 1956)

AMENDMENTS

1. In section 2, for clause (i), the following clause shall be substituted, namely:

'(i) “spot delivery contract” means a contract which provides for—

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.'
(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.'.

2. Section 22A shall be omitted.

PART IV

AMENDMENT TO THE INCOME TAX ACT, 1961

(43 of 1961)

AMENDMENT

In section 45, after sub-section (2), the following sub-section shall be inserted, namely:

(2A) Where any person has had at any time during previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories (Third) Ordinance, 1996, and for the purposes of—

(i) section 48; and

(ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method.

Explanation.— For the purposes of this sub-section, the expressions "beneficial owner", "depository" and "security" shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories (Third) Ordinance, 1996.'.

PART V

AMENDMENT TO THE SECURITIES (PROHIBITION) ACT, 1988

(45 of 1988)

AMENDMENT

In section 3, for sub-section (2), the following sub-section shall be substituted, namely:

(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as a registered owner under sub-section (1) of section 10 of the Depositories (Third) Ordinance, 1996;

(ii) participant as an agent of a depository.

Explanation.— The expressions "depository" and "participant" shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories (Third) Ordinance, 1996.'.
PART VI

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
(15 OF 1992)

AMENDMENTS

1. In section 2, in sub-section (2), for the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956", the words, brackets and figures "the Securities Contracts (Regulation) Act, 1956 or the Depositories (Third) Ordinance, 1996" shall be substituted.

2. In section 11, in clause (ba), for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section (IA), for the words, "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section (1), for the words "this Act", the words, brackets and figures "this Act or the Depositories (Third) Ordinance, 1996" shall be substituted.

SHANKER DAYAL SHARMA
President.

K.L. MOHANPURIA
Secy. to the Govt. of Indic.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 21st June, 1996/Jyaistha 31, 1918 (Saka)

THE SUPREME COURT AND HIGH COURT JUDGES
(CONDITIONS OF SERVICE) AMENDMENT
THIRD ORDINANCE, 1996

No. 29 of 1996

Pronounced by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954.

WHEREAS the Supreme Court and High Court Judges (Conditions of Service) Amendment Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 11th day of January, 1996;

AND WHEREAS the Supreme Court and High Court Judges (Conditions of Service) Amendment Bill, 1996 was introduced in the House of the People to replace the said Ordinance, but has not been passed and has lapsed due to the dissolution of the House of the People;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

AND WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Supreme Court and High Court Judges (Conditions of Service) Amendment Third Ordinance, 1996.

(2) It shall be deemed to have come into force on the 11th day of January, 1996.

CHAPTER II

AMENDMENT OF THE SUPREME COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

2. In section 23A of the Supreme Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as the Supreme Court Judges Act), for the words “one hundred and fifty litres of petrol every month or the actual consumption of petrol”, the words “two hundred litres of fuel every month or the actual consumption of fuel” shall be substituted.

3. In section 23B of the Supreme Court Judges Act, for the words “one thousand two hundred and fifty” and “seven hundred and fifty”, the words “four thousand” and “three thousand” shall respectively be substituted.

CHAPTER III

AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

4. In section 22B of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as the High Court Judges Act), for the words “one hundred and fifty litres of petrol every month or the actual consumption of petrol”, the words “two hundred litres of fuel every month or the actual consumption of fuel” shall be substituted.

5. In section 22C of the High Court Judges Act, for the words “five hundred” and “three hundred”, the words “three thousand” and “two thousand” shall respectively be substituted.

6. (1) The Supreme Court and High Court Judges (Conditions of Service) Amendment Second Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Supreme Court Judges Act and the High Court Judges Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of the respective Act aforesaid as amended by this Ordinance.

SHANKER DAYAL SHARMA
President

K. L. MOHANPURIA
Secy. to the Govt. of India
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 27th June, 1996/Asadha 6, 1918 (Saka)

THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT)
THIRD ORDINANCE, 1996

No. 30 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the inclusion of Koch-Rajbongshi in the list of Scheduled Tribes specified in relation to the State of Assam.

WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 27th day of January, 1996;

AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1996 was introduced in the House of the People to replace the said Ordinance, but had not been passed and has lapsed due to the dissolution of the House of the People;
AND WHEREAS for giving continued effect to the provision of the said Ordinance, the Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Constitution (Scheduled Tribes) Order (Amendment) Third Ordinance, 1996.

(2) It shall be deemed to have come into force on the 27th day of January, 1996.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as the principal Order), in "Part II—Assam", under the heading "II. In the State of Assam excluding the autonomous districts:—", after item 9 and the entry relating thereto, the following item and entry shall be added, namely:

"10. Koch-Rajbongshi."

3. (1) The Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Order, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Order, as amended by this Ordinance.

SHANKER DAYAL SHARMA
President.

K.L. MOHANPURIA
Secy. to the Govt. of India.
THE INCOME-TAX (AMENDMENT) ORDINANCE, 1996

No. 31 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Income-tax Act, 1961.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Income-tax (Amendment) Ordinance, 1996.

(2) It shall come into force at once.
2. In section 80G of the Income-tax Act, 1961,—

(a) in sub-section (1), in clause (i), after the word, brackets, figures and letters "sub-clause (iii hcy)", the words, brackets, figures and letters "or sub-clause (ii hcy)" shall be inserted;

(b) in sub-section (2), in clause (e), after sub-clause (iii he), the following sub-clause shall be inserted, namely:—

"(iii hdi) The Andhra Pradesh Chief Minister's Cyclone Relief Fund 1961 of".

SHANKER DAYAL SHARMA,

President

K.L.MOH ANPURIA,

Secy. to the Govt. of India

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MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 31st December, 1996/Pausa 10, 1918 (Saka)

THE INCOME-TAX (SECOND AMENDMENT) ORDINANCE, 1996

No. 32 of 1996

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Income-tax Act, 1961.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Income-tax (Second Amendment) Ordinance, 1996.

(2) Save as otherwise provided in this Ordinance, sections 4 to 10 shall come into force on the 1st day of January, 1997.

2. In section 54EA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), with effect from the 1st day of October, 1996—

(a) in sub-section (1), for the words, brackets, figures and letter “bonds, debentures or units of mutual fund referred to in clause (23D) of section 10,” the words, brackets, figures and letter “bonds, debentures, shares of a public company or units of any mutual fund referred to in clause (23D) of section 10,” shall be substituted and shall be deemed to have been substituted;
(b) for the words "specified bonds or debentures", wherever they occur, the words "specified securities" shall be substituted and shall be deemed to have been substituted.

3. In section 80G of the Income-tax Act, with effect from the 1st day of April, 1997,—
   (a) in sub-section (1), in clause (i), after the word, brackets, figures and letters "sub-clause (iihda)", the words, brackets, figures and letters "or sub-clause (iihe)" shall be inserted;
   (b) in sub-section (2), in clause (a), after sub-clause (iihda), the following sub-clause shall be inserted, namely:—
   "(iihe) the National Illness Assistance Fund; or".

4. In section 158BC of the Income-tax Act, in clause (a),—
   (a) for the words "not being less than fifteen days", the words "not being less than fifteen days but not more than forty-five days" shall be substituted;
   (b) after the proviso, the following proviso shall be inserted, namely:—
   "Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return.

5. In section 158BE of the Income-tax Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—
   "(1) The order under section 158BC shall be passed,—
   (a) within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997;
   (b) within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

   (2) The period of limitation for completion of block assessment in the case of the other person referred to in section 158BD shall be—
   (a) one year from the end of the month in which the notice under the Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997; and
   (b) within two years from the end of the month in which notice under the Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

6. After section 158BF of the Income-tax Act, the following section shall be inserted, namely:—
   "158BFA. (1) Where the return of total income including undisclosed income for the block period, required by a notice under clause (a) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and—
   (a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or
   (b) where no return has been furnished on the date of completion of assessment under clause (c) of section 158BC."
(2) The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC:

Provided that no order imposing penalty shall be made in respect of a person if—

(i) such person has furnished a return under clause (a) of section 158BC;

(ii) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;

(iii) evidence of tax paid is furnished along with the return; and

(iv) an appeal is not filed against the assessment of that part of income which is shown in the return.

Provided further that the provisions of the preceding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of undisclosed income shown in the return.

(3) No order imposing a penalty under sub-section (2) shall be made,—

(a) unless an assessee has been given a reasonable opportunity of being heard;

(b) by the Assistant Commissioner or Assistant Director, as the case may be, where the amount of penalty exceeds twenty thousand rupees except with the previous approval of the Deputy Commissioner or Deputy Director, as the case may be;

(c) in a case where the assessment is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

(d) in a case where the assessment is the subject matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(e) in any case other than those mentioned in items (c) and (d), after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation. In computing the period of limitation for the purpose of this section,—

(i) the time taken in giving an opportunity to the assessee to be heard under the proviso to section 129;

(ii) the period during which the immunity granted under section 245H remained in force; and

(iii) the period during which the proceedings under sub-section (2) are stayed by an order or injunction of any court, shall be excluded.

(4) An income-tax authority on making an order under sub-section (2) imposing a penalty, unless he is himself an Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer."
7. For section 158BG of the Income-tax Act, the following section shall be substituted, namely:

"158BG. The order of assessment for the block period shall be passed by an Assessing Officer not below the rank of an Assistant Commissioner or an Assistant Director, as the case may be:

Provided that no such order shall be passed without the previous approval of the Deputy Commissioner or the Deputy Director, as the case may be."

8. In section 246 of the Income-tax Act, in sub-section (2), after clause (d), the following clauses shall be inserted, namely:

"(da) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132 A, on or after the 1st day of January, 1997;

(db) an order imposing a penalty under sub-section (2) of section 158BFA."

9. In section 253 of the Income-tax Act, in sub-section (1), for clause (b), the following clause shall be substituted, namely:

"(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or"

10. After section 276CC of the Income-tax Act, the following section shall be inserted, namely:

"276CCC. If a person willfully fails to furnish in due time the return of total income which he is required to furnish by notice given under clause (a) of section 158BC, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 9th January, 1997/Pauṣa 19, 1918 (Saka)

THE PORT LAWS (AMENDMENT) ORDINANCE, 1997

No. 1 of 1997

Promulgated by the President in the Forty-seventh Year of the
Republic of India.

An Ordinance further to amend the Indian Ports Act, 1908 and the

WHEREAS Parliament is not in session and the President is satisfied that circumstances
exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Port Laws (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
CHAPTER II

AMENDMENTS TO THE INDIAN PORTS ACT, 1908

2. In section 3 of the Indian Ports Act, 1908 (hereafter in this Chapter referred to as the Ports Act), for clause (i), the following clause shall be substituted, namely:

"(i) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, 1973;"

3. In section 6 of the Ports Act, in sub-section (1),—

(i) in clause (j), after the words "rates to be paid", the words "in a port other than a major port" shall be inserted;

(ii) for clause (jj), the following clauses shall be substituted, namely:

"(jj) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government;

(jjia) for fixing the rates to be paid for the use of piers, jetties, landing places, wharves, quays, warehouses and sheds of any port, other than a major port, when belonging to the Government;"

(iii) for clause (k), the following clauses shall be substituted, namely:

"(k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for licensing and regulating the crews of any such vessels; and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels and the conditions under which such vessels shall be compelled to ply for hire and further for conditions under which any licence may be revoked;

(kk) for providing for the fees payable in respect of the services specified in clause (k) for any port, other than a major port;"

4. In section 33 of the Ports Act,—

(a) in sub-section (1), after the words "in each of the ports mentioned in the First Schedule", the words "other than a major port" shall be inserted;

(b) in sub-section (3), after the words "declares any other port", the words "other than a major port" shall be inserted.

5. For section 34 of the Ports Act, the following section shall be substituted, namely:

"34. The Government may after consulting,—

(a) in case of ports other than major ports, the authority appointed under section 36;

(b) in case of major ports, the Authority constituted under section 47A of the Major Port Trusts Act, 1963,

exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port subject to this Act from payment of port dues and cancel the exemption, or may vary the rates at which port-dues are to be fixed in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues:

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.
6. In section 35 of the Ports Act, in sub-section (1), after the words "Within a port subject to this Act", the words "not being a major port" shall be inserted.

7. In section 46 of the Ports Act, after the words "A vessel entering any port", the words "not being a major port" shall be inserted.

8. In section 47 of the Ports Act, after the words "When a vessel enters a port", the words "not being a major port" shall be inserted.

9. In the First Schedule to the Ports Act, in Part I, entries under columns 2, 3 and 4 shall be omitted.

CHAPTER III

AMENDMENT TO THE MAJOR PORT TRUSTS ACT, 1963

10. In section 2 of the Major Port Trusts Act, 1963 (hereafter in this Chapter referred to as the Major Port Act), after clause (a), the following clause shall be inserted, namely:—

"(aa) "Authority" means the Tariff Authority for Major Ports constituted under section 47A;".

11. In section 29 of the Major Port Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in clause (a) of sub-section (2), the right to fix rates vested in the Board shall vest in the Authority as from the date it is constituted under sub-section (1) of section 47A.".

12. In section 42 of the Major Port Act, in sub-section (4), for the words and figures "leviable according to the scale framed under section 48 or section 49 or section 50", the words "specified by the Authority, by notification in the Official Gazette" shall be substituted.

13. In section 47 of the Major Port Act, in sub-section (3), in clause (i), for the words and figures "The Arbitration Act, 1940", the words and figures "The Arbitration and Conciliation Act, 1996" shall be substituted.

14. After Chapter V of the Major Port Act, the following Chapter shall be inserted, namely:—

"CHAPTER VA

TARIFF AUTHORITY FOR MAJOR PORTS

47A. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority shall consist of the following Members to be appointed by the Central Government, namely:—

(a) a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;

(b) a Member from amongst economists having experience of not less
than fifteen years in the field of transport or foreign trade;

(c) a Member from amongst persons having experience of not less than fifteen years in the field of finance with special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

47B. (1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may —

(a) relinquish his office by giving in writing to the Central Government a notice of not less than three months, or

(b) be removed from his office in accordance with the provisions of section 47D.

(4) If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

47C. A person shall be disqualified for being appointed as a Chairperson or as a Member of the Authority if he is disqualified for being chosen as a Trustee under section 6.

47D. (1) The Central Government shall remove from the Authority the Chairperson or any Member, if he —

(a) becomes subject to any disqualification under section 47C;

(b) refuses to act or becomes incapable of acting;

(c) in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest, or

(d) is otherwise unsuitable to continue as the Chairperson or as a Member.

(2) The Central Government may suspend the Chairperson or any Member pending an inquiry against him.

(3) No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seat of the Chairperson or Member removed shall be declared vacant.

(4) The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

47E. The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be specified by regulations.
47F. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

47G. No act or proceeding of the Authority shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

47H. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be specified by regulations.

15. In section 48 of the Major Port Act, in sub-section (1),—

(a) for the opening portion, the following shall be substituted, namely:—

"The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches—"

(b) in clause (e), the words excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act" shall be omitted.

16. In section 49 of the Major Port Act, in sub-section (1), for the opening portion, the following shall be substituted, namely:

"The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the Board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder—"

17. After section 49 of the Major Port Act, the following sections shall be inserted, namely:

"49A. (1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

(3) The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2)."
49(B). (1) The Authority shall, from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.

(2) An order increasing or altering the fees for pilotage and certain other services or port-dues at any port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette.

18. For section 50 of the Major Port Act, the following sections shall be substituted, namely:

50. The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service specified in section 48 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 49 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in section 49A or the port dues to be fixed on vessels entering the port and for the duration of such dues as specified in section 49B.

50A. A vessel entering any port in ballast and not carrying passengers shall be charged with a port-dues at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

50B. When a vessel enters a port but does not discharge or take in any cargo or passengers therein (with the exception of such unshipped and reshipment as may be necessary for purposes of repair), she shall be charged with a port-dues at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

50C. Every notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of the conservator and at the custom house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

19. In section 51 of the Major Port Act, for the word "Board" in both the places where it occurs, the word "Authority" shall be substituted.

20. Section 52 of the Major Port Act shall be omitted.

21. In section 54 of the Major Port Act,—

(a) in sub-section (1), for the words "direct any Board", the words "direct the Authority" shall be substituted;

(b) in sub-section (2),—

(i) for the words, brackets and figure, "If any Board against whom a direction is made under sub-section (1) fails or neglects to comply with such direction", the words, brackets and figure, "If the Authority fails or neglects to comply with the direction under sub-section (1)" shall be substituted;

(ii) in the proviso, for the words "the Board", the words "the Authority" shall be substituted.
22. In section 57 of the Major Port Act, for the words "A Board shall not lease", the words "The Authority shall not lease" shall be substituted.

23. In section 59 of the Major Port Act, in sub-section (1) for the words "leviable by a Board under this Act", the words "leviable under this Act" shall be substituted.

24. After section 118 of the Major Port Act, the following section shall be inserted, namely:

110A. (1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority, namely:

(a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be,

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

(a) extend the period of supersession for such further period as it may consider necessary; or

(b) reconstitute the Authority in the manner provided in section 47A.

25. In section 111 of the Major Port Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time:

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section."

26. For section 112 of the Major Port Act, the following section shall be substituted, namely:

"112. Every person employed by the Authority or by a Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code and for the purposes of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of Section 21 of the said Code."
27. In section 121 of the Major Port Act, for the words "against a Board or any member", the words "against the Authority a Board or any member" shall be substituted.

28. In section 122 of the Major Port Act, in sub-section (1), after clause (b), the following clause shall be inserted, namely:

"(ba) the salaries, allowances payable to and the other terms and conditions of the Chairperson and members of the Authority;".

29. After section 123 of the Major Port Act, the following section shall be inserted, namely:

"123A. The Authority may make regulations consistent with this Act for all or any of the following purposes, namely:

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under section 47E;

(b) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under subsection (2) of section 47H".

30. In section 132 of the Major Port Act,—

(a) in sub-section (1),—

(i) in the opening portion, for the words "made by a Board or by the Central Government", the words "made by a Board or the Authority or the Central Government" shall be substituted;

(ii) in clause (b), for the words "made by the Central Government", the words "made by the Authority or the Central Government" shall be substituted;

(b) in sub-section (2), for the words "made by the Central Government", the words "made by the Authority or the Central Government" shall be substituted.

SHANKER DAYAL SHARMA,

President.

K.L. MOHANPURIA,

Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 1997/Pausa 19, 1918 (Saka)

THE RESERVE BANK OF INDIA (AMENDMENT) ORDINANCE, 1997

No. 2 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Reserve Bank of India Act, 1934.

WHEREAS Parliament is not in session and the president is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following ordinance:—

1. This Ordinance may be called the Reserve Bank of India (Amendment) ordinance, 1997.

(2) The provisions of this Ordinance, other than section 9 shall come into force at once, and section 9 shall come into force on the 1st day of April, 1997.
2. In section 451 of the Reserve Bank of India Act, 1934 (hereinafter referred to as the principal Act),—

(a) in clause (c),—

(i) for the portion beginning with the words "but does not include any institution, which,—" and ending with the brackets, letter and words "(a) agricultural operations; or", the following shall be substituted, namely:—

"but does not include any institution which carries on as its principal business,—

(a) agricultural operations; or

(aa) industrial activity; or"

(ii) the following Explanation shall be inserted at the end, namely:—

'Explanation.—For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964.';

(b) after clause (e), the following clause shall be inserted, namely:—

'(f) "non-banking financial company" means—

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.'.

3. After section 451 of the principal Act, the following sections shall be inserted, namely:—

"451A. (1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of fifty lakh rupees or such other amount, not exceeding two hundred lakhs, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:"
Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Ordinance, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Ordinance, 1997 and having a net owned fund of less than five lakh rupees may, for the purpose of enabling such company to fulfill the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend,

subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.

(4) The Bank, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled:

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability and economic growth considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interests of the depositors.
(5) The Bank, after being satisfied that the conditions specified in sub-section (4) are fulfilled, may grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of accounts and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months;

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfilment such condition;

Provided further that before making any order of cancellation of certificate of registration such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final;

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.
Explanations.—For the purposes of this section,—

(i) "net owned fund" means—

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting there from—

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing—

(1) investments of such company in shares of—

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with,—

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such book value exceeds ten per cent, of (a) above.

(II) "subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act, 1956.

45IB. (1) Every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage as the Bank may, from time to time and by notification in the Official Gazette, specify, of the deposits outstanding at the close of business on the last working day of the second preceding quarter:

Provided that the Bank may specify different percentages of investment in respect of different classes of non-banking financial companies.

(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every non-banking financial company to furnish a return to it in such form, in such manner and for such period as may be specified by the Bank.

(3) If the amount invested by a non-banking financial company at the close of business on any day falls below the rate specified under sub-section (1), such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall
continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

(4) (a) The penal interest payable under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the non-banking financial company and, in the event of a failure of the non-banking financial company to pay the same within such period, may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting non-banking financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the Bank; and

(b) when the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting non-banking financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

Explanation.—For the purpose of this section,—

(i) “approved securities” means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) “unencumbered approved securities” includes the approved securities lodged by the non-banking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) “quarter” means the period of three months ending on the last day of March, June, September or December.

45IC. (1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(2) No appropriation of any sum from the reserve fund shall be made by the non-banking financial company except for the purpose as may be specified by the Bank from time to time and every such appropriation shall be reported to the Bank within twenty-one days from the date of such withdrawal:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Bank and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the non-banking financial company for such period as may be specified in the order:
Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share premium account is not less than the paid-up capital of the non-banking financial company.

4. After section 45J of the principal Act, the following section shall be inserted, namely—

"45JA. (1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off-balance sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1) the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to—

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies."

5. In section 45MA of the principal Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of accounts, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking financial company or companies relating to balance sheet, profit and loss account, disclosure of liabilities in the books of accounts or any matter relating thereto;"

(ii) in sub-section (2), for the words "a non-banking institution, being a company", the words "a non-banking financial company" shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where the bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of depositors of such company it may at any time by order direct that a special audit of the accounts of the non-banking financial company in
relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

(4) The remuneration of the auditors as may be fixed by the Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the non-banking financial company so audited.

6. After section 45MA of the principal Act, the following sections shall be inserted, namely:

"45MB. (1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order.

45MC. (1) the Bank, on being satisfied that a non-banking financial company—

(a) is unable to pay its debt; or

(b) has by virtue of the provisions of section 45IA become disqualified to carry on the business of a non-banking financial institution; or

(c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,

may file an application for winding up of such non-banking financial company under the Companies Act, 1956.

(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision."
7. After section 45NA of the principal Act, the following sections shall be inserted, namely—

45NB. (1) any information relating to a non-banking financial company,—

(i) contained in any statement or return submitted by such company under the provisions of this chapter; or

(ii) obtained through audit or inspection or otherwise by the Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any non-banking financial company, with the previous permission of the Bank, of any information furnished to the Bank under sub-section (1);

(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any non-banking financial company or its borrowers;

(c) the disclosure or publication by the non-banking financial company or by the Bank of any such information to any other non-banking financial company or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law;

Provided that any such information received by a non-banking financial company under this clause shall not be published except in accordance with the practice and usage customary amongst companies or as permitted or required under any other law.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the non-banking financial company or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any non-banking financial company to any authority constituted under any law.

(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter.

45NC. The Bank, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of this Chapter shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class or non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose."
8. After section 45Q of the principal Act, the following sections shall be inserted, namely—

"45QA. (1) Every deposit accepted by a non-banking financial company unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10B of the Companies Act, 1956 may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interest of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter.

45QB. (1) Where a deposit is held by a non-banking financial institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the non-banking financial institution.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, a nomination made purports to confer on any person the right to receive the amount of deposit from the non-banking financial institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a non-banking financial institution in accordance with the provisions of this section shall constitute a full discharge to the non-banking financial institution of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(5) No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a non-banking financial institution, shall be receivable by the non-banking institution, nor shall the non-banking financial institution be bound by any such notice even though expressly given to it.
Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a non-banking financial institution, the non-banking financial institution shall take due note of such decree, order, certificate or other authority."

9. For section 45S of the principal Act, the following section shall be substituted, namely:

45S. (1) Subject to the provisions of Chapter III-B, no person, other than a body corporate, shall accept any deposit:

Provided that an individual may accept deposit from—

(a) his relative; and

(b) any other individual only for his personal use but not for lending or business purpose.

(2) Where any person other than a body corporate holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within two years from the date of such commencement, whichever is earlier.

(3) On and from the date of 1st day of April, 1997, no person other than a body corporate shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.—For the purposes of this section, a person shall be deemed to be a relative of another if, and only if,—

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the List of relatives below.

List of Relatives

1. Father, 2. Mother (including step-mother), 3. Son (including step-son),
4. Son’s wife, 5. Daughter (including step-daughter), 6. Father’s father,
7. Father’s mother, 8. Mother’s mother, 9. Mother’s father, 10. Son’s son,
11. Son’s son’s wife, 12. Son’s Daughter, 13. Son’s Daughter’s husband,
14. Daughter’s husband, 15. Daughter’s son, 16. Daughter’s son’s wife,
22. Sister’s husband.

10. In section 58B of the principal Act,—

(a) after sub-section (4), the following sub-sections shall be inserted, namely:

(4A) If any person contravenes the provisions of sub-section (4) of section 451A, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be punishable with fine which may extend to five thousand rupees.

(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues;";

(b) in sub-section (5),—

(i) after the words "If any person", the expression "other than an auditor" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB, or".

11. After section 58F of the principal Act, the following section shall be inserted, namely:—

"58G. (1) Notwithstanding anything contained in section 58B, if the contravention or default of the nature referred to in section 58B is committed by a non-banking financial company, the Bank may impose on such non-banking financial company—

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (4A) or clause (a) or clause (aa) of sub-section (5) of section 58B, a penalty of five lakhs rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the non-banking financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such non-banking financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the Bank demanding payment of the sum is served on the non-banking financial company and, in the event of failure of the non-banking financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the non-banking financial company is situated:

Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf, to by the principal civil court.

(4) The court which makes a direction under sub-section (4), shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.
(3) No complaint shall be filed against any non-banking financial company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a non-banking financial company in a court in respect of contravention or default of the nature referred to in section 58B, no proceedings for imposition of penalty against that non-banking financial company shall be taken under this section.”.

12. In the First Schedule to the principal Act, for items 1 and 2, the following items shall be substituted, namely:—

1. The Western Area shall consist of the States of Goa, Gujarat, Andhra Pradesh and Maharashtra and the Union Territories of Dadra and Nagar Haveli, and Daman and Diu.

2. The Eastern Area shall consist of the States of Arunachal Pradesh, Assam, Bihar, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal and the Union territories of Andaman and Nicobar Islands.”.

SHANKER DAYAL SHARMA,
President

K.L. MOHANPURIA,
Secy. to the Government of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 9th January, 1997/Pausa 19, 1918 (Saka)

THE CONSTITUTION (SCHEDULED TRIBES) ORDER
(AMENDMENT) ORDINANCE, 1997

No. 3 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the inclusion of Koch-Rajbongshi in the list of Scheduled Tribes specified in relation to the State of Assam.

WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1996 to provide for the aforesaid matter was promulgated by the President on the 27th day of January, 1996;

AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1996 was introduced in the House of the People to replace the said Ordinance, but had not been passed and had lapsed due to the dissolution of the House of the People;

AND WHEREAS for giving continued effect to the provision of the said Ordinance, the Constitution (Scheduled Tribes) Order (Amendment) Second Ordinance, 1996 was promulgated by the President on the 27th day of March, 1996;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the Constitution (Scheduled Tribes) Order (Amendment) Third Ordinance, 1996 was promulgated by the President on the 27th day of June, 1996;
AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1996 was introduced in the House of the People and could not be passed;

AND WHEREAS the Constitution (Scheduled Tribes) Order (Amendment) Third Ordinance, 1996 ceased to operate on the 21st day of August, 1996;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Constitution (Scheduled Tribes) Order (Amendment) Third Ordinance, 1996 and to validate the action taken under the said Ordinance;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Constitution (Scheduled Tribes) Order (Amendment) Ordinance, 1997.

(2) It shall be deemed to have come into force on the 27th day of January, 1996.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as the principal Order), in “PART II—Assam”, under the heading “II. In the State of Assam excluding the autonomous districts:—”, after item 9 and the entry relating thereto, the following item and entry shall be added, namely:

“10. Koch-Rajbongshi.”.

3. Notwithstanding the fact that the Constitution (Scheduled Tribes) Order (Amendment) Third Ordinance, 1996, has ceased to operate, the inclusion of Koch-Rajbongshi in the Constitution (Scheduled Tribes) Order, 1950, shall be deemed to have been made by this Ordinance and shall be deemed to be as valid and effective as if the amendment made by this Ordinance had been in force at all material times.

SHANKER DAYAL SHARMA
President.

K.L. MOHANPURIA
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 15th January, 1997/Pausa 25, 1918 (Saka)

THE SUGAR EXPORT PROMOTION (REPEAL) ORDINANCE, 1997

No. 4 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India

An Ordinance to repeal the Sugar Export Promotion Act, 1958.

Whereas a Bill to repeal the Sugar Export Promotion Act, 1958, has been passed by the House of the People and is pending in the Council of States;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Sugar Export Promotion (Repeal) Ordinance, 1997.

(2) It shall come into force at once.
2. The Sugar Export Promotion Act, 1958 is hereby repealed.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Government of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 15th January, 1997/Pausa 25, 1918 (Saka)

THE DEPOSITORIES RELATED LAWS (AMENDMENT) ORDINANCE, 1997

No. 5 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Indian Stamp Act, 1899, the State Bank of India Act, 1955, the Companies Act, 1965, the State Bank of India (Subsidiary Banks) Act, 1959, the Industrial Development Bank of India Act, 1964, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Depositories Related Law (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
CHAPTER II

AMENDMENT TO THE INDIAN STAMP ACT, 1899

2. In section 8A of the Indian Stamp Act, 1899, for clause (d), the following clauses shall be substituted, namely:

"(d) transfer of beneficial ownership of shares, such shares being shares of a company formed and registered under the Companies Act, 1956 or a body corporate established by a Central Act dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act;

(e) transfer of beneficial ownership of units, such units being units of a mutual fund including units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1953 dealt with by a depository, shall not be liable to duty under article 62 of Schedule I of this Act."

CHAPTER III

AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

3. In section 13 of the State Bank of India Act, 1955 (hereinafter in this Chapter referred to as the State Bank Act), in sub-section (1), the following proviso shall be inserted at the end, namely:

"Provided that nothing in this sub-section shall apply to the shares held with a depository."

4. After section 13 of the State Bank Act, the following section shall be inserted, namely:

"13A. The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be a register of shareholders for the purposes of this Act."

5. In section 15 of the State Bank Act, the following proviso and Explanation shall be inserted at the end, namely:

"Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners.

Explanation.—For the purposes of section 13, section 13A and this section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (d), (e) and (j) of sub-section (1) of section 2 of the Depositories Act, 1996."

CHAPTER IV

AMENDMENTS TO THE STATE BANK OF INDIA (SUBLIARY BANKS) ACT, 1959

6. In section 21 of the State Bank of India (Subsidiary Banks) Act, 1959 (hereinafter in this Chapter referred to as the Subsidiary Banks Act), the following proviso shall be inserted at the end, namely:

"Provided that nothing in this section shall apply to the shares held with a depository."
AMENDMENTS TO THE COMPANIES ACT, 1956

CHAPTER V

AMENDMENTS TO THE COMPANIES ACT, 1956

21A. The register of beneficial owners maintained by a depository under section 21 of the Depositories Act, 1996 shall be deemed to be a register of beneficial owners.

Note.

21A. The register of beneficial owners maintained by a depository under section 21 of the Depositories Act, 1996 shall be deemed to be a register of beneficial owners.
Amendment of section 150.

11. In section 150 of the Companies Act, in sub-section (1), in clause (b), after the words "the shares held by each member", the words "distinguishing each share by its number except where such shares are held with a depository" shall be inserted.

Amendment of section 152.

12. In section 152 of the Companies Act, in sub-section (1), in clause (b), after the words "the debentures held by each member", the words "distinguishing each debenture by its number except where such debentures are held with a depository" shall be inserted.

CHAPTER VI

AMENDMENTS TO THE INDUSTRIAL DEVELOPMENT BANK OF INDIA ACT, 1964

Amendment of section 13B.

13. In section 13B of the Industrial Development Bank of India Act, 1964 (hereinafter in this Chapter referred to as the Development Bank Act), in sub-section (1), the following proviso shall be inserted at the end, namely:—

"Provided that nothing in this sub-section shall apply to the shares held with a depository."

Insertion of new section 13BA.

14. After section 13B of the Development Bank Act, the following section shall be inserted, namely:—

"13BA. The register of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be a register of the shareholders for the purposes of this Act."

Amendment of section 13C.

15. In section 13C of the Development Bank Act, the following proviso and Explanation shall be inserted at the end, namely:—

"Provided that nothing in this section shall apply to a depository in respect of the shares held by it as a registered owner on behalf of a beneficial owner.

Explanation—For the purposes of section 13B, section 13BA and this section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (a), (c) and (d) of sub-section (1) of section 2 of the Depositories Act, 1996."

CHAPTER VII

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

Amendment of section 3.

16. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970 (hereinafter in this Chapter referred to as the Bank Nationalisation Act), in sub-section (2)(b), the following proviso shall be inserted at the end, namely:—

"Provided that nothing in this sub-section shall apply to the shares held with a depository."

Amendment of section 3A.

17. In section 3A of the Bank Nationalisation Act, the following proviso shall be inserted at the end, namely:—

"Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners."
THE GAZETTE OF INDIA EXTRAORDINARY

5

18. After section 3A of the Bank Nationalisation Act, the following section shall be inserted, namely:

"3B. The register of beneficial owner maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be a register of shareholders for the purposes of this Act.

Explanation.—For the purposes of section 3, section 3A and this section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996."

CHAPTER VIII

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

19. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (hereinafter in this Chapter referred to as the Bank (Second) Nationalisation Act), after sub-section (2F), the following proviso shall be inserted at the end, namely:

"Provided that nothing in this sub-section shall apply to the shares held with a depository."

20. In section 3A of the Bank (Second) Nationalisation Act, the following proviso shall be inserted at the end, namely:

"Provided that nothing in this section shall apply to a depository in respect of shares held by it as a registered owner on behalf of the beneficial owners."

21. After section 3A of the Bank (Second) Nationalisation Act, the following section shall be inserted, namely:

"3B. The register of beneficial owner maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be a register of shareholders for the purposes of this Act.

Explanation.—For the purposes of section 3, section 3A and this section, the expressions "beneficial owner", "depository" and "registered owner" shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996."
CHAPTER IX

AMENDMENT TO THE DEPOSITORY ACT, 1996

22. In section 9 of the Depositories Act, 1996, for sub-section (2), the following sub-section shall be substituted, namely—

"(2) Nothing contained in sections 153, 153A, 153B, 153C, 187B, 187C, and 372 of the Companies Act, 1956 shall apply to a depository in respect of securities held by it on behalf of the beneficial owners."

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Government of India.

Corrigenda

In the Finance (No. 2) Act, 1996 (33 of 1996) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 28th September, 1996 (Issue No. 62),—

at page 1, in the title, for “BILL”, read “ACT”;

at page 2, in the marginal heading against section 2, for “tax”, read “Income-tax”;

at page 9,—

(i) in line 20, for “seven years”, read “five years”;

(ii) in line 24, for “Explanation”, read “the Explanation”;

(iii) in line 44, for “of transfer thereof”, read “of transfer thereof”;

at page 10, in line 15, for “of the section”, read “of section”;

at page 14,—

(i) in line 21, for “case”, read “cases”;

(ii) in line 23, for “case”, read “clause”;

at page 23, in line 23, for “has not been part paid”, read “has been part paid”;

at page 32,—

(i) in line 4, for “wa of winning fro”, read “way of winning from”;

(ii) omit “(viii) on income by way of long-term capital gains”;

at page 33,—

(i) in paragraph A, for Sl. No. (3) and the entries relating thereto, read

"(3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,20,000, the amount by which the total income exceeds Rs. 60,000;",

(ii) in paragraph B, for Sl. No. (2) and the entries relating thereto, read

"(2) where the total income exceeds Rs. 1,000 plus 20% per cent. of the amount by which the total income exceeds Rs. 10,000;",

at page 52, in line 31, for “10%”, read “12%”;

at page 59, in line 8, for “6M.M.”, read “6MM”;

at page 69, in line 29, for “IRON STEEL”, read “IRON OR STEEL.”.
MINISTRY OF LAW AND JUSTICE  
(Legislative Department)  

New Delhi, the 16th January, 1997/Pauca 26, 1918 (Saka)

THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) AMENDMENT ORDINANCE, 1997

No. 6 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (i) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (i) This Ordinance may be called the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1997.

2. It shall come into force at once.

2. In section 5 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the principal Act),—

(a) in sub-section (2), for the words “a sitting Judge”, the words “one or more sitting Judges” shall be substituted;
(b) in sub-section (3), for the words "the Judge of the Special Court" at both the places where they occur, the words "a Judge of the Special Court" shall be substituted.

3. After section 5 of the principal Act, the following section shall be inserted, namely:—

"SA. Where the Special Court consists of two or more Judges, the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated may, from time to time, by general or special order, make provisions as to the distribution of cases amongst the Judges and specify the matters which may be dealt with by each of such Judge."

SHANKER DAYAL SHARMA,

President.

K. L. MOHANPURIA,

Secy. to the Government of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 24th January, 1997/Magh 4, 1918

THE INDUSTRIAL RECONSTRUCTION BANK (TRANSFER OF UNDERTAKINGS AND REPEAL) ORDINANCE, 1997

No. 7 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the transfer and vesting of the undertakings of the Industrial Reconstruction Bank of India to and in the Company to be formed and registered as a Company under the Companies Act, 1956, and for matters connected therewith or incidental thereto and also to repeal the Industrial Reconstruction Bank of India Act, 1984.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER 1

PRELIMINARY

1. (1) This Ordinance may be called the Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Ordinance, 1997.

(2) It shall come into force at once.

Short title
and commencement.
Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint under section 3;

(b) "Company" means the Industrial Investment Bank of India Limited to be formed and registered under the Companies Act, 1956;

(c) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under sub-section (1) of section 3 of the Industrial Reconstruction Bank of India Act, 1984.

CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKINGS OF RECONSTRUCTION BANK IN COMPANY

3. On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in, the Company the undertakings of Reconstruction Bank.

4. (1) The Central Government, being the shareholder of the Reconstruction Bank immediately before the appointed day, shall be deemed to be registered, on and from the appointed day, as a shareholder of the Company.

(2) The undertakings of the Reconstruction Bank which are transferred to, and which vest in, the Company under section 3 shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concerns, loans, advances and guarantees given to industrial concerns, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Reconstruction Bank in relation to its undertakings, within or without India, all books of accounts, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind within or without India subsisting of the Reconstruction Bank in relation to its undertakings.

(3) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed day and affecting the Reconstruction Bank shall cease to have effect or to be enforceable against the Reconstruction Bank and shall be of as full force and effect against or in favour of the Company in which the undertakings of the Reconstruction Bank have vested by virtue of this Ordinance and enforceable as fully and effectually as if instead of the Reconstruction Bank, the Company had been named therein or had been a party thereto.
5. (1) Every officer or other employee of the Reconstruction Bank (except a Director of the Board or the Chairman and Managing Director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertakings which have vested in the Company by virtue of this Ordinance, become, as from the appointed day, an officer or, as the case may be, an employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to have, have any concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Reconstruction Bank if its undertakings had not vested in the Company and shall continue to do so as an officer or, as the case may be, an employee of the Company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period.

(2) Where an officer or other employee of the Reconstruction Bank opts under sub-section (1) not to be in employment or service of the Company, such officer or other employee shall be deemed to have resigned.

6. (1) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Reconstruction Bank to the Company shall not entitle such officer or other employee to any compensation under this Ordinance or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(2) The officers and other employees who have retired before the appointed day from the service of the Reconstruction Bank and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the Company.

(3) The trust of the provident fund or the gratuity fund of the Reconstruction Bank and any other body created for the welfare of officers or employees would continue to discharge their functions in the Company as was being done hitherto in the Reconstruction Bank and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Company.

(4) Notwithstanding anything contained in this Ordinance or in the Companies Act, 1956 or in any other law for the time being in force or in the regulations of the Reconstruction Bank, no Lessor of the Board, the Chairman and Managing Director or any other person entitled to the management of the whole or substantial part of the business and affairs of the Reconstruction Bank shall be entitled to any compensation against the Reconstruction Bank or the Company for the loss of office or for the premature termination of any contract of management entered into by him with the Reconstruction Bank.
Concession, etc. to be deemed to have been granted to Company.

6. With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Reconstruction Bank in connection with the affairs and business of the Reconstruction Bank under any law for the time being in force shall be deemed to have been granted to the Company.

Tax exemption or benefit to continue to have effect.

7. (1) Notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the Company shall not be liable to pay income-tax or any other tax for a period of five years computed from the appointed day in respect of any income, profits or gains derived, or any amount received by the Company.

(2) The transfer and vesting of the undertakings or any part thereof in terms of section 3 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 for the purposes of capital gains.

Guarantee to be operative.

8. Any guarantee given for or in favour of the Reconstruction Bank with respect to any loan, lease finance or other assistance shall continue to be operative in relation to the Company.

Arrangement with Company on appointment of directors to prevail.

9. (1) Where any arrangement entered into by the company with an industrial or other concern provides for the appointment by the company of one or more directors of such concern, such provision and any appointment of directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to such concern, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the company in pursuance of the arrangement as aforesaid.

(2) Any director appointed in pursuance of sub-section (1) shall—

(a) hold office during the pleasure of the company and may be removed or substituted by any person by order in writing by the company;

(b) not incur any obligation or liability by reason only of his being a director for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directorships fable to such retirement.

Act 18 of 1891 to apply to the books of Company.

10. The Company shall be deemed to be a bank for the purposes of the Banks' Books Evidence Act, 1891.
11. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

12. In every Act, rule or regulation in force on the appointed day,—

(a) for the words "Industrial Reconstruction Bank of India", wherever they occur, the words "Industrial Investment Bank of India Limited" shall be substituted;

(b) for the words "Reconstruction Bank", wherever they occur, the words "Industrial Investment Bank" shall be substituted.

13. (1) On the appointed day, the Industrial Reconstruction Bank of India Act, 1984 shall stand repealed.

(2) Notwithstanding the repeal of the Industrial Reconstruction Bank of India Act, 1984—

(a) the Company shall, so far as may be, comply with the provisions of Chapter VII of the Act so repealed for any of the purposes related to the annual accounts and audit of the Reconstruction Bank;

(b) the provisions of Chapter VIII of the Act so repealed will continue to be applicable in respect of the arrangements entered into by the Reconstruction Bank with an industrial concern under section 18 thereof up to the appointed day and the Company will be entitled to act upon and enforce the same as fully and effectually as if this Ordinance had not been promulgated.

CHAPTER IV

AMENDMENT TO THE INDUSTRIAL RECONSTRUCTION BANK OF INDIA ACT, 1984

14. In the Industrial Reconstruction Bank of India Act, 1984 after section 4 the following section shall be inserted, namely:—

"4A. (1) The Central Government may reduce share capital of the Reconstruction Bank by,—

(a) extinguishing or reducing the liability of any of its equity shares;

(b) either with or without extinguishing or reducing liability on any of its equity shares, cancelling any paid up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its equity shares, paying of any paid up share capital which is in excess of the wants of the Reconstruction Bank."

Shares, bonds and debentures to be deemed to be approved securities.

Substitution in Acts, rules or regulations of company in place of the Reconstruction Bank.


Insertion of new section 4A.

Transitional provisions regarding adjustment of capital of the Reconstruction Bank.
(2) The Central Government may at any time, by notification in the Official Gazette, convert such number of equity shares held by it as it may decide into redeemable preference shares.

(3) The redeemable preference shares referred to in sub-section (2) shall carry such fixed rates of dividend as the Central Government may specify at the time of such conversion.

SHANKER DAYAL SHARMA,
President

K. L. MOHANPURIA,
Secy. to the Govt. of India
MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24th January, 1997/Magha 4, 1918 (Saka)

THE ELECTRICITY LAWS (AMENDMENT) ORDINANCE, 1997

No. 8 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Electricity Laws (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
CHAPTER II
AMENDMENTS TO THE INDIAN ELECTRICITY ACT, 1910

2. In the Indian Electricity Act, 1910 (hereafter in this Chapter referred to as the Electricity Act), in section 2,—

(i) after clause (b), the following clause shall be inserted, namely:

'(ba) "area of transmission" means the area within which a transmission licensee is for the time being authorised by his license to transmit energy;'

(ii) after clause (g), the following clauses shall be inserted, namely:

'(ga) "inter-State transmission" means transmission from one State to another State;

(gb) "intra-State transmission" means transmission within the State;'

(iii) after clause (m), the following clauses shall be inserted, namely:

'(ma) "transmission licence" means a license granted under Part II A to transmit energy;

(mb) "transmission licensee" means any person who holds a transmission license;

(mc) "transmit" means conveyance of energy by means of main transmission lines and the expression "transmission" shall be construed accordingly;'.

3. After Part II of the Electricity Act, the following Part shall be inserted, namely:

"PART II A

TRANSMISSION OF ENERGY

27A. (1) The State Government or any authority notified by that Government may, on application made in the prescribed form and on payment of the prescribed fee, if any, grant a transmission license, subject to such terms and conditions as may be prescribed, to any person for intra-State transmission of energy in the area of transmission within the State.

(2) The Central Government or any authority notified by that Government may, on application made in the prescribed form and on payment of the prescribed fee, if any, grant a transmission license, subject to such terms and conditions as may be prescribed, to any person for inter-State transmission of energy in the area of transmission.

(3) The provisions of sections 12 to 19 (both inclusive) and clauses XIV to XVII (both inclusive) of the Schedule shall, as far as may be, apply to a transmission license subject to the modifications that references to "license" and "licensee" shall be construed as references to "transmission license" and "transmission licensee" respectively."
4. In section 30 of the Electricity Act, after the word "licensee", the words "transmission licensee" shall be inserted.

Amendment of section 30.

5. In section 37 of the Electricity Act, in sub-section (2),

(i) in clause (a), for the word "licensees", the words "licensees and transmission licensees" shall be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:

"(ca) prescribe the terms and conditions for grant of transmission license;".

Amendment of section 37.

6. In section 51 of the Electricity Act, for the words "licensee or any other person engaged in the business of supplying energy", the words "licensee, transmission licensee or any other person engaged in the business of transmission or supplying energy" shall be substituted.

Amendment of section 51.

CHAPTER III

AMENDMENTS TO THE ELECTRICITY (SUPPLY) ACT, 1948

7. In the Electricity (Supply) Act, 1948 (hereafter in this Chapter referred to as the Supply Act), in section 2, in clause (12), for the word "distribution", the words "distribution or transmission of energy" shall be substituted.

Amendment of section 2.

8. For section 41 of the Supply Act, the following section shall be substituted, namely:

"41. (1) Where the Board or a Generating Company considers it necessary to use for any of its purposes any transmission lines or main transmission lines of a licensee, the Board or the Generating Company shall have power to use such lines to the extent to which the capacity thereof is or thereafter remains surplus to the requirements of the licensee for the transmission of electricity, for such time and upon such terms as may be agreed with a licensee and on payment of charges calculated in accordance with the provisions of the Fifth Schedule.

(2) A transmission licensee may enter into an agreement with any Board, Generating Company, bulk licensee, supply licensee or any other transmission licensee for the transmission or supply of electricity."

Substitution of new section for section 41.

9. In section 55 of the Supply Act,—

(a) in sub-section (1), for the words "Every licensee shall comply with", the words "Every licensee or transmission licensee for intra-State transmission shall comply with" shall be substituted;

(b) in sub-section (2), for the words "Every licensee or Generating Company", the words "Every licensee, transmission licensee or Generating Company" shall be substituted.

Amendment of section 55.
(c) after sub-section (3), the following sub-section shall be inserted, namely:

"(d) The Central Government in the case of Regional Load Despatch and the State Government in the case of load despatch centres at the State may, by notification, specify the fees and charges to be paid to a person by whom the load despatch functions are entrusted by the Central Government the State Government, as the case may be."

SHANKER DAYAL SHA
Pre.

K. L. MOHANPU
Secy. to the Govt. of I.
THE NATIONAL HIGHWAYS LAWS (AMENDMENT) ORDINANCE, 1997

No. 9 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance further to amend the National Highways Act, 1956 and the National Highways Authority of India Act, 1988.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the National Highways Laws (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
CHAPTER II

Amendment of the National Highways Act, 1956

2. In section 2 of the National Highways Act, 1956 (hereinafter referred to as the National Highways Act), in sub-section (1), the words "excepts such parts thereof as are situated within any municipal area" shall be omitted.

3. For section 3 of the National Highways Act, the following sections shall be substituted, namely:

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

(a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;

(b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to any thing attached to the earth.

3A. (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. On the issue of a notification under sub-section (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to—

(a) make any inspection, survey, measurement, valuation or inquiry;

(b) take levels;

(c) dig or bore into sub-soil;

(d) set out boundaries and intended lines of work;

(e) mark such levels, boundaries and lines by placing marks and cutting trenches; or

(f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (f) of sub-section (1) of section 2 of the Advocates Act, 1961.

(1) Any order made by the competent authority under sub-section (2) shall be final.
3D. (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A. (2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3E. (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District;

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local
newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place to be fixed by such authority.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (3), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. (1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under subsection (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof, or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (3) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by the Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.
31. The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of any document;
(c) reception of evidence or affidavits;
(d) requisitioning any public record from any court or office;
(e) issuing commission for examination of witnesses.

31. Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act."

4. Section 8 of the National Highways Act shall be omitted.

5. In section 9 of the National Highways Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

"(aa) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 3H;".

CHAPTER III

AMENDMENT OF THE NATIONAL HIGHWAYS AUTHORITY OF INDIA ACT, 1988

6. For section 13 of the National Highways Authority of India Act, 1988 (hereinafter referred to as the National Highways Authority Act), the following section shall be substituted, namely:—

"13. Any land required by the Authority for discharging its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the Authority under the provisions of the National Highways Act, 1956."

7. In section 16 of the National Highways Authority Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

"(h) engage, or entrust any of its functions to, any person on such terms and conditions as may be prescribed;".

8. For section 17 of the National Highways Authority Act, the following section shall be substituted, namely:—

"17. The Central Government may, after due appropriation made by Parliament, by law in this behalf,—

(a) provide any capital that may be required by the Authority for the discharge of its functions under this Act or for any purpose connected therewith on such terms and conditions as that Government may determine;
(b) pay to the Authority, on such terms and conditions as the Central Government may determine, by way of loans or grants such sums of money as that Government may consider necessary for the efficient discharge by the Authority of its functions under this Act;"

9. In section 34 of the National Highways Authority Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:—

"(dd) the terms and conditions subject to which the functions of the Authority may be entrusted to any person under clause (h) of sub-section (2) of section 16;".

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India
THE LALIT KALA AKADAMI (TAKING OVER OF MANAGEMENT) ORDINANCE, 1997

No. 10 OF 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India.

An Ordinance to provide for the taking over of the management of the Lalit Kala Akadami for a limited period in the public interest and for matter connected therewith or incidental thereto.

WHEREAS the Lalit Kala Akadami was set up as an apex cultural body in the field of visual arts by the Government of India by Parliamentary Resolution passed on the 5th August, 1954 to encourage and promote visual arts, paintings, graphics, sculptures, etc.;
AND WHEREAS the Lalit Kala Akadami was registered as a society under the Societies Registration Act, 1860 (21 of 1860) on the 11th March, 1957;

AND WHEREAS the Akadami has full functional autonomy in the field of its activity, even though the Government of India is the sole-funding agency for the organisation;

AND WHEREAS pursuant to the complaints received with regard to the misuse of funds by the Lalit Kala Akadami from several quarters including from the Hon’ble Members of Parliament, a Committee was set up by the Government of India by Resolution dated the 24th March, 1988 under the Chairmanship of Shri P.N. Haksar to go into the functioning of the Lalit Kala Akadami and the said Committee, after a detailed scrutiny of the affairs and irregularities in the management of the said Akadami, recommended the restructuring of their General Council, Executive Board and the electrol roll, of the artists constituency;

AND WHEREAS, in view of the serious difficulties which have arisen with regard to the management of the Lalit Kala Akadami, it is necessary to take over, for a limited period, the management thereof and it is felt that any delay in taking over the management of the Lalit Kala Akadami would be highly detrimental to the interests and objectives of Akadami;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

Short title and commencement. 1. (1) This Ordinance may be called the Lalit Kala Akadami (Taking Over of Management) Ordinance, 1997.

(2) It shall come into force at once.

Definitions. 2. In this Ordinance, unless the context otherwise requires,—

(a) "Administrator" means a person appointed as the Administrator under section 4;

(b) "prescribed" means prescribed by rules made under this Ordinance;

(c) "Societies Registration Act" means the Societies Registration Act, 1860, as in force in the National Capital Territory of Delhi;

(d) "society" means the Lalit Kala Akadami being a society registered under the Societies Registration Act;

(e) words and expressions used herein and not defined, but defined in the Societies Registration Act shall have the meanings respectively assigned to them in that Act.
CHAPTER II

TAKING OVER OF THE MANAGEMENT OF THE LALIT KALA AKADAM!

3. (1) On and from the commencement of this Ordinance, and for a period of three years thereafter, the management of the society shall vest in the Central Government:

Provided that if the Central Government is of opinion that in order to secure the proper management of the society, it is expedient that such management should continue to vest in the Central Government after the expiry of the said period of three years, it may, from time to time, issue directions for the continuance of such management for such period, not exceeding one year at a time, as it may think fit; so, however, that the total period for which such management shall continue to vest in the Central Government shall not, in any case, exceed five years.

(2) The management of the society shall be deemed to include management of all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works of art, workshops, projects, stores, instruments, library, machinery, automobiles and other vehicles, cash balances, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the commencement of this Ordinance in the ownership, possession, power or control of the society, and all such books of account, registers, maps, plans and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the undertaking and affairs of the society and in force immediately before the commencement of this Ordinance shall be deemed to have terminated on such commencement.

(4) All persons in charge of the management of the society, including persons holding offices as Chairman, Vice-Chairman, Secretary or Honorary Secretary, as the case may be, and members of the General Council, Executive Board, Finance Committee and all other committees of the society immediately before the commencement of this Ordinance shall be deemed to have vacated their offices as such on such commencement.

4. (1) The Central Government shall, as from commencement of this Ordinance, appoint a person as the Administrator of the undertaking for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the undertaking for and on behalf of the Central Government.

(2) Subject to the supervision, control and directions of the Administrator, the functions of the finance Committee of the Society, before the commencement of this Ordinance, shall be exercised by an officer of the Central Government, to be appointed by that Government.

(3) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and duties as that Government may deem desirable and the Administrator may apply to the Central Government at any time for instructions as to the manner in which he shall conduct the management of the society or in relation to any matter arising in the course of such management.
(4) Subject to the other provisions of this Ordinance and the rules made thereunder and to the control of the Central Government, the Administrator shall be entitled notwithstanding anything contained in the Societies Registration Act or in any other law for the time being in force, to exercise, in relation to the management of the society, the powers of the General Council, or, as the case may be, the Executive Board, including the powers to dispose of any property or assets of such society, whether such powers are derived under any law for the time being in force or from the memorandum and rules and regulations of the society or from any other source.

(5) Every person having possession, custody or control of any property forming part of the society shall deliver forthwith such property to the Administrator.

(6) Any person who, on the commencement of this Ordinance has in his possession or under his control any books, papers, works of art or other documents relating to management of the society, including the minutes books containing the resolutions of the persons in charge of the management of the society before the commencement of this Ordinance, the current cheque books relating to the management of the society, any letters, memorandums, notes or other communications between him and the society shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, papers, works of art and other documents (including such minutes books, cheque books, letters, memorandums, notes or other communications) to the Administrator.

(7) Any person in charge of the administration of the society immediately before the commencement of this Ordinance shall, within ten days from that day or within such further period as the Central Government may allow in this behalf, furnish to the Administrator a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) forming part of the society immediately before the commencement of this Ordinance and of all the liabilities and obligations of the society, in relation to its administration, subsisting immediately before such commencement, and also of all agreements entered into by the society in relation to its administration and in force immediately before such commencement.

(8) The Administrator shall receive from the funds of the society such remuneration as the Central Government may fix.

5. Notwithstanding anything contained in any law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3) of section 3 or who ceases to hold any office by reason of the provisions contained in sub-section (4) of that section, shall be entitled to claim any compensation for the premature termination of the contract of administration or other arrangement or for the loss of his office.

6. (1) Notwithstanding anything contained in sub-section (1) of section 3, if, at any time before the expiry of the period referred to in that sub-section, it appears to the Central Government that the purposes of the vesting of the management of the society in that Government have been fulfilled or that for any other reason, it is not necessary that the management of the society should remain vested in that Government, it may, by order published in the Official Gazette, relinquish the management of the society with effect from such date as may be specified in the order.

(2) On and from the date specified under sub-section (1), the administration of the society shall vest in the General Council of the society and such management shall be carried on in accordance with the provisions of the Societies Registration Act so, however, that the steps, if any, in relation to the management of the society may be taken after the publication of the order under sub-section (1).
7. (1) Notwithstanding anything contained in the Societies Registration Act or in the memorandum and rules and regulations of the society, but subject to the provisions of sub-section (2) of section 6, so long as the management of the society remains vested in the Central Government,—

(a) it shall not be lawful for the members of the society or any other person to nominate or appoint any person to be a member of the General Council of the society;

(b) no resolution passed at any meeting of the members of the society or at any meeting of the General Council of the society, on or after the commencement of this Ordinance, shall be given effect to unless approved by the Central Government;

(c) no proceeding for the dissolution of the society or for the merger with any other society or for the appointment of a Receiver in respect of its administration shall be in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1) and subject to such other exceptions, restrictions and limitations, if any, as may be prescribed, the Societies Registration Act shall continue to apply to the society in the same manner as it applied thereto before the commencement of this Ordinance.

CHAPTER III

MISCELLANEOUS

8. Any person who,—

(a) having in his possession or custody or under his control any property forming part of the society, wrongfully withholds such property from the Administrator or any person authorised under this Ordinance, or

(b) wrongfully obtains possession of any such property, or

(c) wilfully retains, or fails to deliver, any property forming part of the society or removes or destroys it, or

(d) wilfully withholds or fails to account for any books, papers, works of art or other documents which may be in his possession or custody or under his control to the Administrator or any person authorised under this Ordinance, or

(e) fails, without any reasonable cause, to furnish information or particulars as provided in sub-section (6) of section 4,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

9. (1) Where an offence under this Ordinance 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:

Application of Act 21 of 1860.
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 Ordinance 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 any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

10. In computing the period of limitation prescribed by any law for the time being in force for any suit or application against any person by the society in respect of any matter arising out of any transaction in relation to its management, the time during which this Ordinance is in force shall be excluded.

11. The provisions of this Ordinance or any notification, order or rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Ordinance or in any instrument having effect by virtue of any law other than this Ordinance or in any decree or order of any court.

12. (1) No suit, prosecution or other legal proceeding shall lie against the Administrator or any officer of the Central Government or any other person for anything which is done in good faith done or intended to be done under this Ordinance.

(2) No suit or other legal proceeding shall lie against the Central Government or the Administrator or any officer of the Central Government or any other person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

13. (1) If the Central Government is satisfied, after such inquiry as it may think fit, that any contract or agreement entered into at any time within one year immediately preceding the commencement of this Ordinance, between the society and any other person, in so far as such contract or agreement relates to the management of the society, has been entered into in bad faith, or is detrimental to the interests of the society, it may make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Provided that no contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by an order under sub-section (1) may make an application to the High Court at Delhi for the variation or reversal of such order and thereupon such court may confirm, modify or reverse such order.
14. If the Administrator is of opinion that any contract of employment entered into by the society in relation to its management, at any time before the commencement of this Ordinance, is unduly onerous, he may, by giving to the employee one month's notice in writing or the salary or wages for one month in lieu thereof, terminate such contract of employment.

15. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

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

SHANKER DÂYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Government of India.
MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 25th January, 1997/Magha 5, 1918 (Saka)

THE TELECOM REGULATORY AUTHORITY OF INDIA ORDINANCE, 1997

No. 11 of 1997

Promulgated by the President in the Forty-seventh Year of the Republic of India

An Ordinance to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

WHEREAS the Telecom Regulatory Authority of India Bill, 1996 was introduced in the House of the People but has not been passed;

AND WHEREAS the Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;
NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 122 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Telecom Regulatory Authority of India Ordinance, 1997.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,

(a) “appointed date” means the date with effect from which the Authority is established under sub-section (1) of section 3;

(b) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;

(c) “Chairperson” means the Chairperson of the Authority appointed under sub-section (3) of section 3;

(d) “Fund” means the Fund constituted under sub-section (1) of section 22;

(e) “licensor” means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunication services;

(f) “member” means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(g) “notification” means a notification published in the Official Gazette;

(h) “prescribed” means prescribed by rules made under this Ordinance;

(i) “regulations” means regulations made by the Authority under this Ordinance;

(j) “service provider” means the Government and includes a licensee;

(k) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services.
(2) Words and expressions used and not defined in this Ordinance but defined in the
Indian Telegraph Act, 1855 or the Indian Wireless Telegraphy Act, 1933, shall have the
meanings respectively assigned to them in those Acts.

(3) Any reference in this Ordinance to a law which is not in force in the State of
Jammu and Kashmir shall in relation to that State be construed as a reference to the
responding law, if any, in that State.

CHAPTER II

"TELECOM REGULATORY AUTHORITY OF INDIA"

3. (1) With effect from such date as the Central Government may, by notification
appoint, there shall be established, for the purposes of this Ordinance, an Authority to
be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual
succession and a common seal, with power, subject to the provisions of this Ordinance,
to acquire, hold and dispose of property, both movable and immovable, and to contract,
and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not
exceeding four members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

4. (1) The Chairperson shall be a person who is or has been a Judge of the
Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person,--

(a) who has held the post of Secretary or Additional Secretary, or the posts of
Additional Secretary and Secretary to the Government of India or any equivalent
post in the Central Government or the State Government for a period of three years;
or

(b) who has special knowledge of law or consumer affairs.

5. (1) Before appointing any person as the Chairperson or member, the Central
Government shall satisfy itself that the person does not have any such financial or other
interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which
he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he
enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire
from service before joining as a member.
(5) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed.

(6) The salary, allowances and other conditions of service of the Chairperson or of a member shall not be varied to his disadvantage after appointment.

(7) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may-

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(8) The Chairperson or any other member ceasing to hold office as such, shall -

(a) be ineligible for further employment under the Central Government or any State Government; or

(b) not accept any commercial employment, for a period of two years from the date he ceases to hold such office.

(9) A vacancy caused to the office of the Chairperson or any other member shall be filled up within a period of two months from the date on which such vacancy occurs.

Explanation.—For the purposes of this section, “commercial employment” means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in any field and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

**Power of Chairperson and Vice-Chairperson.**

6. (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

**Removal of members from office in certain circumstances.**

7. The Central Government may remove from office any member, where-

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or
(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

e) has so abused his position as to render his continuance in office prejudicial to the public interest.

8. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

9. No act or proceeding of the Authority shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Ordinance.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

POWERS AND FUNCTIONS OF THE AUTHORITY

11. (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to-

(a) recommend the need and timing for introduction of new service provider;

(b) recommend the terms and conditions of licence to a service provider;
(c) ensure technical compatibility and effective inter-relationship between different service providers;

(d) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(e) ensure compliance of terms and conditions of licence;

(f) recommend revocation of licence for non-compliance of terms and conditions of licence;

(g) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(h) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(i) protect the interest of the consumers of telecommunication services;

(j) settle disputes between service providers;

(k) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(l) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(m) ensure effective compliance of universal service obligations;

(n) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Ordinance.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Ordinance including the rates at which messages shall be transmitted to any country outside India:

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.
12. (1) Where the Authority considers it expedient so to do, it may, by order in writing—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other document of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1)—

(a) every officer of the Government Department, if such service provider is a department of the Government;

(b) every director, manager, secretary or other officer, if such service provider is a company; or

(c) every partner, manager, secretary or other officer, if such service provider is a firm; or

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) and (c),

shall be bound to produce before the Authority making the inquiry, all such books of accounts or other documents in his custody or power relating to, or having a hearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as may consider necessary for proper functioning by service providers.

13. The Authority may, for the discharge of its functions under sub-section (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

CHAPTER IV

SETTLEMENT OF DISPUTES

14. (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:
Provided that if the members of the bench differ on any point or points they shall state the point or points on which they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed date all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court on any matter relating to:

(i) technical compatibility and inter-connections between service providers;

(ii) revenue sharing arrangements between different service providers;

(iii) quality of telecommunication services and interest of consumers.

Provided that nothing in this sub-section shall apply in respect of matters relating to:

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885.

15. (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation. - For the purposes of this sub-section, the expression "aggrieved person" means:

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14;

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1), the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit preferably within a period of six months from the date of filing of such application and shall record reasons in writing if final order cannot be passed within the said period.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.
(3) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

16. (i) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex-parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex-parte;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

18. Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Right to legal representation.

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.
Orders passed by the Authority or the High Court to be executable as a decree.

20. If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government.

21. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as are required to pay salaries and allowances payable to the Chairperson and the members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority.

Fund.

22. (1) There shall be constituted a Fund to be called the Telecom Regulatory Authority Fund and there shall be credited thereto--

(a) all grants, fees and charges received by the Authority under this Ordinance; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting--

(a) the salaries and allowances payable to the Chairperson and members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority; and

(b) the expenses on objects and for purposes authorised by this Ordinance.

Accounts and audit.

23. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit or shall be payable by the Authority to the Comptroller and Auditor-General of India.
The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same powers, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

25. (1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.
26. All members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance to be public servants within the meaning of section 21 of the Indian Penal Code.

27. No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Ordinance to determine.

28. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

29. If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.

30. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time 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 provided in this Ordinance if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

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

Explanations. -- For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.
31. (1) Where an offence under this Ordinance has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

32. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

33. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle dispute under Chapter IV and to make regulation under section 35) as it may deem necessary.

34. (1) No court shall take cognizance of any offence punishable under this Ordinance or the rules or regulations made thereunder save on a complaint made by the Authority.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of the first class shall try any offence punishable under this Ordinance.

35. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(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 salary and allowances payable to and the other conditions of service of the Chairperson and members under sub-section (3) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;

(d) the period within which an application is to be made under sub-section (1) of section 5;
(e) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(f) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-sections (1) and (2) of section 24;

(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

36. (1) The Authority may, by notification, make regulations consistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) levy of fees and other charges under clause (f) of sub-section (1) of section 11.

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

38. The provisions of this Ordinance shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 and, in particular, nothing in this Ordinance shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority.
S. 39. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made before each House of Parliament.

SHANKER DAYAL SHARMA,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th January, 1997/Magha 10, 1918 (Saka)

THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY
ORDINANCE, 1997

No. 12 of 1997

Promulgated by the President in the Forty-eighth Year of the
Republic of India.

An Ordinance to provide for the establishment of a National Environment
Appellate Authority to hear appeals with respect to restriction of areas in
which any industries, operations or processes or class of industries,
operations or processes shall not be carried out or shall be
carried out subject to certain safeguards under the
Environment (Protection) Act, 1986 and for matters
connected therewith or incidental thereto.

Whereas Parliament is not in session and the President is satisfied that circumstances
exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (I) of article 123 of the
Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (I) This Ordinance may be called the National Environment Appellate Authority
Ordinance, 1997.

(2) It shall come into force at once.
Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Act" means the Environment (Protection) Act, 1986;

(b) "Authority" means the National Environment Appellate Authority established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "Member" means a Member of the Authority;

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "Vice-Chairperson" means the Vice-Chairperson of the Authority;

CHAPTER II

ESTABLISHMENT OF AUTHORITY

3. (1) The Central Government shall, by notification in the Official Gazette, establish a body to be known as the National Environment Appellate Authority to exercise the powers conferred upon, and to perform the functions assigned to it under this Ordinance.

(2) The head office of the Authority shall be at Delhi.

Composition of Authority.

4. The Authority shall consist of a Chairperson, a Vice-Chairperson and such other Members, not exceeding three, as the Central Government may deem fit.

Qualifications for appointment as Chairperson, Vice-Chairperson or other Member.

5. (1) A person shall not be qualified for appointment as a Chairperson unless he has been—

(a) a Judge of the Supreme Court; or

(b) the Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as a Vice-Chairperson unless he has—

(a) for at least two years held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and

(b) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.

(3) A person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development.

(4) The Chairperson, the Vice-Chairperson and the Members shall be appointed by the President.
6. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Vice-Chairperson shall act as the Chairperson until the date on which a new Chairperson appointed in accordance with the provisions of this Ordinance to fill such vacancy enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairperson or, as the case may be, such one of the Member as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

7. The Chairperson, Vice-Chairperson or other Member shall hold office for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:

Provided that no Chairperson, Vice-Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of seventy years; and

(b) in the case of the Vice-Chairperson or other Member, the age of sixty-five years.

8. (1) The Chairperson, Vice-Chairperson or other Member may, by notice in writing under his hand addressed to the President, resign his office:

Provided that the Chairperson, Vice-Chairperson or other Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson, Vice-Chairperson or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson, Vice-Chairperson or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The President may suspend from office the Chairperson, the Vice-Chairperson or any other Member of the Authority in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or other Member referred to in sub-section (2).
9. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Vice-Chairperson and other Members shall be such as may be prescribed by the Central Government.

10. No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the establishment of the Authority.

CHAPTER III

- JURISDICTION AND POWERS OF THE AUTHORITY

11. (1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards, may within thirty days from the date of such order prefer an appeal to the authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For purposes of sub-section (1), “person” means—

(a) any person who is likely to be affected by the grant of environmental clearance;

(b) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;

(d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or

(e) any local authority within any part of whose local limits is within the neighbourhood, wherein the project is proposed to be located.

(3) On receipt of an appeal preferred under sub-section (1), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.
(2) The Authority shall have, for the purposes of discharging its functions under this Ordinance, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witness or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

13. The Chairperson shall exercise such financial and administrative powers as may be vested in him under the rules:

Provided that the Chairperson shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairperson or any other officer subject to the condition that the Vice-Chairperson or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

14. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and other employees as it may think fit.

(2) The officers and other employees of the Authority shall discharge their functions under the general superintendence of the Chairperson.
(3) The salaries and allowances and conditions of service of the officers and other employees shall be such as may be prescribed.

CHAPTER IV

MISCELLANEOUS

15. With effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Ordinance.

16. All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

17. The Chairperson, Vice-Chairperson and other Members and the officers and other employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

18. No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson, Vice-Chairperson or other Member of the Authority or any other person authorised by the Chairperson, the Vice-Chairperson or other Member for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

19. Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

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

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

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

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

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

Provided that no such order shall be made after the expiry of the period of three years from the date on which this Ordinance is promulgated by the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

22. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(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 under sub-section (4) of section 8 for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or other Member;

(b) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson, the Vice-Chairperson and other Members under section 9;

(c) the form and the particulars which an appeal shall contain under sub-section (2) of section 11;

(d) financial and administrative powers of the Chairperson under section 13;

(e) the salaries and allowances and conditions of service of the officers and other employees of the Authority;

(f) any other matter which is required to be, or may be, prescribed.

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

SHANKER DAYAL SHARMA,
President.

RAGHBIR SINGH,
Additional Secy. to the Govt. of India.
Corrigenda

In the Reserve Bank of India (Amendment) Ordinance, 1997 (Ord. 2 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 9th January, 1997 (Issue No. 7),--

1. At page 2, in line 22, for "approval", read "approval".

2. At page 3, in line 10, for "fifth", read "fifty".

3. At page 6, in line 3, for "interest", read "interest".

4. At page 7,--

(i) in line 8, for "in manner", read "in a manner";

(ii) in line 17, for "direction", read "directions";

(iii) in line 42, for "sub-section", read "sub-sections".

Corrigenda

In the Depositories Related Laws (Amendment) Ordinance, 1997 (Ord. 5 of 1997) published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 15th January 1997 (Issue No. 9), at page 1,--

(i) in the long title, in line 5, for "Acquisition", read "Acquisition";

(ii) in line 7, for "Law", read "Laws".

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MINISTRY OF LAW AND JUSTICE  
(Legislative Department)  

New Delhi, the 5th June, 1997; Jyaiistra 15, 1919 (Saka)  

THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS  
(AMENDMENT) ORDINANCE, 1997  

No. 13 of 1997  

Promulgated by the President in the Forty-eighth Year of the Republic of India. 

An Ordinance further to amend the Presidential and Vice-Presidential Elections Act, 1952. 

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action; 

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1997.  

(2) It shall come into force at once.
2. In section 5B of the Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as the principal Act), in sub-section (1),—

(i) in clause (a), for the words "ten electors" at both the places, where they occur, the words "fifty electors" shall be substituted;

(ii) in clause (b), for the words "five electors" at both the places, where they occur, the words "twenty electors" shall be substituted.

3. In section 5C of the principal Act, in sub-section (7), for the words "two thousand five hundred rupees", the words "fifteen thousand rupees" shall be substituted.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 21st June, 1997/jyaistha 31, 1919 (Saka)

THE OUT-OF-TURN ALLOTMENT OF GOVERNMENT RESIDENCES
(VALIDATION) ORDINANCE, 1997

No. 14 of 1997

Promulgated by the President in the Forty-eighth Year
of the Republic of India.

An Ordinance to validate certain out-of-turn allotments made by the
Central Government.

WHEREAS Parliament is not in session and the President is satisfied
that circumstances exist which render it necessary for him to take
immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of
article 123 of the Constitution, the President is pleased to promulgate the
following Ordinance:

1. (1) This Ordinance may be called the Out-of-turn Allotment of Government
Residences (Validation) Ordinance, 1997.

(2) It shall come into force at once.
2. In this Ordinance, "out-of-turn allotment", in relation to a Government resident, means the allotment made by the Central Government during the period on and from the 1st day of January, 1991 to the 31st day of December, 1995 to a person eligible for allotment of such residence before his regular turn for allotment of such residence becomes due to that person.

3. (1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority to the contrary, every out-of-turn allotment shall be deemed to have been made by the Central Government in exercise of the powers vested in it for making an allotment under Supplementary Rule 317-B-23 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963.

(2) Every out-of-turn allotment referred to in sub-section (1) shall, for all purposes be deemed to be, and always to have been, validly made under the said Allotment of Government Residences (General Pool in Delhi) Rules, 1963 and no allottee of such allotment shall, save as otherwise provided in sub-section (5), be evicted from a Government residence solely on the ground that such residence was allotted to him on out-of-turn basis.

(3) No allottee referred to in sub-section (1) shall be allowed to continue to occupy a Government residence unless—

(a) he has paid, or agrees to pay in equal monthly instalments (without interest) within a period of two years from the date of commencement of this Ordinance, the arrears of enhanced licence fee payable by him in terms of the orders of the Supreme Court in the matter of Writ Petition No. 585 of 1994, and also agrees to continue to pay the appropriate enhanced licence fee as is applicable in his case till the day he becomes eligible for in-turn allotment of a Government residence; and

(b) he, being an allottee who is to superannuate within two years from the commencement of this Ordinance, has given his consent in writing that his employer may deduct the enhanced licence fee as is applicable in his case referred to in clause (a) from his gratuity or any other retirement benefit or any other arrears payable to him.

(4) No person who has been allotted a Government residence on out-of-turn basis shall be allowed to avail of protection against eviction under sub-section (2) unless such person has given in writing, within thirty days from the date of commencement of this Ordinance, that he shall make the payment of the enhanced licence fee including the arrears as is payable by him in accordance with the provisions of sub-section (3).

(5) No protection against eviction under sub-section (2) shall apply to an out-of-turn allotment—

(a) where it is proved that the allottee has sub-let the Government residence allotted to him; or

(b) where such allotment has been obtained by making misrepresentation of fact, by fraudulent means or on payment of illegal gratification to any person for obtaining such Government residence; or

(c) where such allotment is of a higher type of Government residence than his entitlement.
4. Any suit or legal proceeding relating to an out-of-turn allotment which was instituted before the commencement of this Ordinance shall, on such commencement, abate.

Suits, etc., to abate.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE  
(Legislative Department) 

New Delhi, the 16th September, 1997/Bhadra 25, 1919 (Saka) 

THE INCOME-TAX (AMENDMENT) ORDINANCE, 1997 

No. 15 of 1997 

Promulgated by the President in the Forty-eighth Year of the Republic of India. 

An Ordinance further to amend the Income-tax Act, 1961. 

WHEREAS the Income-tax (Second Amendment) Bill, 1997 has been introduced in Parliament but has not yet been passed; 

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill and to make certain other amendments to the Income-tax Act, 1961; 

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:— 

1. (1) This Ordinance may be called the Income-tax (Amendment) Ordinance, 1997. 

(2) Save as otherwise provided in this Ordinance, it shall come into force at once. 

2. In section 32 of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in sub-section (1), with effect from the 1st day of April, 1998,—
(a) before clause (ii), the following clause shall be inserted, namely:

"(i) in the case of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;";

(b) for the second proviso, the following proviso shall be substituted, namely:

"Provided further that where an asset referred to in clause (i) or clause (ii), as the case may be, is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of at least one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such assets shall be restricted to fifty per cent, of the amount calculated at the percentage, prescribed for an asset under clause (i) or clause (ii), as the case may be:"

3. In section 80-1A of the Income-tax Act,—

(a) in sub-section (2), in clause (iv),—

(i) in sub-clause (b), the following proviso shall be inserted with effect from the 1st day of April, 1998, namely:—

'Provided that in the case of an industrial undertaking set up in part of India for the generation, or generation and distribution, of power, the period ending shall have effect as if for the figures "1998", the figures "2000" had been substituted.';

(ii) in sub-clause (c), after the words "specify in this behalf", the words and letters "as industrially backward district of Category 'A' or industrially backward district of Category 'B' and" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1995;

(b) in sub-section (4B), after the words, "North-Eastern Region", the words, letters and figures "or in any part of India on or after the 1st day of April, 1997" shall be inserted with effect from the 1st day of April, 1998;

(c) in sub-section (5), in clause (i), in sub-clause (b), after the proviso the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1995, namely:—

'Provided further that in case of an industrial undertaking located in Category 'B' industrially backward district, the provisions of this clause shall have effect as if for the words "five assessment years", the words "three assessment years" had been substituted.';

(d) in sub-section (6),—

(A) for clause (ii), the following clauses shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1995, namely:—

"(ii) ten in the case of any other assessee deriving profits and gains from an industrial undertaking other than an industrial undertaking located in an industrially backward district of Category 'B';

(iia) eight in the case of an assessee deriving profits and gains from an industrial undertaking located in an industrially backward district of Category 'B';"

(B) in clause (iv), the following proviso shall be inserted with effect from the 1st day of April, 1998, namely:—

'Provided that where the assessee begins operating and maintaining any infrastructure facility referred to in sub-clause (ii) of clause (ca) of sub-
section (1/2), the provisions of this clause shall have effect as if for the word "twelve", the word "twenty" had been substituted.

(c) after sub-section (7), the following sub-section shall be inserted with effect from the 1st day of April, 1998, namely:

"(7A) Notwithstanding anything contained in sub-section (4A), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to, a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which transfer to reserve account took place."

(f) in sub-section (1/2), for clause (ca), the following clause shall be substituted with effect from the 1st day of April, 1998, namely:

"(ca) "infrastructure facility" means—

(i) a road, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette,

(ii) a highway including housing or other activities being an integral part of the highway project; and

(iii) a water supply project, irrigation project, sanitation and sewerage system;"

K. R. NARAYANAN,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 16th September, 1997/Bhadra 25, 1919 (Saka)

THE FINANCE ACT (AMENDMENT) ORDINANCE, 1997

No. 16 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Finance Act, 1979 and the Finance (No. 2) Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Finance Acts (Amendment) Ordinance, 1997.

(2) It shall come into force at once.

2. In sub-section (1) of section 35 of the Finance Act, 1979, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, in clause (i), for the works “three hundred rupees”, the words “seven hundred and fifty rupees” shall be substituted.
3. In section 68 of the Finance (No. 2) Act, 1996—
   (a) in sub-section (1), for the words “two per cent.”, the words “five per cent.” shall be substituted;
   (b) to sub-section (1), the following proviso shall be added, namely:

   “Provided that in the case of goods falling under heading Nos. 27.09 to 27.15 and heading No. 98.01 of the said First Schedule, the provisions of this sub-section shall have effect, as if the words “five per cent.”, the words “two per cent.” had been substituted.”

K. R. NARAYANAN,
President,

K. L. MOHANPURIA,
Secy. to the Govt. of India.
THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1997

No. 17 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Whereas a Bill further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, has been introduced in Parliament but has not yet been passed;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

(1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
2. In section 6 of the Employees’ Provident Funds and Miscellaneous Provident Act, 1952 (hereinafter referred to as the principal Act), for the words “eight and one-third per cent.,” and “ten per cent.,” wherever they occur, the words “ten per cent.” and “twelve per cent.” shall respectively be substituted.

3. In section 7D of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

“(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is, or has been, or is qualified to be,—

(i) a Judge of a High Court, or
(ii) a district judge.”

4. Section 7F of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:

“(2) The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Presiding Officer.”

5. In section 16 of the principal Act, in sub-section (3),—

(i) in clause (c), the word “or” occurring at the end shall be omitted;
(ii) clause (d) and the Explanation thereto shall be omitted.

K. R. NARAYAN

President

K. L. MOHANPURIA

Secy. to the Govt. of India
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 24th September, 1997/Asvina 2, 1919 (Saka)

THE PAYMENT OF GRATUITY (AMENDMENT) ORDINANCE, 1997

No. 18 OF 1997

Promulgated by the President in the Forty-eighth Year of the
Republic of India.

An Ordinance further to amend the Payment of Gratuities Act, 1972.

Whereas a Bill further to amend the Payment of Gratiuity Act, 1972, has been introduced in Parliament but has not yet been passed;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Payment of Gratuities (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
2. In section 4 of the Payment of Gratitude Act, 1972, in sub-section (3), for the words "one lakh", the words "two lakhs and fifty thousand" shall be substituted.

K. R. NARAYANAN,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 26th September, 1997 / Asvina 4, 1919 (Saka)

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE, 1997

No. 19 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Merchant Shipping (Amendment) Ordinance, 1997.

(2) It shall come into force at once.

2. In section 89 of the Merchant Shipping Act, 1958, (hereinafter referred to as the principal Act), after clause (e), the following clause shall be inserted, namely:

"(f) to transmit the complaint of any dispute of a foreign seaman of a vessel, registered in a country other than India, in Indian territorial waters, with the master,
owner or agent, to the competent authority of the country of registration and a copy
of such complaint shall be forwarded to the Director General, International Labour
Organisation office."

3. In section 132 of the principal Act, after sub-section (1), the following sub-section
shall be inserted, namely:—

"(2A) Any complaint of dispute, received, by the Shipping master from an
Indian seaman, on a vessel registered in a country other than India in Indian territorial
waters, with the master, owner or agent."

4. After section 138 of the principal Act, the following section shall be inserted,
namely:—

"138A. The ordinary hours of work for all seamen shall not exceed forty-eight
hours in a week."

5. In section 369 of the principal Act, after sub-section (2), the following sub-section
shall be inserted, namely:—

"(3) The Central Government shall on receipt of the investigation report from
the court cause it to be published in the Official Gazette."

6. In Section 436 of the principal Act, in sub-section (2), in the Table, after serial
Number 42 and the entries relating thereto, the following shall be inserted, namely:—

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K. R. NARAYANAN,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 1st October, 1997/Asvina 9, 1919 (Saka)

THE LOTTERIES (REGULATION) ORDINANCE, 1997

No. 20 of 1997

promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to regulate the lotteries and to provide for matters connected therewith and incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Lotteries (Regulation) Ordinance, 1997.

(2) It shall extend to the whole of India.

(3) It shall come into force on the 2nd day of October, 1997.
Definitions.  

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets;

(b) "prescribed" means prescribed by rules made under this Ordinance.

Prohibition of lotteries.  

3. Save as otherwise provided in section 4, no State Government shall organise, conduct or promote any lottery.

Conditions subject to which lotteries may be organised, etc.  

4. A State Government may organise, conduct or promote a lottery, subject to the following conditions, namely:—

(a) prizes shall not be offered on any preannounced number or on the basis of a single digit;

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c) the State Government shall sell the tickets either itself or through distributors or selling agents;

(d) the State Government itself shall conduct the draws of all the lotteries;

(e) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(f) the place of draw shall be located within the State concerned;

(g) no lottery shall have more than one draw in a week;

(h) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;

(i) the number of bumper draws of a lottery shall not be more than six in a calendar year;

(j) such other conditions as may be prescribed by the Central Government.

Prohibition of sale of ticket in a State.  

5. A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by another State.

Prohibition of organisation, etc., of lottery.  

6. The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of section 4 or where tickets of such lottery are sold in contravention of the provisions of section 5.
7. If any person acts as an agent, a promoter or trader in any lottery organised, conducted or promoted in contravention of the provisions of this Ordinance or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

8. The offence under this Ordinance shall be cognizable and non-bailable.

9. (1) Where an offence under this Ordinance 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 exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals, and

(b) "director", in relation to a firm, means a partner in the firm.

10. The Central Government may give directions to the State Government as to carrying into execution in the State of any of the provisions of this Ordinance or of any rule or order made thereunder.

11. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(2) Every notification issued by the Central Government, and every rule made by it, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.
12. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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) time to be fixed for claiming prize money under clause (e) of subsection (2) of section 4;

(b) period to be fixed for draws of all lotteries under clause (h) of subsection (2) of section 4; and

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be 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.

K. R. NARAYANAN,

President.

K. L. MOHANPURIA,

Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

*New Delhi, the 3rd October, 1997/Asvina 11, 1919 (Saka)*

**THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ORDINANCE, 1997**

No. 21 of 1997

Premulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period for dealing more effectively with persons indulging in hoarding and blackmarketing of, and profiteering in, essential commodities and for matters connected therewith or incidental thereto.

*Whereas* for ensuring the availability of essential commodities at fair prices, it is necessary to curb the hoarding and blackmarketing of, and profiteering in, such commodities;

*And whereas* for dealing more effectively with persons indulging in such anti-social activities, it is necessary to make certain special provisions by way of amendments to the Essential Commodities Act, 1955, for a temporary period;
AND WHEREAS a Bill further to amend the Essential Commodities (Special Provisions) Act, 1981 and to make special provisions by way of amendment to the Essential Commodities Act, 1955 to achieve the above objects was introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Essential Commodities (Special Provisions) Ordinance, 1997.

(2) It shall come into force at once except in the States of Arunachal Pradesh, Mizoram and the Union territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli and Lakshadweep; and in these States and Union territories on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and Union territories, and any reference to the commencement of this Ordinance or any provision thereof shall be construed in relation to each State and Union territory, as a reference, to the coming into force of this Ordinance in that State or Union territory.

2. During the period of operation of this Ordinance, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

Provided that the amendments specified in sections 5 to 10 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Ordinance and the provisions of the principal Act shall apply to, and in relation to, such offences as if those amendments had not been made.

3. In section 2 of the principal Act,—

(a) clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted, namely:—

'(iia) "Code" means the Code of Criminal Procedure, 1973;" and

(b) after clause (e), the following clause shall be inserted, namely:—

"(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code."

4. In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

"Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed."

5. In section 7 of the principal Act,—

(a) in sub-section (1), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2A) shall be omitted;

(d) sub-section (2B) shall be omitted.
6. To section 8 of the principal Act, the following proviso shall be added, namely:

"Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (i) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only."

7. For section 10A of the principal Act, the following section shall be substituted, namely:

"10A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under—

(a) this Act shall be cognizable;

(b) this Act except the offence punishable under sub-clause (i) of clause (a) of sub-section (1) of section 7 shall be non-bailable;

(c) sub-clause (i) of clause (a) of sub-section (1) of section 7, if committed more than once shall be non-bailable."

8. After section 10A of the principal Act, the following section shall be inserted, namely:

"10AA. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no officer below the rank of an officer-in-charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act."

9. Section 12 of the principal Act shall be omitted.

10. For section 12A of the principal Act, the following sections shall be substituted, namely:

"12A. (1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the Explanation to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) he is qualified for appointment as a judge of High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. (1) Notwithstanding anything contained in the Code,—

(e) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are these Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;
(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him;

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section:

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a special Court or the High Court;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may
exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12A.

12AB. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AC. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.'.

II. After section 51A of the principal Act, the following section shall be inserted namely:—

"15AA. Notwithstanding anything contained in any other law, any prosecution in respect of any offence under the principal Act, committed during the period commencing on the 1st day of September, 1997, and ending with the date of commencement of this Ordinance, shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court."

K.R. NARAYANAN,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th October, 1997/Kartika 7, 1919 (Saka)

THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) AMENDMENT ORDINANCE, 1997

No. 22 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to amend the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

Now, therefore, in exercise of the powers conferred by clause (1) of article 226 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1997.

(2) It shall come into force at once.
2. For section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Definitions.

"2. In this Act, unless the context otherwise requires,—

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "Board" means the Prasar Bharati Board;

(d) "broadcasting" means broadcasting by the Prasar Bharati;

(e) "Chairman" means the Chairman of the Corporation appointed under section 4;

(f) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(g) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(h) "elected Member" means a Member elected under section 3;

(i) "Executive Member" means the Executive Member appointed under section 4;

(j) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(k) "Member" means a Member of the Board;

(l) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(m) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(n) "notification" means a notification published in the Official Gazette;

(o) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an ex officio Member, the Nominated Member or an elected Member;

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

(q) "Recruitment Board" means a board established under sub-section (1) of section 10;

(r) "regulations" means regulations made by the Corporation under this Act;

(s) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;
(i) "year" means the financial year.

3. In section 3 of the principal Act,—

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The Board shall consist of—

(a) a Chairman;

(b) one Executive Member;

(c) six Part-time Members;

(d) Executive Director (Finance), ex officio;

(e) Executive Director (Personnel), ex officio;

(f) Director-General (Akashvani), ex officio;

(g) Director-General (Doordarshan), ex officio;

(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves."

(b) in sub-section (6), the proviso shall be omitted.

4. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism."

5. For section 6 of the principal Act, the following section shall be substituted, namely:—

"6. (1) The Chairman shall be Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, shall be a Whole-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(3) The term of office of Part-time Members shall be six years.

(4) The term of office of an elected Member shall be six years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) The Executive Member shall be an employee of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such
conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed.

(6) The Chairman shall be entitled to such allowances, honorarium and other facilities as may be prescribed.

(7) Part-time Members shall be entitled to such allowances as may be prescribed.

(8) The Chairman, the Executive Member and other Members except *ex officio* Members shall not be eligible for re-appointment.

(9) No person having any commercial interest, direct or indirect, in any broadcasting, advertising or programme producing agency shall be eligible for appointment as a Chairman, Executive Member or Part-time Member.”.

6. In section 7 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman, Executive Member or any Part-time Member from his office if such Chairman, Executive Member or such Part-time Member—

(a) ceases to be a citizen of India; or

(b) is adjudged an insolvent; or

(c) is convicted of any offence involving moral turpitude; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove the Chairman from his office if he engages during his term of office in any paid employment outside the duties of his office.”;

(b) in sub-section (4), for the words “any Whole-time Member, except any *ex officio* Member, the Nominated Member or any elected Member,” the words “the Executive Member” shall be substituted.

7. In section 9 of the principal Act, in sub-section (1), after the words and brackets “the Director-General (Doodhandhan),” the words and brackets ”, the Executive Director (Finance), the Executive Director (Personnel)” shall be inserted.

8. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards:

Provided that the Union Public Service Commission shall continue to discharge its functions relating to recruitment of officers and employees of the Corporation which was being discharged immediately before the appointed day till the recruitment Board is constituted for such categories of officers and employees of the Corporation.”.
9. In section 11 of the principal Act,—

(a) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) the provisions of sub-section (1) shall not apply to any of the officers or employees not borne on the cadres of Akashvani and Doordarshan:

Provided that officers from the Indian Information Service, Central Secretariat Service, Central Secretariat Stenographers’ Service, Central Secretariat Clerical Service borne on the cadre of the Ministry of Information and Broadcasting, equal in number of their cadre posts borne on the strength of Akashvani and Doordarshan immediately before the appointed day may be absorbed by the Corporation after following such procedure as may be prescribed:

Provided further that the members of Indian Information Service and other services working in Akashvani and Doordarshan immediately before the appointed day and not borne on the cadres of Akashvani and Doordarshan shall be deemed to be on deputation on such terms and conditions and till such time as may be finalised by the Corporation in consultation with the respective cadre controlling authorities.

(b) in sub-section (5), the third proviso shall be omitted.

10. In section 12 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public service broadcasting to inform, educate and entertain the public."

(ii) in sub-section (2), in clause (a), for the words "broadcast frequencies available", the words "broadcasting frequencies made available for public service broadcasting" shall be substituted;

(iii) in sub-section (3), in clause (c), the words "and to establish procedures for the allocation of such programmes, rights or privileges to the services," shall be omitted;

(iv) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) In order to achieve its objectives the Corporation may formulate its own programme and advertisement codes, fix such limits on broadcasting of advertisements as considered necessary to ensure that adequate time is made available for the promotion of the objectives of the Prasar Bharati.

Explanation.—For the removal of doubts it is hereby declared that the programme and advertisement codes or limits on broadcasting of advertisement shall be in addition to and not in derogation of any programme and advertisement codes or limits on broadcasting of advertisements specified by or under any other law for the time being in force."

(v) in sub-section (7),—

(a) the word "service" shall be omitted;
(b) the proviso shall be omitted.

11. Sections 13 to 15 of the principal Act shall be omitted.

12. In section 16 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

"(a) all property and assets which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on perpetual lease on payment of a nominal fee of rupees one per annum.

(b) the Non-lapsable Fund which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation;"

13. For section 25 of the principal Act, the following section shall be substituted, namely:—

"25. (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the objections, if any, of the Board.

(2) The Central Government after considering the objections if any of the Board, may propose to supersede the Board and if it so proposes, shall prepare a report and lay it before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(3) If, before the expiry of the session immediately following the session or the successive session referred to in subsection (2), both Houses agree to supersede the Board the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification.

(4) Upon the publication of the notification under sub-section (3),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(5) On the expiration of the period of supersession specified in the notification issued under sub-section (4), the President may reconstitute the Board by fresh appointments, and in such case any person who had vacated his office under clause (a) of sub-section (4) shall not be disqualified for appointment:"

Substitution of new section for section 25.

Report to Parliament in certain matters and recommendations as to action against the Board.
Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(6) The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament.

14. Section 26 of the principal Act shall be omitted.

15. For sections 27 and 28 of the principal Act, the following sections shall be substituted namely:

"27. The Chairman and every other Member, every officer or other employee of the Corporation and every member of a committee thereof, and every member of a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

28. No suit or other legal proceeding shall lie against the Corporation, the Chairperson or any member or officer or other employee thereof or a member of a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder."

16. For section 31 of the principal Act, the following section shall be substituted, namely:

"31. The Corporation shall prepare once in every year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

17. In section 32 of the principal Act, in sub-section (2),

(i) in clause (a) for the words, brackets and figures "Whole-time Members under sub-section (7) of section 6", the words, brackets and figures "Executive Member under sub-section (5) of section 6" shall be substituted;

(ii) for clause (b), the following clauses shall be substituted, namely:

"(b) the allowances payable to and facilities admissible to the chairman under sub-section (6) of section 6;

(ba) the allowances payable to the Part-time Members under sub-section (7) of section 6;"

(iii) for clause (f), the following clause shall be substituted, namely:

"(f) the procedure for absorption of officers under sub-section (2) of section 11;"
(iv) clauses (g) and (h) shall be omitted;

(v) clauses (i), (j), (k) and (l) shall be re-lettered as clauses (g), (h), (i) and (j);

(vi) for the clause (i) so re-lettered, the following clause shall be substituted, namely:—

"(i) the form in which, and the time within which, the Corporation shall prepare their annual report under section 31."

Amendment of section 33.

18. In section 33 of the principal Act, in sub-section (2), clause (h) shall be omitted and clause (i) shall be re-lettered as clause (h).

K.R. NARAYANAN

President.

T.K. VISWANATHAN

Joint Secretary to the Govt. of India.
THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 1997

No. 23 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

Whereas the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
2. For section 159 of the Representation of the People Act, 1951, the following section shall be substituted, namely:

"159. (1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be authorities for the purposes of sub-section (1), namely:

(i) every local authority;

(ii) every university established by a Central, Provincial or State Act;

(iii) any other institution, concern or undertaking (not being an institution, a concern or an undertaking established under a Central, Provincial or State Act or a company within the meaning of section 617 of the Companies Act, 1956) controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Additional Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 24th December, 1997/Pausa 3, 1919 (Saka)

THE FINANCE (SECOND AMENDMENT) ORDINANCE, 1997

No. 24 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Finance Act, 1979 and Finance (No. 2) Act, 1996.

WHEREAS the Finance Acts (Amendment) Ordinance, 1997 was promulgated by the President on the 16th day of September, 1997 to further amend the Finance Act, 1979 and the Finance (No. 2) Act, 1996;

AND WHEREAS, the Finance Acts (Amendment) Ordinance, 1997 could not be replaced by an Act of Parliament due to the dissolution of the House of the people;

AND WHEREAS, the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Finance (Second Amendment) Ordinance, 1997.

(2) It shall be deemed to have come into force on the 16th day of September, 1997.
2. In sub-section (1) of section 35 of the Finance Act, 1979, for clause (i), the following clause shall be substituted, namely:—

"(i) for every such journey to any place outside India other than a place in a neighbouring country—

(a) at the rate of seven hundred and fifty rupees on or after the 26th day of September, 1997 but before the 1st day of January, 1998;

(b) at the rate of five hundred rupees on or after the 1st day of January, 1998;"

3. In section 68 of the Finance (No. 2) Act, 1996,—

(a) in sub-section (1), for the words "two per cent.," the words "five per cent." shall be substituted;

(b) to sub-section (1) as so amended, the following proviso shall be added, namely:—

'Provided that in the case of goods falling under heading Nos. 27.09 to 27.15 and heading No. 98.01 of the said First Schedule, the provisions of this sub-section shall have effect as if for the words "five per cent.," the words "two per cent." had been substituted.'


(2) Notwithstanding such repeal, anything done or any action taken under the Finance Act, 1979 or the Finance (No. 2) Act, 1996 as amended by the said Ordinance, shall be deemed to have been done or taken under the Finance Act, 1979 or, as the case may be, the Finance (No. 2) Act, 1996, as amended by this Ordinance.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Additional Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 25th December, 1997/Pausha 4, 1919 (Saka)

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) SECOND ORDINANCE, 1997

No. 25 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS a Bill further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, has been introduced in Parliament but has not yet been passed;

AND WHEREAS for giving effect to the provisions of the said Bill, the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997 was promulgated by the President on the 22nd day of September, 1997;

AND WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997.

(2) It shall be deemed to have come into force on the 22nd day of September, 1997.

2. In section 5 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words “eight and one-third per cent.” and “ten per cent.”, wherever they occur, the words “ten per cent.” and “twelve per cent.” shall respectively be substituted.

3. In section 7D of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

“(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is, or has been, or is qualified to be,

(i) a Judge of a High Court; or
(ii) a district judge.”.

4. Section 7F of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:

“(2) The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Presiding Officer.”.

5. In section 16 of the principal Act, in sub-section (i),—

(i) in clause (c), the word “or” occurring at the end shall be omitted;
(ii) clause (d) and the Explanation thereto shall be omitted.

6. (1) The Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHUBIR SINGH,
Additional Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 25th December, 1997/Pausa 4, 1919 (Saka)

THE PAYMENT OF GRATUITY (AMENDMENT) SECOND ORDINANCE, 1997

No. 26 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Payment of Gratuity Act, 1972.

WHEREAS a Bill further to amend the Payment of Gratuity Act, 1972, has been introduced in Parliament but has not yet been passed;

AND WHEREAS for giving effect to the provisions of the said Bill, the Payment of Gratuity (Amendment) Ordinance, 1997 was promulgated by the President on the 24th day of September, 1997;

AND WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Payment of Gratuity (Amendment) Second Ordinance, 1997.

(2) It shall be deemed to have come into force on the 24th day of September, 1997.

2. In section 4 of the Payment of Gratuity Act, 1972, (hereinafter referred to as the principal Act), in sub-section (2), for the words "one lakh", the words "two lakhs and fifty thousand" shall be substituted.

3. (1) The Payment of Gratuity (Amendment) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

A. R. NARAYANAN,
President.

KAGHBIR SINGH,
Additional Secy. to the Govt. of India.

Corrigenda

In the Essential Commodities (Special Provisions) Ordinance, 1997 (Ord. 21 of 1997) as published in the Gazette of India, Extraordinary, Part-II, Section 1, dated the 3rd October, 1997 (Issue No. 58),—

1. At Page 1, in the preamble,—

(a) in line 7, for “curb the hoarding and blackmarketing”, read “curb the hoarding and blackmarketing”;

(b) in line 8, for “effectively”, read “effectively”.

2. At page 2, in line 21, for “admendments”, read “amendments”.

3. At page 3, in line 37, for “a judge of High Court”, read “a Judge of a High Court”.

4. At page 4, in line 16, for “person”, read “person”.

5. At page 5, in line 13, for “section 51A”, read “section 15A”.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 25th December, 1997/Pausa 4, 1919 (Saka)

THE MERCHANT SHIPPING (AMENDMENT) SECOND
ORDINANCE, 1997

No. 27 of 1997

Promulgated by the President in the Forty-eighth Year of the
Republic of India.

An Ordinance further to amend the Merchant Shipping Act, 1958.

Whereas the Merchant Shipping (Amendment) Ordinance, 1997 to further amend
the Merchant Shipping Act, 1958 was promulgated by the President on the 26th day of
September, 1997;

And whereas the Merchant Shipping (Amendment) Ordinance, 1997 could not be
replaced by an Act of Parliament due to the dissolution of the House of the People;

And whereas the House of the People has been dissolved and the Council of States
is not in session and the President is satisfied that circumstances exist which render it
necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (7) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:

1. (7) This Ordinance may be called the Merchant Shipping (Amendment) Second
Ordinance, 1997.

(2) It shall be deemed to have come into force on the 26th day of September, 1997.
2. In section 89 of the Merchant Shipping Act, 1958, (hereinafter referred to as the principal Act), after clause (d), the following clause shall be inserted, namely:—

"(dd) to transmit the complaint of any dispute of a foreign seaman or a vessel, registered in a country other than India, in Indian territorial waters, with the master, owner or agent, to the competent authority of the country of registration and a copy of such complaint shall be forwarded to the Director General, International Labour Organisation office;".

3. In section 132 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A). Any complaint of dispute, received by the Shipping master from an Indian seaman, on a vessel registered in a country other than India in Indian territorial waters, with the master, owner or agent.".

4. After section 138 of the principal Act, the following section shall be inserted, namely:—

"138A. The ordinary hours of work for all seamen shall not exceed forty-eight hours in a week."

5. In section 369 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The Central Government shall on receipt of the investigation report from the court, cause it to be published in the Official Gazette.".

6. In section 436 of the principal Act, in sub-section (2), in the table, after Serial Number 42 and the entries relating thereto, the following shall be inserted, namely:—

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<tr>
<td>42A</td>
<td>If the master or owner contravenes the provisions of section 138A.</td>
<td>138A</td>
<td>Fine which may extend to double the average wages per hour payable to the seaman for working beyond forty-eight hours.</td>
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</table>

7. (1) The Merchant Shipping (Amendment) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHIBIR SINGH,
Additional Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE

(立法机关部门)

New Delhi, the 26th December, 1997/Pausa 5, 1919 (Saka)

THE INCOME-TAX (AMENDMENT) SECOND ORDINANCE, 1997

No. 28 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Income-tax, Act, 1961.

WHEREAS the Income-tax (Amendment) Ordinance, 1997 further to amend the Income-tax Act, 1961 was promulgated by the President on the 16th day of September, 1997;

AND WHEREAS the Income-tax (Amendment) Ordinance, 1997 could not be replaced by an Act of Parliament due to the dissolution of the House of the People;

AND WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Income-tax (Amendment) Second Ordinance, 1997.

(2) Save as otherwise provided in this Ordinance, it shall be deemed to have come into force on the 16th day of September, 1997.
2. In section 32 of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in sub-section (7), with effect from the 1st day of April, 1998,—

(a) before clause (ii), the following clause shall be inserted, namely:

"(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;";

(b) for the second proviso, the following proviso shall be substituted, namely:

"Provided further that where an asset referred to in clause (i) or clause (ii), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent. of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii), as the case may be;".

3. In section 80-IA of the Income-tax Act,—

(a) in sub-section (1), after the words "commercial production of mineral oil in the North-Eastern Region", the words, letters and figures "or in any part of India on or after the 1st day of April, 1997" shall be inserted with effect from the 1st day of April, 1998;

(b) in sub-section (2), in clause (iv),—

(i) in sub-clause (b), the following proviso shall be inserted with effect from the 1st day of April, 1998, namely:

"Provided that in the case of an industrial undertaking set up in any part of India for the generation, or generation and distribution, of power, the period ending shall have effect as if for the figures "1998", the figures "2000" had been substituted;"

(ii) in sub-clause (c), after the words "specify in this behalf", the words and letters "as industrially backward district of Category A or industrially backward district of Category B and" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1995;

(c) in sub-section (4F), after the words "North-Eastern Region", the words, letters and figures "or in any part of India on or after the 1st day of April, 1997" shall be inserted with effect from the 1st day of April, 1998;

(d) in sub-section (5), in clause (i), in sub-clause (b), after the proviso, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1995, namely:

"Provided further that in case of an industrial undertaking located in Category B industrially backward district, the provisions of this clause shall have effect as if for the words "five assessment years", the words "three assessment years" had been substituted;"

(e) in sub-section (6),—

(A) for clause (ii), the following clauses shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1995, namely:

"(ii) ten in the case of an assessee, not being a co-operative society, deriving profits and gains from an industrial undertaking specified in sub-clause (a) or sub-clause (b) or sub-clause (d) of clause (iv) of sub-section (2) or located in Category A backward districts specified in sub-clause (c) of clause (iv) of that sub-section;"
(iii) eight in the case of an assessee deriving profits and gains from an industrial undertaking located in Category B districts specified in sub-clause (c) of clause (iv) of sub-section (2) and such an undertaking is not covered under clauses (i) and (ii) of this sub-section;"

(β) in clause (iv), the following proviso shall be inserted with effect from the 1st day of April, 1998, namely:

"Provided that where the assessee begins operating and maintaining any infrastructure facility referred to in sub-clause (ii) of clause (ca) of sub-section (12), the provisions of this clause shall have effect as if for the word "twelve", the word "twenty" had been substituted;"

(C) in clause (viii), after the words "commercial production of mineral oil in the North-Eastern Region", the words, letters and figures "and other parts of the country on or after the 1st day of April, 1997" shall be inserted with effect from the 1st day of April, 1998;

(f) after sub-section (7), the following sub-section shall be inserted with effect from the 1st day of April, 1998, namely:

"(7A) Notwithstanding anything contained in sub-section (4A), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which transfer to reserve account took place."

(g) in sub-section (12), for clause (ca), the following clause shall be substituted with effect from the 1st day of April, 1998, namely:

"(ca) "infrastructure facility" means—

(i) a road, bridge, airport, port, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette;

(ii) a highway including housing or other activities being an integral part of the highway project; and

(iii) a water supply project, irrigation project, sanitation and sewerage system;"

4. (l) The Income-tax (Amendment) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Income-tax Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the Income-tax Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

K. L. MOHANPURIA,
Secy. to the Govt. of India.
The Gazette of India

EXTRAORDINARY

PART II—Section 1

PUBLISHED BY AUTHORITY

No. 66] NEW DELHI, FRIDAY, DECEMBER 26, 1997 / PAUSA 5, 1919

THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) AMENDMENT SECOND ORDINANCE, 1997

No. 29 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to amend the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

WHEREAS the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1997 was promulgated by the President on the 29th day of October, 1997;

AND WHEREAS the House of the People has been dissolved and a Bill to replace the said Ordinance could not be introduced in the House of the People;

AND WHEREAS the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance:

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997.

(2) It shall deemed to have come into force on the 29th day of October, 1997.
2. For section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1978 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

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

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Director-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "Board" means the Prasar Bharati Board;

(d) "broadcasting" means broadcasting by the Prasar Bharati;

(e) "Chairman" means the Chairman of the Corporation appointed under section 4;

(f) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(g) "Doordarshan" means the offices, Kendras and other establishments, by whatever name called, which immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(h) "elected Member" means a Member elected under section 3;

(i) "Executive Member" means the Executive Member appointed under section 4;

(j) "Kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(k) "Member" means a Member of the Board;

(l) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(m) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(n) "notification" means a notification published in the Official Gazette;

(o) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an ex officio Member, the Nominated Member or an elected Member;

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

(q) "Recovery Board" means a board established under sub-section (1) of section 10;

(r) "regulations" means regulations made by the Corporation under this Act;

(s) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;
(6) "year" means the financial year.

3. In section 3 of the principal Act,—

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) The Board shall consist of—

(a) a Chairman;
(b) one Executive Member;
(c) six Part-time Members;
(d) Executive Director (Finance), ex officio;
(e) Executive Director (Personnel), ex officio;
(f) Director-General (Akashvani), ex officio;
(g) Director-General (Doordarshan), ex officio;

(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves."

(b) in sub-section (6), the proviso shall be omitted.

4. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism."

5. For section 6 of the principal Act, the following section shall be substituted, namely:—

"6. (1) The Chairman shall be a Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member shall be a Whole-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(3) The term of office of the Part-time Members shall be six years.

(4) The term of office of an elected Member shall be six years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) The Executive Member shall be an employee of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed."
(6) The Chairman shall be entitled to such allowances, honorarium and such other facilities as may be prescribed.

(7) Part-time Members shall be entitled to such allowances as may be prescribed.

(8) The Chairman, the Executive Member and other Members except \textit{ex officio} Members shall not be eligible for re-appointment.

(9) No person having any commercial interest, direct or indirect, in any broadcasting, advertising or programme producing agency shall be eligible for appointment as a Chairman, Executive Member or Part-time Member.

6. In section 7 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman, Executive Member or any Part-time Member from his office if such Chairman, Executive Member or such Part-time Member—

(a) ceases to be a citizen of India; or

(b) is adjudged an insolvent; or

(c) is convicted of any offence involving moral turpitude; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove the Chairman from his office if he engages during his term of office in any paid employment outside the duties of his office.

(b) in sub-section (4), for the words "any Whole-time Member, except any \textit{ex-officio} Member, the Nominated Member or any elected Member," the words "the Executive Member" shall be substituted.

7. In section 9 of the principal Act, in sub-section (1), after the words and brackets "the Director-General (Doordarshan)", the words and brackets, "the Executive Director (Finance), the Executive Director (Personnel)" shall be inserted.

8. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards:

Provided that the Union Public Service Commission shall continue to discharge its functions relating to recruitment of officers and employees of the Corporation which was being discharged immediately before the appointed day till the recruitment Board is constituted for such categories of officers and employees of the Corporation.".
9. In section 11 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) the provisions of sub-section (1) shall not apply to any of the officers or employees not borne on the cadres of Akashvani and Doordarshan:

Provided that officers from the Indian Information Service, Central Secretariat Service, Central Secretariat Stenographers' Service, Central Secretariat Clerical Service borne on the cadre of the Ministry of Information and Broadcasting, equal in number of their cadre posts borne on the strength of Akashvani and Doordarshan immediately before the appointed day may be absorbed by the Corporation after following such procedure as may be prescribed:

Provided further that the members of Indian Information Service and other services working in Akashvani and Doordarshan immediately before the appointed day and not borne on the cadres of Akashvani and Doordarshan shall be deemed to be on deputation on such terms and conditions and till such time as may be finalised by the Corporation in consultation with the respective cadre controlling authorities.";

(b) in sub-section (5), the third proviso shall be omitted.

10. In section 12 of the principal Act,—

(a) for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public service broadcasting to inform, educate and entertain the public."

(b) in sub-section (2), in clause (a), for the words "broadcast frequencies available", the words "broadcasting frequencies made available for public service broadcasting" shall be substituted;

(c) in sub-section (3), in clause (a), the words "and to establish procedures for the allocation of such programmes, rights or privileges to the services," shall be omitted;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) In order to achieve its objectives, the Corporation may formulate its own programme and advertisement codes, fix such limits on broadcasting of advertisements as considered necessary to ensure that adequate time is made available for the promotion of the objectives of the Prasar Bharati.

Explanation.—For the removal of doubts, it is hereby declared that the programme and advertisement codes or limits on broadcasting of advertisements shall be in addition to and not in derogation of any programme and advertisement codes or limits on broadcasting of advertisements specified by or under any other law for the time being in force."

(e) in sub-section (7),—

(i) the word "service" shall be omitted;

(ii) the proviso shall be omitted.
11. Sections 13 to 15 of the principal Act shall be omitted.

12. In section 16 of the principal Act, for clause (a), the following clauses shall be substituted, namely:

"(a) all property and assets which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on perpetual lease on payment of a nominal fee of rupee one per annum.

(a) the Non-lapsable Fund which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation."

13. For section 25 of the principal Act, the following section shall be substituted, namely:

"25. (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government shall give a reasonable opportunity to the Board to showcase as to why it should not be superseded and shall consider the objections, if any, of the Board.

(2) The Central Government after considering the objections, if any, of the Board, may propose to supersede the Board and if it so proposes, shall prepare a report and lay it before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(3) If, before the expiry of the session immediately following the session or the successive sessions referred in sub-section (2), both Houses agree to supersede the Board, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification.

(4) Upon the publication of the notification under sub-section (3),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act be exercised or discharged by or on behalf of the Board, shall, until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(5) On the expiration of the period of supersession specified in the notification issued under sub-section (3), the President may reconstitute the Board by fresh appointments, and in such a case any person who had vacated his office under clause (a) of sub-section (4) shall not be disqualified for appointment:
(6) The Central Government shall cause the notification issued under sub-section (3) and a full report of the action taken under this section to be laid before each House of Parliament."

14. Section 26 of the principal Act shall be omitted.

15. For sections 27 and 28 of the principal Act, the following sections shall be substituted, namely:

"27. The Chairman and every other Member, every officer or other employee of the Corporation and every member of a committee thereof, and every member of a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or a member of a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder."

16. For section 31 of principal Act, the following section shall be substituted, namely:

"31. The Corporation shall prepare once in every year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

17. In section 32 of the principal Act, in sub-section (2),—

(i) in clause (a), for the words, brackets and figures "Whole-time Members under sub-section (7) of section 6", the words, brackets and figures "Executive Member under sub-section (5) of section 6" shall be substituted;

(ii) for clause (b), the following clauses shall be substituted, namely:

"(b) the allowances payable to and facilities admissible to the Chairman under sub-section (6) of section 6;

(ba) the allowances payable to the Part-time Members under sub-section (7) of section 6;"

(iii) for clause (f), the following clause shall be substituted, namely:

"(f) the procedure for absorption of officers under sub-section (2) of section 11;"

(iv) clauses (g) and (h) shall be omitted;

(v) clauses (i), (j), (k) and (l) shall be re-lettered as clauses (g), (h), (i) and (j);

(vi) for the clause (i) so re-lettered, the following clause shall be substituted, namely:

"(i) the form in which, and the time within which, the Corporation shall prepare its annual report under section 31."
18. In section 33 of the principal Act, in sub-section (2), clause (h) shall be omitted and clause (i) shall be re-lettered as clause (h).

19. (1) The Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1997 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act as amended by this Ordinance.

K.R. NARAYANAN,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.

CORRIGENDUM

In the Representation of the People (Amendment) Ordinance, 1997 (Ord. 23 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 23rd December, 1997 (Issue No. 60), at page 2, in line 13, for “vided”, read “provided”.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi the 20th December, 1997/Pausa 5, 1919 (Saka)

THE CONTINGENCY FUND OF INDIA (AMENDMENT) ORDINANCE, 1997

No. 30 of 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Contingency Fund of India Act, 1950.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Contingency Fund of India (Amendment) Ordinance, 1997.

(2) It shall come into force at once.
2. During the period of operation of this Ordinance, the Contingency Fund of India Act, 1950 (hereinafter referred to as the principal Act) shall have effect subject to the amendment specified in section 3.

3. In section 2 of the principal Act, for the proviso, the following proviso shall be substituted, namely:

"Provided that during the period beginning on the date of commencement of the Contingency Fund of India (Amendment) Ordinance, 1997, and ending on the 31st day of March, 1998, this section shall have effect subject to the modification that for the words "fifty crores of rupees", the words "fourteen thousand seven hundred crores of rupees" shall be substituted."

K.R. NARAYANAN,  
President.

K. L. MOHANPURIA,  
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th December, 1997/Pausa 9, 1919 (Saka)

THE LOTTERIES (REGULATION) SECOND ORDINANCE, 1997

No. 31 OF 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to regulate the lotteries and to provide for matters connected therewith and incidental thereto.

WHEREAS the Lotteries (Regulation) Ordinance, 1997, to provide for the aforesaid matters was promulgated by the President on the 1st day of October, 1997;

AND WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Lotteries (Regulation) Second Ordinance, 1997.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 2nd day of October, 1997.
2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets;

(b) "prescribed" means prescribed by rules made under this Ordinance.

3. Save as otherwise provided in section 4, no State Government shall organise, conduct or promote any lottery.

4. A State Government may organise, conduct or promote a lottery, subject to the following conditions, namely:—

(a) prizes shall not be offered on any preannounced number or on the basis of a single digit,

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c) the State Government shall sell the tickets either itself or through distributors or selling agents;

(d) the State Government itself shall conduct the draws of all the lotteries;

(e) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(f) the place of draw shall be located within the State concerned;

(g) no lottery shall have more than one draw in a week;

(h) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;

(i) the number of bumper draws of a lottery shall not be more than six in a calendar year;

(j) such other conditions as may be prescribed by the Central Government.

5. A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by another State.

6. The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of section 4 or where tickets of such lottery are sold in contravention of the provisions of section 5.

7. If any person acts as an agent, a promoter or trader in any lottery organised, conducted or promoted in contravention of the provisions of this Ordinance or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

8. The offence under this Ordinance shall be cognizable and non-bailable.

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

Explanation.—For the purposes of this section—
(a) "company" means any body corporate and includes a firm or other association of individuals and
(b) "director", in relation to a firm, means a partner in the firm.

10. The Central Government may give directions to the State Government as to carrying into execution in the State of any of the provisions of this Ordinance or of any rule made thereunder.

11. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

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

12. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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) time to be fixed for claiming prize money under clause (c) of section 4;
(b) period to be fixed for draws of all lotteries under clause (h) of section 4; and
(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be 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.

13. (1) The Lotteries (Regulation) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Additional Secy. to the Govt. of India.
Corrigenda

In the Finance Act, 1997 (26 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 14th May, 1997 (Issue No. 40),—

1. At page 13, in lines 37 and 53, for “sub-section (2)”, read “sub-section (3)”.
2. At page 20, in line 42, for “validity”, read “validly”.
3. At page 23, in line 42, for “section 84”, read “section 88”.
4. At page 61,—
   (i) in line 8, in column (3), for “-Glass”, read "-Glass’;
   (ii) in line 9, in column (2), for "7010.11”, read “7010.11”;
   (iii) in line 12, in column (3), for “—Glass chimneys”; read “-Glass chimneys”;
   (iv) in line 53, in column (3), for “-Of stainless steel:”, read “-Of stainless steel:
   (v) in line 54, in column (2), for “7204.21”, read “7204.21”.
   (vi) in line 59, in column (3), for “Pattis/pattas”, read “-Pattis/pattas”.
5. At page 62,—
   (i) in line 16, in column (3), for “-Articles”, read "-Articles’;
   (ii) in line 17, in column (2), for “7326.21”, read “7326.21”.

Corrigenda

In the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997 (Ord. 29 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 26th December, 1997 (Issue No. 66),—

1. At page 1, in the last line, for “shall deemed”, read “shall be deemed”.
2. At page 6, after line 36, insert—

   “Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.”.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 2nd January, 1998/Pausa 12, 1919 (Saka)

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS)
SECOND ORDINANCE, 1998

No. 1 of 1998

Promulgated by the President in the Forty-eighth Year of the
Republic of India.

An Ordinance to make certain special provisions by way of amendments to
the Essential Commodities Act, 1955, for a temporary period for dealing
more effectively with persons indulging in hoarding and blackmarketing
of, and profiteering in, essential commodities and for matters connected
therewith or incidental thereto.

Whereas the Essential Commodities (Special Provisions) Ordinance, 1997 was
promulgated by the President on the 3rd day of October, 1997;

And Whereas the House of the People has been dissolved and the Council of States
is not in session and the President is satisfied that circumstances exist which render it
necessary for him to take immediate action to give continued effect to the provisions of
the said Ordinance;
Now, therefore, in exercise of the powers conferred by clause (f) of article 122 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (f) This Ordinance may be called the Essential Commodities (Special Provisions) Second Ordinance, 1998.

(2) It shall come into force on the 3rd day of October, 1997 except in the States of Arunachal Pradesh, Mizoram and the Union territories of Andaman and Nicobar Islands, Doda and Nagar Haveli and Lakshadweep; and in these States and Union territories on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and Union territories, and any reference to the commencement of this Ordinance or any provisions thereof shall be construed in relation to each State and Union territory, as a reference, to the coming into force of this Ordinance in that State or Union territory.

2. During the period of operation of this Ordinance, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

Provided that the amendments specified in sections 5 to 10 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Ordinance and the provisions of the principal Act shall apply to, and in relation to, such offences as if those amendments had not been made.

3. In section 2 of the principal Act,—

(a) clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted, namely:

"(iia) 'Code' means the Code of Criminal Procedure, 1973;"

(b) after clause (e), the following clause shall be inserted, namely:

"(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code."

4. In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:

"Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed.".

5. In section 7 of the principal Act,—

(a) in sub-section (I), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2A) shall be omitted;

(d) sub-section (2B) shall be omitted.

6. To section 8 of the principal Act, the following proviso shall be added, namely:

"Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (iv) of sub-clause (i) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may,
notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only:"

7. For section 10A of the principal Act, the following section shall be substituted, namely:—

"10A. Notwithstanding anything contained in the Code, every offence punishable under—

(a) this Act shall be cognizable;
(b) this Act, except the offence punishable under sub-clause (i) of clause (a) of sub-section (i) of section 7, shall be non-bailable;
(c) sub-clause (i) of clause (a) of sub-section (f) of section 7, if committed more than once, shall be non-bailable:"

8. After section 10A of the principal Act, the following section shall be inserted, namely:—

"10AA. Notwithstanding anything contained in the Code, an officer below the rank of an officer-in-charge of a police station or any police officer authorised by him in this behalf in writing, shall arrest any person accused of committing an offence punishable under this Act:"

9. Section 12 of the principal Act shall be omitted.

10. For section 12A of the principal Act, the following sections shall be substituted, namely:—

"12A. (i) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word " appoint " shall have the meaning given to it in the Explanation to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) he is qualified for appointment as a judge of a High Court, or
(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. (i) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate."
Provided it at where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him;

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d), exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a special Court or the High Court;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act, take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial;

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tend to a person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 306 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12A.
12AC. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor."

II. After section 15A of the principal Act, the following section shall be inserted namely:

"15AA. Notwithstanding anything contained in any other law, any prosecution in respect of any offence under the principal Act, committed during the period commencing on the 1st day of September, 1997, and ending with the date of commencement of this Ordinance, shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court."

12. (1) The Essential Commodities (Special Provisions) Ordinance, 1997 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Principal Act, as amended by the said Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K.R. NARAYANAN,
President.

RACHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE  
(Legislative Department)  

New Delhi, the 21st January, 1998/Magha 1, 1919 (Saka)  

THE NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND RESEARCH ORDINANCE, 1998  

No. 2 of 1998  

Promulgated by the President in the Forty-eighth Year of the Republic of India.  

An Ordinance to declare the institution known as the National Institute of Pharmaceutical Education and Research to be an institution of national importance and to provide for its incorporation and matters connected therewith.  

WHEREAS the National Institute of Pharmaceutical Education and Research Bill, 1997, to declare the Institute as an institution of national importance, was pending in the House of People;  

AND WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;  

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:
1. (1) This Ordinance may be called the National Institute of Pharmaceutical Education and Research Ordinance, 1998.

(2) It shall come into force at once.

2. Whereas the objects of the institution known as the National Institute of Pharmaceutical Education and Research, Sector-67, S.A.S. Nagar (Mohali), District Ropar, Punjab are such as to make the institution one of national importance, it is hereby declared that the institution known as the National Institute of Pharmaceutical Education and Research is an institution of national importance.

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

(a) “appointed day” means the date of establishment of the National Institute of Pharmaceutical Education and Research under sub-section (1) of section 4;

(b) “Board” means the Board of Governors of the Institute constituted under sub-section (3) of section 4;

(c) “Chairperson” means the Chairperson of the Institute nominated under clause (a) of sub-section (3) of section 4;

(d) “Dean” means the Dean of the Institute appointed under section 17;

(e) “Director” means the Director of the Institute appointed under section 16;

(f) “Funds” means the Fund to be maintained under section 21;

(g) “Institute” means the National Institute of Pharmaceutical Education and Research established under sub-section (1) of section 4;

(h) “Senate” means the Senate of the Institute referred to in section 13;

(i) “Society” means the National Institute of Pharmaceutical Education and Research Society, Sector-67, S.A.S. Nagar (Mohali), District Ropar, Punjab registered under the Societies Registration Act, 1860;

(j) “Statutes” and “Ordinances” mean the Statutes and Ordinances of the Institute made under this Ordinance.
CHAPTER II

THE INSTITUTE

4. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the National Institute of Pharmaceutical Education and Research shall be constituted as a body corporate by the name aforesaid.

(2) The Institute shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property and to contract, and shall, by that name, sue and be sued.

(3) The Institute shall consist of the Board of Governors having the following persons, namely:

(a) Chairperson, who shall be an eminent academician, scientist or technologist or professional, to be nominated by the Visitor;

(b) Director of the Institute, ex officio;

(c) Joint Secretary, in charge of pharmaceutical industries in the concerned Ministry or Department of the Government of India, ex officio;

(d) Secretary, Technical Education, Government of Punjab, Chandigarh, ex officio;

(e) Financial Adviser of the Ministry or Department of the Government of India dealing with the pharmaceutical industries, ex officio;

(f) the Drug Controller General of India, Ministry of Health and Family Welfare of the Government of India, ex officio;

(g) the Member-Secretary, All-India Council for Technical Education, ex officio;

(h) Director of any one of the national laboratories of the Council of Scientific and Industrial Research to be nominated by the Director General of Council of Scientific and Industrial Research, New Delhi;

(i) Director of either the All-India Institute of Medical Sciences, New Delhi or the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be nominated by rotation by the Ministry of Health and Family Welfare of the Government of India;

(j) President, Indian Drugs Manufacturers’ Association, ex officio;

(k) President, Organisation of Pharmaceutical Producers of India, ex officio;

(l) three eminent pharmaceutical experts, one of whom shall be an educationist, a research scientist and a bio-technologist, to be nominated by the Central Government;

(m) three eminent public persons or social workers one of whom shall be either from the Scheduled Castes or the Scheduled Tribes to be nominated by the Visitor out of a panel prepared by the Central Government;

(n) two pharmaceutical industrialists to be nominated by the Visitor out of a panel prepared by the Central Government;
(o) three Members of Parliament, two from Lok Sabha to be nominated by the Speaker of Lok Sabha and one from Rajya Sabha to be nominated by the Chairman of Rajya Sabha.

(4) The term of office of the Chairperson and Governors other than ex officio Governors shall be three years and they shall be entitled for such allowances as may be determined by the Central Government.

(5) The term of office of Governor nominated to fill a casual vacancy shall continue for the remainder of the term of the Governor in whose place he has been nominated.

(6) The Board shall meet at least three times in a year at such place and time and observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by the Board.

5. On and from the appointed day, subject to the other provisions of this Ordinance, all properties which had vested in the Society, immediately before the commencement of this Ordinance, shall, on and from such commencement, vest in the Institute.

6. On and from the appointed day,—

(a) any reference to the Society in any contract or other instrument shall be deemed as a reference to the Institute;

(b) all the rights and liabilities of the Society shall be transferred to, and be the rights and liabilities of, the Institute; and

(c) every person employed by the Society immediately before the appointed day shall hold office or service in the Institute by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same if this Ordinance had not been promulgated, and shall continue to be so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

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

7. The functions of the Institute shall be—

(i) to nurture and promote quality and excellence in pharmaceutical education and research;

(ii) to concentrate on master's degree, doctoral and post-doctoral courses and research in pharmaceutical education;

(iii) to hold examinations and grant degrees;

(iv) to confer honorary awards or other distinctions;

(v) to co-operate with educational or other institutions having objects wholly or partly similar to those of the Institute by exchange of faculty members and scholars.
and generally in such manner as may be conducive to their common objective;

(vi) to conduct courses for teachers, pharmaceutical technologist, community and hospital pharmacists and other professionals;

(vii) to collect and maintain world literature on pharmaceutical and related sciences and technology so as to develop an information centre of its own kind for other institutions within the country and in the developing world;

(viii) to create a central faculty of pharmaceutical instrumentation and analysis for use by the researchers within and outside the Institute;

(ix) to have a centre to experiment and innovate and to train teachers and other workers in the art or science of pharmaceutical teaching;

(x) to develop a world level centre for creation of new knowledge and transmission of existing information in pharmaceutical areas, with focus on national, educational, professional and industrial commitments;

(xi) to develop a multi-disciplinary approach in carrying out research and training of pharmaceutical manpower so that the larger interests of the profession, academia and pharmaceutical industry are better served and a pharmaceutical work culture is evolved which is in tune with the changing world trends and patterns of pharmaceutical education and research;

(xii) to organise national or inter-national symposia, seminars and conferences in selected areas of pharmaceutical education, from time to time;

(xiii) to arrange courses catering to the special needs of the developing countries;

(xiv) to act as a nucleus for interaction between academia and industry by encouraging exchange of scientists and other technical staff between the Institute and the industry and by undertaking sponsored and funded research as well as consultancy projects by the Institute; and

(xv) to pay due attention to studies on the distribution and usage of drugs by the rural masses, taking into account the socio-economic spectrum in the country.

Powers of Board

8. (1) Subject to the provisions of this Ordinance, the Board shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers not otherwise provided for by this Ordinance, the Statutes and the Ordinances, and shall have the power to review the acts of the Senate.

(2) Without prejudice to the provisions of sub-section (1), the Board shall—

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) fix, demand and receive fees and other charges;

(c) supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare, and cultural and corporate life;

(d) institute academic and other posts and to make appointments thereto (except in the case of the Director);
(e) frame Statutes and Ordinances and to alter, modify or rescind the same;

(f) institute and award fellowship, scholarship, prizes and medals;

(g) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute for the next financial year as it thinks fit together with a statement of its development plans; and

(h) do all such things as may be necessary, incidental or conducive to the attainment of all or any of the aforesaid functions.

(5) The Board shall have the power to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Ordinance.

(4) Notwithstanding anything contained in sub-section (2) of section 4, the Institute shall not dispose of in any manner any immovable property without the prior approval of the Central Government.

Institute to be open to all races, creeds and classes.

9. (1) The Institute shall be open to persons of either sex and of whatever race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers or workers or in any other connection whatsoever.

(2) No bequest, donation or transfer of any property shall be accepted by the Institute which in the opinion of the Board involves conditions or obligations opposed to the spirit and object of this section.

Teaching at Institute.

10. All teaching at the Institute shall be conducted by or in the name of the Institute in accordance with the Statutes and Ordinances made in this behalf.

Visitor.

11. (1) The President of India shall be the Visitor of the Institute.

(2) The Visitor may appoint one or more persons to review the work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.

(3) Upon receipt of any such report, the Visitor may take such action and issue such directions as he considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions.

Authorities of Institute.

12. The following shall be the other authorities of the Institute, namely:

(a) a Senate;

(b) such other authorities as may be declared by the Statutes to be the authorities of the Institute.

Senate.

13. The Senate of the Institute shall consist of the following persons, namely:

(a) the Director, ex officio, who shall be the Chairperson of the Senate;

(b) the Dean, ex officio;

(c) five professors of the Institute, to be nominated by the Chairperson in consultation with the Director, by rotation;
(d) three persons, not being employees of the Institute, to be nominated by the Chairperson in consultation with the Director, from among educationists of repute, one each from the fields of science, engineering and humanities and one of them shall be either from the Scheduled Castes or from the Scheduled Tribes; and

(e) such other members of the staff as may be laid down in the Statutes.

14. Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Senate of the Institute shall have the control and general regulation, and be responsible for the maintenance, of standards of instruction, education and examination in the Institute and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes.

15. (1) The Chairperson shall ordinarily preside at the meetings of the Board and at the Convocations of the Institute.

(2) It shall be the duty of the Chairperson to ensure that the decisions taken by the Board are implemented.

(3) The Chairperson shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes.

16. (1) The Director of the Institute shall be appointed by the Board with the prior approval of the Visitor.

(2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and academic performance of the Institute and for imparting of instruction and maintenance of discipline therein.

(3) The Director shall submit annual reports and accounts to the Board.

(4) The Director shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes or the Ordinances.

17. (1) The Dean of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall exercise such powers and perform such duties as may be assigned to him by this Ordinance or the Statutes or the Director.

(2) The Dean shall report to the Director.

18. (1) The Registrar of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall be the custodian of records, the common seal, the funds of the Institute and such other property of the Institute as the Board shall commit to his charge.

(2) The Registrar shall act as the Secretary of the Board, the Senate and such committees as may be prescribed by the Statutes.

(3) The Registrar shall be responsible to the Director for the proper discharge of his functions.

(4) The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes or the Director.
19. The powers and duties of authorities and officers, other than those hereinbefore mentioned, shall be determined by the Statutes.

20. For the purpose of enabling the Institute to discharge its functions efficiently under this Ordinance, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as it may think fit.

21. (1) The Institute shall maintain a Fund to which shall be credited—

(a) all moneys provided by the Central Government;

(b) all fees and other charges;

(c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and

(d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund of the Institute shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund of the Institute shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its duties under this Ordinance.

22. Notwithstanding anything contained in section 21, the Central Government may direct the Institute to—

(a) set up an endowment fund and any other fund for specified purpose;

(b) transfer money from its Fund to endowment fund or any other fund.

23. (1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance-sheet, in such form as may be specified, in accordance with such general directions as may be issued by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute.
24. (1) The Institute shall constitute for the benefit of its employees, including the Director, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit.

Pension and provident fund.

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

Appointment.

25. All appointments on the staff of the Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes—

(a) by the Board, if the appointment is made on the academic staff in the post of Assistant Professor or above or if the appointment is made on the non-academic staff in any cadre, the maximum of the pay-scale for which is the same or higher than that of Assistant Professor; and

(b) by the Director, in any other case.

Appointments.

26. Subject to the provisions of this Ordinance, the Statutes may provide for all or any of the following matters, namely:

(a) the formation of departments of teaching;

(b) the institution of fellowships, scholarships, exhibitions, medals and prizes;

(c) the classification, the method of appointment and the determination of the terms and conditions of service of officers, teachers and other staff of the Institute;

(d) the reservation of posts for the Scheduled Castes, the Scheduled Tribes and other categories of persons as may be determined by the Central Government, from time to time;

(e) the constitution of pension, insurance and provident funds for the benefit of the officers, teachers and other staff of the Institute;

(f) the constitution, powers and duties of the authorities of the Institute;

(g) the establishment and maintenance of halls and hostels;

(h) the manner of filling vacancies among members of the Board;

(i) the authentication of the orders and decisions of the Board;

(j) the meetings of the Senate, the quorum at such meetings and the procedure to be followed in the conduct of their business; and

(k) any other matter which by this Ordinance is to be or may be prescribed by the Statutes.
27. (1) The first Statute of the Institute shall be framed by the Board with the previous approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.

(2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereafter in this section provided.

(3) A new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may assent thereto or withhold assent or remit it to the Board for consideration.

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

Ordinances.

28. Subject to the provisions of this Ordinance and the Statutes, the ordinances of the Institute may provide for all or any of the following matters, namely:—

(a) the admission of the students to the Institute;

(b) the reservation for the Scheduled Castes, the Scheduled Tribes and other categories of person;

(c) the courses of study to be laid down for all degrees of the Institute;

(d) the conditions under which students shall be admitted to the degree courses and to the examinations of the Institute and shall be eligible for degrees;

(e) the conditions of award of the fellowships, scholarships, exhibitions, medals and prizes;

(f) the conditions and mode of appointment and duties of examining bodies, examiners and moderators;

(g) the conduct of examinations;

(h) the maintenance of discipline amongst the students of the Institute;

(i) the fees to be charged for courses of study in the Institute and for admission to the examinations of degrees of the Institute;

(j) the conditions of residence of students of the Institute and the levying of the fees for residence in the halls and hostels and of other charges; and

(k) any other matter which by this Ordinance or the Statutes is to be, or may be provided for by the ordinances.

Ordinances how made.

29. (1) Save as otherwise provided in this section, ordinances shall be made by the Senate.

(2) All ordinances made by the Senate shall have effect from such date as it may direct, but every ordinance so made shall be submitted, as soon as may be, to the Board and shall be considered by the Board at its next succeeding meeting.

(3) The Board shall have power by resolution to modify or cancel any such ordinances and such ordinances shall from the date of such resolution stand modified accordingly or cancelled, as the case may be.
30. (1) Any dispute arising out of a contract between the Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal of Arbitration consisting of one member appointed by the Institute, one member nominated by the employee and an umpire appointed by the Visitor.

(2) The decision of the Tribunal of Arbitration shall be final and shall not be questioned in any court.

(3) No suit or proceeding shall lie in any court in respect of any matter which is required by sub-section (1) to be referred to the Tribunal of Arbitration.

(4) The Tribunal of Arbitration shall have power to regulate its own procedure.

(5) Nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

CHAPTER III

MISCELLANEOUS

31. No act of the Institute or Board or Senate or any other body set up under this Ordinance or the Statutes, shall be invalid merely by reason of—

(a) any vacancy in, or defect in, the constitution thereof, or

(b) any defect in the election, nomination or appointment of person acting as a member thereof, or

(c) any irregularity in its procedure not affecting the merits of the case.

Acts and proceedings not to be invalidated by vacancies.

32. Notwithstanding anything contained in the University Grants Commission Act, 3 of 1956 or in any other law for the time being in force, the Institute shall have power to grant degrees and other academic distinctions and titles under this Ordinance.

33. Whenever the Institute receives funds from any Government, the University Grants Commission or any other agency sponsoring a scheme to be executed by the Institute, notwithstanding anything in this Ordinance,—

(a) the amount received shall be kept by the Institute separately from the Fund of the Institute and utilised only for the purpose of the scheme;

(b) the staff required to execute the same shall be recruited in accordance with the terms and conditions stipulated by the sponsoring organisation:

Provided that any money remaining unutilised under clause (a) shall be transferred to the endowment fund created under section 22 of this Ordinance.

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

Power to remove difficulties.

Provided that no such order shall be made after the expiry of two years from the appointed day.
(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

35. Notwithstanding anything contained in this Ordinance,—

(a) the Board of Governors of the Society functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Board is constituted for the Institute under this Ordinance, but on the constitution of a new Board under this Ordinance, the members of the Board holding office before such constitution shall cease to hold office;

(b) until the first Statutes and the Ordinances are made under this Ordinance, the Statutes and Ordinances of the National Institute of Pharmaceutical Education and Research, Sahibzada Ajit Singh Nagar, Punjab, as in force immediately before the commencement of this Ordinance, shall continue to apply to the Institute in so far as they are not inconsistent with the provisions of this Ordinance.

36. (1) Every Statute or Ordinance made under this Ordinance shall be published in the Official Gazette.

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

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

Y. R. NARAYANAN,
President.

RAJAHIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 22nd January, 1998/Magha 2, 1919 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 1998

No. 3 of 1998

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 1998.

(2) It shall come into force at once.
2. In the Representation of the People Act, 1951, in section 60, after clause (b), the following clause shall be inserted, namely:—

"(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

K. R. NARAYANAN,
President.

RAGHIBIR SINGH,
Secy. to the Govt. of India.

CORRIGENDUM

In the Essential Commodities (Special Provisions) Second Ordinance, 1998 (Ord. 1 of 1998) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 2nd January, 1998 (Issue No. 1), at page 2, in line 15, for "amendments", read "amendments".
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 24th January, 1998/Magha 4, 1919 (Saka)

THE CONTINGENCY FUND OF INDIA (AMENDMENT) ORDINANCE, 1998

No. 4 of 1998

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance further to amend the Contingency Fund of India Act, 1950.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Contingency Fund of India (Amendment) Ordinance, 1998.

(2) It shall come into force at once.
2. In section 2 of the Contingency Fund of India Act, 1950 [as amended by the Contingency Fund of India (Amendment) Ordinance, 1997], for the words "Fourteen thousand seven hundred crores of rupees", the words "thirty-two thousand four hundred and ninety crores of rupees" shall be substituted.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 21st April, 1998/Vaisakha 1, 1920 (Saka)

THE FINANCE (AMENDMENT) ORDINANCE, 1998

No. 5 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Finance Act, 1979 and the Finance (No. 2) Act, 1996.

WHEREAS the Finance Acts (Amendment) Ordinance, 1997 was promulgated by the President on the 16th day of September, 1997 to further amend the Finance Act, 1979 and the Finance (No. 2) Act, 1996;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance with certain modifications, the Finance (Second Amendment) Ordinance, 1997 was promulgated by the President on the 24th day of December, 1997;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Finance (Second Amendment) Ordinance, 1997;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Finance (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 16th day of September, 1997.
2. In sub-section (i) of section 35 of the Finance Act, 1979, for clause (i), the following clause shall be substituted, namely:

"(i) for every such journey to any place outside India other than a place in a neighbouring country—
   (a) at the rate of seven hundred and fifty rupees on or after the 26th day of September, 1997 but before the 1st day of January, 1998;
   (b) at the rate of five hundred rupees on or after the 1st day of January, 1998.".

3. In section 68 of the Finance (No. 2) Act, 1996:

(a) in sub-section (1), for the words "two per cent.", the words "five per cent." shall be substituted;

(b) in sub-section (1) as so amended, the following proviso shall be added, namely:

"Provided that in the case of goods falling under heading Nos. 27.09 to 27.15 and heading No. 98.01 of the said First Schedule, the provisions of this sub-section shall have effect as if for the words "five per cent.", the words "two per cent." had been substituted.

4. (1) The Finance (Second Amendment) Ordinance, 1997 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Finance Act, 1979 or the Finance (No. 2) Act, 1996 as amended by the said Ordinance, shall be deemed to have been done or taken under the Finance Act, 1979 or, as the case may be, the Finance (No. 2) Act, 1996, as amended by this Ordinance.

K.R. NARAYANAN,
President.

RAGHIBIR SINGH,
Secy. to the Govt. of India.

Corrigenda

In the National Institute of Pharmaceutical Education and Research Ordinance, 1998 (Ord. 2 of 1998) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 21st January, 1998 (issue No. 2), at page 9,—

(e) in line 12, for "accordance", read "accordance";

(b) in line 30, for "maintenance", read "maintenance").

Corrigendum

In the Contingency Fund of India (Amendment) Ordinance, 1998 (Ord. 4 of 1998) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 24th January, 1998 (issue No. 4), at page 2, in line 1, for "Contingency", read "Contingency".

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MINISTRY OF LAW AND JUSTICE
( Legislitative Department)

New Delhi, the 23rd April, 1998/Vaisakha 3, 1920 (Saka)

THE LOTTERIES (REGULATION) ORDINANCE, 1998

No. 6 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance to regulate the lotteries and to provide for matters connected therewith and incidental thereto.

WHEREAS the Lotteries (Regulation) Ordinance, 1997, to provide for the aforesaid matters was promulgated by the President on the 1st day of October, 1997;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the Lotteries (Regulation) Second Ordinance, 1997 was promulgated by the President on the 30th day of December, 1997;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Lotteries (Regulation) Second Ordinance, 1997;

NOW, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

L (1) This Ordinance may be called the Lotteries (Regulation) Ordinance, 1998.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 2nd day of October, 1997.
2. In this Ordinance, unless there is anything repugnant in the subject or context—

(a) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets;

(b) "prescribed" means prescribed by rules made under this Ordinance.

3. Save as otherwise provided in section 4, no State Government shall organise, conduct or promote any lottery.

4. A State Government may organise, conduct or promote a lottery, subject to the following conditions, namely:

(a) prizes shall not be offered on any preannounced number or on the basis of a single digit;

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c) the State Government shall sell the tickets either itself or through distributors or selling agents;

(d) the State Government itself shall conduct the draws of all the lotteries;

(e) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(f) the place of draw shall be located within the State concerned;

(g) no lottery shall have more than one draw in a week;

(h) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;

(i) the number of bumper draws of a lottery shall not be more than six in a calendar year;

(j) such other conditions as may be prescribed by the Central Government.

5. A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by another State.

6. The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of section 4 or where tickets of such lottery are sold in contravention of the provisions of section 5.

7. If any person acts as an agent, a promoter or trader in any lottery organised, conducted or promoted in contravention of the provisions of this Ordinance or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

8. The offence under this Ordinance shall be cognizable and non-bailable.

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

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

11. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

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

12. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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) time to be fixed for claiming prize money under clause (c) of section 4;

(b) period to be fixed for draws of all lotteries under clause (b) of section 4; and

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be 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.

13. (1) The Lotteries (Regulation) Second Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

K. R. NARAVANAN.
President.

RAGHIBIR SINGH,
Secy to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 23rd April, 1998/Vaisakha 3, 1920 (Saka)

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE, 1998
No. 7 of 1998

Promulgated by the President in the Forty-ninth Year of the
Republic of India.

An Ordinance further to amend the Merchant Shipping Act, 1958.

WHEREAS the Merchant Shipping (Amendment) Ordinance, 1997 to further amend
the Merchant Shipping Act, 1958 was promulgated by the President on the 26th day of
September, 1997;

AND WHEREAS the Merchant Shipping (Amendment) Ordinance, 1997 could not be
replaced by an Act of Parliament due to the dissolution of the House of the People;

AND WHEREAS for giving continued effect to the provisions of the said Ordinance, the
Merchant Shipping (Amendment) Second Ordinance, 1997 was promulgated by the Presi-
dent on the 25th day of December, 1997;

AND WHEREAS Parliament is not in session and the President is satisfied that circum-
cstances exist which render it necessary for him to take immediate action to give continued
effect to the provisions of the Merchant Shipping (Amendment) Second Ordinance, 1997;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Merchant Shipping (Amendment)

12) It shall be deemed to have come into force on the 26th day of September, 1997.
2. In section 89 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), after clause (d), the following clause shall be inserted, namely:

"(dd) to transmit the complaint of any dispute of a foreign seaman of a vessel registered in a country other than India, in Indian territorial waters, with the master, owner or agent, to the competent authority of the country of registration and a copy of such complaint shall be forwarded to the Director General, International Labour Organisation office;".

3. In section 132 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:

"(IA). Any complaint of dispute, received by the Shipping master from an Indian seaman, on a vessel registered in a country other than India in Indian territorial waters, with the master, owner or agent;".

4. After section 138 of the principal Act, the following section shall be inserted, namely:

"138A. The ordinary hours of work for all seamen shall not exceed forty-eight hours in a week;".

5. In section 369 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:

"(3) The Central Government shall on receipt of the investigation report from the court, cause it to be published in the Official Gazette;".

6. In section 436 of the principal Act, in sub-section (2), in the table, after Serial Number 42 and the entries relating thereto, the following shall be inserted, namely:

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| 42A | If the master or owner contravenes the provisions of section 138A. | 138A | Fine which may extend to double the average wages per hour payable to the seaman for working beyond forty-eight hours;".

7. (1) The Merchant Shipping (Amendment) Second Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN, President.

RAGHBIR SINGH, Secy. to the Govt. of India.

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MINISTRY OF LAW AND JUSTICE  
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THE EMPLOYEES’ PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) ORDINANCE, 1998

No. 8 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

WHEREAS a Bill further to amend the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, was introduced in the Council of States but has not yet been passed:

AND WHEREAS the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1997 to give effect to the provisions of the said Bill was promulgated by the President on the 22nd day of September, 1997;

AND WHEREAS the House of the People had been dissolved and the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997 to give continued effect to the provisions of the said Ordinance was promulgated by the President on the 25th day of December, 1997;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Employees’ Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1998.

(2) It shall come into force on the 22nd day of September, 1997.

2. In section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words "eight and one-third per cent," and "ten per cent," wherever they occur, the words "ten per cent," and "twelve per cent," shall respectively be substituted.

3. In section 7D of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is, or has been or is qualified to be,—

(i) a Judge of a High Court; or

(ii) a district judge."

4. Section 7F of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:

"(2) The Presiding Officer shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the High Court in which such Presiding Officer had been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Presiding Officer.".

5. In section 16 of the principal Act, in sub-section (1),

(i) in clause (c), the word "or" occurring at the end shall be omitted;

(ii) clause (d) and the Explanation thereto shall be omitted.

6. (1) The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Second Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIIR SINGH,
Secy. to the Govt. of India.
MINSISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 23rd April, 1998 / Vaisakha 5, 1920 (Saka)

THE NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND RESEARCH (SECOND) ORDINANCE, 1998

No. 9 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance to declare the institution known as the National Institute of Pharmaceutical Education and Research to be an institution of national importance and to provide for its incorporation and matters connected therewith.

WHEREAS the National Institute of Pharmaceutical Education and Research Bill, 1997, to declare the Institute as an institution of national importance, was introduced in the House of the People on the 3rd March, 1997;

AND WHEREAS the House of the People was dissolved and the Council of States was not in session and the President on being satisfied that circumstances exist which render it necessary for him to take immediate action promulgated the National Institute of Pharmaceutical Education and Research Ordinance, 1998 on the 21st January, 1998;

AND WHEREAS both the Houses of Parliament are not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the National Institute of Pharmaceutical Education and Research Ordinance, 1998:
NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the National Institute of Pharmaceutical Education and Research (Second) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 21st day of January, 1998.

2. Whereas the objects of the institution known as the National Institute of Pharmaceutical Education and Research, Sector-67, S.A.S. Nagar (Mohali), District Ropar, Punjab are such as to make the institution one of national importance, it is hereby declared that the institution known as the National Institute of Pharmaceutical Education and Research is an institution of national importance.

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

(a) "appointed day" means the date of establishment of the National Institute of Pharmaceutical Education and Research under sub-section (1) of section 4;

(b) "Board" means the Board of Governors of the Institute constituted under sub-section (3) of section 4;

(c) "Chairperson" means the Chairperson of the Institute nominated under clause (a) of sub-section (3) of section 4;

(d) "Dean" means the Dean of the Institute appointed under section 17;

(e) "Director" means the Director of the Institute appointed under section 16;

(f) "Fund" means the Fund to be maintained under section 21;

(g) "Institute" means the National Institute of Pharmaceutical Education and Research established under sub-section (1) of section 4;

(h) "Senate" means the Senate of the Institute referred to in section 13;

(i) "Society" means the National Institute of Pharmaceutical Education and Research Society, Sector-67, S.A.S. Nagar (Mohali), District Ropar, Punjab registered under the Societies Registration Act, 1860;

(j) "Statutes" and "Ordinances" mean the Statutes and the Ordinances of the Institute made under this Ordinance.

CHAPTER II
THE INSTITUTE

4. (1) With effect from such date as the Central Government, may by notification in the Official Gazette, appoint, the National Institute of Pharmaceutical Education and Research shall be constituted as a body corporate by the name aforesaid.

(2) The Institute shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property and to contract, and shall, by that name, sue and be sued.

(3) The Institute shall consist of the Board of Governors having the following persons, namely:—

(a) Chairperson, who shall be an eminent academician, scientist or technologist or professional, to be nominated by the Visitor;
(b) Director of the Institute, *ex officio*;

(c) Joint Secretary, in charge of pharmaceutical industries in the concerned Ministry or Department of the Government of India, *ex officio*;

(d) Secretary, Technical Education, Government of Punjab, Chandigarh, *ex officio*;

(e) Financial Adviser of the Ministry or Department of the Government of India dealing with the pharmaceutical industries, *ex officio*;

(f) Drug Controller General of India, Ministry of Health and Family Welfare of the Government of India, *ex officio*;

(g) Member-Secretary, All-India Council for Technical Education, *ex officio*;

(h) Director of any one of the national laboratories of the Council of Scientific and Industrial Research to be nominated by the Director General of Council of Scientific and Industrial Research, New Delhi;

(i) Director of either the All-India Institute of Medical Sciences, New Delhi or the Post-Graduate Institute of Medical Education and Research, Chandigarh to be nominated by rotation by the Ministry of Health and Family Welfare of the Government of India;

(j) President, India Drugs Manufacturers' Association, *ex officio*;

(k) President, Organisation of Pharmaceutical Producers of India, *ex officio*;

(l) three eminent pharmaceutical experts, one of whom shall be an educationist, a research scientist and a bio-technologist, to be nominated by the Central Government;

(m) three eminent public persons or social workers one of whom shall be either from the Scheduled Castes or from the Scheduled Tribes, to be nominated by the Visitor out of a panel prepared by the Central Government;

(n) two pharmaceutical industrialists to be nominated by the Visitor out of a panel prepared by the Central Government;

(o) three Members of Parliament, two from Lok Sabha to be nominated by the Speaker of Lok Sabha and one from Rajya Sabha to be nominated by the Chairman of Rajya Sabha.

(4) The term of office of the Chairperson and Governors other than *ex officio* Governors shall be three years and they shall be entitled for such allowances as may be determined by the Central Government.

(5) The term of office of Governor nominated to fill a casual vacancy shall continue for the remainder of the term of the Governor in whose place he has been nominated.

(6) The Board shall meet at least three times in a year at such place and time and observe such rules of procedure in regard to the transaction of business at its meetings as may be determined by the Board.

5. On and from the appointed day, subject to the other provisions of this Ordinance, all properties which had vested in the Society, immediately before the commencement of this Ordinance, shall, on and from such commencement, vest in the Institute.

6. On and from the appointed day—

(a) any reference to the Society in any contract or other instrument shall be deemed as a reference to the Institute;

(b) all the rights and liabilities of the Society shall be transferred to, and be the rights and liabilities of, the Institute; and

(c) every person employed by the Society immediately before the appointed day shall hold office or service in the Institute by the same tenure, at the same
remuneration and upon the same terms and conditions and with the same rights and
privileges as to pension, leave, gratuity, provident fund and other matters as he
would have held the same if this Ordinance had not been promulgated, and shall
continue to be so unless and until his employment is terminated or until such tenure,
remuneration and terms and conditions are duly altered by the Statutes;

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

7. The functions of the Institute shall be—

(i) to nurture and promote quality and excellence in pharmaceutical education
and research;

(ii) to concentrate on courses leading to master's degree, doctoral and post-
doctoral courses and research in pharmaceutical education;

(iii) to hold examinations and grant degrees;

(iv) to confer honorary awards or other distinctions;

(v) to co-operate with educational or other institutions having objects wholly
or partly similar to those of the Institute by exchange of faculty members and scholars
and generally in such manner as may be conducive to their common objective;

(vi) to conduct courses for teachers, pharmaceutical technologist, community
and hospital pharmacists and other professionals;

(vii) to collect and maintain world literature on pharmaceutical and related
sciences and technology so as to develop an information centre of its own kind for
other institutions within the country and in the developing world;

(viii) to create a central faculty of pharmaceutical instrumentation and analysis
for use by the researchers within and outside the Institute;

(ix) to have a centre to experiment and innovate and to train teachers and other
workers in the art or science of pharmaceutical teaching;

(xi) to develop a world level centre for creation of new knowledge and
transmission of existing information in pharmaceutical areas, with focus on national,
educational, professional and industrial commitments;

(xii) to develop a multi-disciplinary approach in carrying out research and
training of pharmaceutical manpower so that the larger interests of the profession,
academia and pharmaceutical industry are better served and a pharmaceutical work
culture is evolved which is in tune with the changing world trends and patterns of
pharmaceutical education and research;

(xiii) to organise national or international symposia, seminars and conferences
in selected areas of pharmaceutical education, from time to time;

(xiv) to arrange courses catering to the special needs of the developing countries;

(xv) to act as a nucleus for inter-action between academic and industry by
encouraging exchange of scientists and other technical staff between the Institute
and the industry and by undertaking sponsored and funded research as well as
consultancy projects by the Institute; and

(xvi) to pay due attention to studies on the distribution and usage of drugs
by the rural masses, taking into account the socio-economic spectrum in the
country.
8. (1) Subject to the provisions of this Ordinance, the Board shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers not otherwise provided for by this Ordinance, the Statutes and the Ordinances, and shall have the power to review the acts of the Senate.

(2) Without prejudice to the provisions of sub-section (1), the Board shall—

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) fix, demand and receive fees and other charges;

(c) supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare and cultural and corporate life;

(d) institute academic and other posts and to make appointments thereto (except in the case of the Director);

(e) frame Statutes and Ordinances and to alter, modify or rescind the same;

(f) institute and award fellowship, scholarship, prizes and medals;

(g) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute for the next financial year as it thinks fit together with a statement of its development plans; and

(h) do all such things as may be necessary, incidental or conducive to the attainment of all or any of the aforesaid functions.

(3) The Board shall have the power to appoint such committees as it considers necessary for the exercise of its power and the performance of its duties under this Ordinance.

(4) Notwithstanding anything contained in sub-section (2) of section 4, the Board shall not dispose of in any manner any immovable property without the prior approval of the Central Government.

9. (1) The Institute shall be open to persons of either sex and of whatever race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers or workers or in any other connection whatsoever.

(2) No bequest, donation or transfer of any property shall be accepted by the Institute which in the opinion of the Board involves conditions or obligations opposed to the spirit and object of this section.

10. All teaching at the Institute shall be conducted by or in the name of the Institute in accordance with the Statutes and the Ordinances made in this behalf.

11. (1) The President of India shall be the Visitor of the Institute.

(2) The Visitor may appoint one or more persons to review the work and progress of the Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.

(3) Upon receipt of any such report, the Visitor may take such action and issue such directions as he considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions.

12. The following shall be the other authorities of the Institute, namely:—

(a) a Senate;

(b) such other authorities as may be declared by the Statutes to be the authorities of the Institute.
13. The Senate of the Institute shall consist of the following persons, namely—

(a) the Director, *ex officio*, who shall be the Chairperson of the Senate;

(b) the Dean, *ex officio*;

(c) five professors of the Institute, to be nominated by the Chairperson in consultation with the Director, by rotation;

(d) three persons, not being employees of the Institute, to be nominated by the Chairperson in consultation with the Director, from among educationists of repute, one each from the fields of science, engineering and humanities and one of them shall be either from the Scheduled Castes or from the Scheduled Tribes; and

(e) such other members of the staff as may be laid down in the Statutes.

14. Subject to the provisions of this Ordinance, the Statutes and the Ordinances, the Senate of the Institute shall have the control and general regulation, and be responsible for the maintenance, of standards of instruction, education and examination in the Institute and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes.

15. (1) The Chairperson shall ordinarily preside at the meetings of the Board and at the Convocations of the Institute.

(2) It shall be the duty of the Chairperson to ensure that the decisions taken by the Board are implemented.

(3) The Chairperson shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes.

16. (1) The Director of the Institute shall be appointed by the Board with the prior approval of the Visitor.

(2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and academic performance of the Institute and for imparting of instruction and maintenance of discipline therein.

(3) The Director shall submit annual reports and accounts to the Board.

(4) The Director shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes or the Ordinances.

17. (1) The Dean of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall exercise such powers and perform such duties as may be assigned to him by this Ordinance or the Statutes or the Director.

(2) The Dean shall report to the Director.

18. (1) The Registrar of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall be the custodian of records, the common seal, the funds of the Institute and such other property of the Institute as the Board shall commit to his charge.

(2) The Registrar shall act as the Secretary of the Board, the Senate and such committees as may be prescribed by the Statutes.

(3) The Registrar shall be responsible to the Director for the proper discharge of his functions.

(4) The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Ordinance or the Statutes or the Director.

19. The powers and duties of authorities and officers, other than those hereinbefore mentioned, shall be determined by the Statutes.
20. For the purpose of enabling the Institute to discharge its functions efficiently under this Ordinance, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money and in such manner as it may think fit.

21. (1) The Institute shall maintain a fund to which shall be credited—
   (a) all moneys provided by the Central Government;
   (b) all fees and other charges;
   (c) all moneys received by the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; and
   (d) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund of the Institute shall be deposited in such banks or invested in such manner as the Institute may, with the approval of the Central Government, decide.

(3) The Fund of the Institute shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its duties under this Ordinance.

22. Notwithstanding anything contained in section 21, the Central Government may direct the Institute to—
   (a) set up an endowment fund and any other fund for specified purpose;
   (b) transfer money from its Fund to endowment fund or any other fund.

23. (1) The Institute shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance-sheet, in such form as may be specified, in accordance with such general directions as may be issued by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Institute shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Institute to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Institute shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Institute.

(4) The accounts of the Institute as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. (1) The Institute shall constitute, for the benefit of its employees, including the Director, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit.

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

25. All appointments on the staff of the Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes—
   (a) by the Board, if the appointment is made on the academic staff in the post of Assistant Professor or above or if the appointment is made on the non-academic staff in any cadre, the maximum of the pay-scale for which is the same or higher than that of Assistant Professor; and
(b) by the Director, in any other case.

26. Subject to the provisions of this Ordinance, the Statutes may provide for all or any of the following matters, namely:

(a) the formation of departments of teaching;
(b) the institution of fellowships, scholarships, exhibitions, medals and prizes;
(c) the classification, the method of appointment and the determination of the terms and conditions of service of officers, teachers and other staff of the Institute;
(d) the reservation of posts for the Scheduled Castes, the Scheduled Tribes and other categories of persons as may be determined by the Central Government, from time to time;
(e) the constitution of pension, insurance and provident funds for the benefit of the officers, teachers and other staff of the Institute;
(f) the constitution, powers and duties of the authorities of the Institute;
(g) the establishment and maintenance of halls and hostels;
(h) the manner of filling vacancies among members of the Board;
(i) the authentication of the orders and decisions of the Board;
(j) the meetings of the Senate, the quorum at such meetings and the procedure to be followed in the conduct of their business; and
(k) any other matter which by this Ordinance is to be, or may be, prescribed by the Statutes.

27. (1) The first Statute of the Institute shall be framed by the Board with the previous approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.

(2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereafter in this section provided.

(3) A new Statute or addition to the Statute or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may assent thereto or withhold assent or refer it to the Board for consideration.

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

28. Subject to the provisions of this Ordinance and the Statutes, the ordinances of the Institute may provide for all or any of the following matters, namely:

(a) the admission of the students to the Institute;
(b) the reservation for the Scheduled Castes, the Scheduled Tribes and other categories of person;
(c) the courses of study to be laid down for all degrees of the Institute;
(d) the conditions under which students shall be admitted to the degree courses and to the examinations of the Institute and shall be eligible for degrees;
(e) the conditions of award of the fellowships, scholarships, exhibitions, medals and prizes;
(f) the conditions and mode of appointment and duties of examining bodies, examiners and moderators;
(g) the conduct of examinations;
(h) the maintenance of discipline amongst the students of the Institute;
(i) the fees to be charged for courses of study in the Institute and for admission to the examinations of degrees of the Institute.
(a) the conditions of residence of students of the Institute and the levying of the fees for residence in the halls and hostels and of other charges; and

(b) any other matter which by this Ordinance or the Statutes is to be, or may be provided for by the ordinances.

29. (1) Save as otherwise provided in this section, ordinances shall be made by the Senate.

(2) All ordinances made by the Senate shall have effect from such date as it may direct, but every ordinance so made shall be submitted, as soon as may be, to the Board and shall be considered by the Board at its next succeeding meeting.

(3) The Board shall have power by resolution to modify or cancel any such ordinances and such ordinances shall from the date of such resolution stand modified accordingly or cancelled, as the case may be.

30. (1) Any dispute arising out of a contract between the Institute and any of its employees shall, at the request of the employee concerned or at the instance of the Institute, be referred to a Tribunal or Arbitration consisting of one member appointed by the Institute, one member nominated by the employee and an umpire appointed by the Visitor.

(2) The decision of the Tribunal of Arbitration shall be final and shall not be questioned in any court.

(3) No suit or proceeding shall lie in any court in respect of any matter which is required by sub-section (1) to be referred to the Tribunal of Arbitration.

(4) The Tribunal of Arbitration shall have power to regulate its own procedure.

(5) Nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

CHAPTER II
MISCELLANEOUS

31. No act of the Institute or Board or Senate or any other body set up under this Ordinance or the Statutes, shall be invalid merely by reason of—

(a) any vacancy in, or defect in, the constitution thereof, or

(b) any defect in the election, nomination or appointment of person acting as a member thereof, or

(c) any irregularity in its procedure not affecting the merits of the case.

32. Notwithstanding anything contained in the University Grants Commission Act, 1956 or in any other law for the time being in force, the Institute shall have power to grant degrees and other academic distinctions and titles under this Ordinance.

33. Wherever the Institute receives funds from any Government, the University Grants Commission or any other agency sponsoring a scheme to be executed by the Institute, notwithstanding anything in this Ordinance,—

(a) the amount received shall be kept by the Institute separately from the Fund of the Institute and utilised only for the purpose of the scheme;

(b) the staff required to execute the same shall be recruited in accordance with the terms and conditions stipulated by the sponsoring organisation;

Provided that any money remaining unutilised under clause (a) shall be transferred to the endowment fund created under section 22 of this Ordinance.

34. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Ordinance, as appears to it to be necessary or expedient for removing the difficulty:
Provided that no such order shall be made after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

35. Notwithstanding anything contained in this Ordinance,—

(a) the Board of Governors of the Society functioning as such immediately before the commencement of this Ordinance shall continue to so function until a new Board is constituted for the Society under this Ordinance, but on the constitution of a new Board under this Ordinance, the members of the Board holding office before such constitution shall cease to hold office;

(b) until the first Statutes and the Ordinances are made under this Ordinance, the Statutes and Ordinances of the National Institute of Pharmaceutical Education and Research, Sector-67, S.A.S. Nagar (Mohali), District Reper, Punjab, as in force, immediately before the commencement of this Ordinance, shall continue to apply to the Institute in so far as they are not inconsistent with the provisions of this Ordinance.

36. (1) Every Statute or Ordinance made under this Ordinance shall be published in the Official Gazette.

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

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

37. (1) The National Institute of Pharmaceutical Education and Research Ordinance, 1998, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance so repealed, shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 23rd April, 1998/Vaisakha 3, 1920 (Saka)

THE PAYMENT OF GRATUITY (AMENDMENT) ORDINANCE, 1998

No. 10 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India

An Ordinance further to amend the Payment of Gratuity Act, 1972.

Whereas a Bill further to amend the Payment of Gratuity Act, 1972, was introduced in the Council of States but has not yet been passed;

And whereas the Payment of Gratuity (Amendment) Ordinance, 1997 to give effect to the provisions of the said Bill was promulgated by the President on the 24th day of September, 1997;

And whereas the House of the People had been dissolved and the Payment of Gratuity (Amendment) Second Ordinance, 1997 to give continued effect to the provisions of the said Ordinance was promulgated by the President on the 25th day of December, 1997;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the Payment of Gratuity (Amendment) Second Ordinance, 1997;
Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Payment of Gratuity (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 24th day of September, 1997.

2. In section 4 of the Payment of Gratuity Act, 1972, (hereinafter referred to as the principal Act), sub-section (3), for the words "one lakh", the words "two lakhs and fifty thousand" shall be substituted.

3. (1) The Payment of Gratuity (Amendment) Second Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 24th April, 1998/Vaisakha 4, 1920 (Saka)

THE HIGH COURT AND SUPREME COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT ORDINANCE, 1998

No. 11 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the High Court and Supreme Court Judges (Conditions of Service) Amendment Ordinance, 1998.

(2) It shall be deemed to have come into force on the 1st day of January, 1996.
CHAPTER II

AMENDMENT OF THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1954

2. In the long title to the High Court Judges (Conditions of Service) Act, 1954, (hereinafter referred to as the High Court Judges Act), for the words "certain conditions of service", the words "salaries and certain conditions of service" shall be substituted.

3. In section 1 of the High Court Judges Act, for the brackets and words "(Conditions of Service)", the brackets and words "(Salaries and Conditions of Service)" shall be substituted.

4. In Chapter III of the High Court Judges Act,—

(a) for the heading "Pensions", the heading "Salaries and Pensions" shall be substituted; and

(b) after the heading as so substituted and before section 14, the following section shall be inserted, namely:—

"13A. (1) There shall be paid to the Chief Justice of a High Court by way of salary thirty thousand rupees per mensem.

(2) There shall be paid to a Judge of a High Court by way of salary twenty-six thousand rupees per mensem."

CHAPTER III

AMENDMENT OF THE SUPREME COURT JUDGES (CONDITIONS OF SERVICE) ACT, 1958

5. In the long title to the Supreme Court Judges (Conditions of Service) Act, 1958, (hereinafter referred to as the Supreme Court Judges Act), for the words "certain conditions of service", the words "salaries and certain conditions of service" shall be substituted.

6. In section 1 of the Supreme Court Judges Act, for the brackets and words "(Conditions of Service)", the brackets and words "(Salaries and Conditions of Service)" shall be substituted.

7. In Chapter III of the Supreme Court Judges Act,—

(a) for the heading "Pensions", the heading "Salaries and Pensions" shall be substituted; and

(b) after the heading as so substituted and before section 13, the following section shall be inserted, namely:—

"12A. (1) There shall be paid to the Chief Justice of India by way of salary thirty-three thousand rupees per mensem.

(2) There shall be paid to a Judge of the Supreme Court by way of salary thirty thousand rupees per mensem."
CHAPTER IV
TRANSITIONAL PROVISION

8. The difference of salary payable to a Judge of a High Court under the High Court Judges Act or a Judge of the Supreme Court under the Supreme Court Judges Act, as amended by this Ordinance, and salary payable to such Judge but for this Ordinance, shall be paid in two instalments, the first instalment being five thousand rupees plus fifty percent of the balance of such difference to be paid as early as may be practicable, and the second instalment to be paid within such period as may be decided by the Central Government.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Sec. to the Govt. of India.
MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 24th April, 1998/Naishaka 4, 1920 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDINANCE, 1998

No. 12 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS the representation of the People (Amendment) Ordinance, 1997 further to amend the Representation of the People Act, 1951 was promulgated by the President on the 23rd day of December, 1997;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 23rd day of December, 1997.
2. For section 159 of the Representation of the People Act, 1951, (hereinafter referred to as the principal Act), the following section shall be substituted, namely:

"159. (1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purposes of sub-section (1), namely:

(i) every local authority;

(ii) every university established by a Central, Provincial or State Act;

(iii) any other institution, concern or undertaking (not being an institution, a concern or an undertaking established under a Central, Provincial or State Act or a company within the meaning of section 617 of the Companies Act, 1956) controlled or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government."

3. (1) The Representation of the People (Amendment) Ordinance, 1997, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance so repealed, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K.R. NARAYANAN,
President

RAGHBIR SINGH,
Secy. to the Govt. of India
MINISTRY OF LAW AND JUSTICE  
(Legislative Department)  

New Delhi, the 25th April, 1998/Vaisakha 5, 1920 (Saka)  

THE ESSENTIAL COMMODITIES (AMENDMENT)  
ORDINANCE, 1998  

No. 13 of 1998  

Promulgated by the President in the Forty-ninth Year of the  
Republic of India  

An Ordinance further to amend the Essential Commodities Act, 1955.  

WHEREAS Parliament is not in session and the President is satisfied that circumstances  
exist which render it necessary for him to take immediate action;  

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of  
the Constitution, the President is pleased to promulgate the following Ordinance:—  

1. (1) This Ordinance may be called the Essential Commodities (Amendment)  

(2) It shall come into force at once.
2. In section 2 of the Essential Commodities Act, 1955, (hereinafter referred to as the principal Act),—

(a) clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted, namely:—

"(ia) "Code" means the Code of Criminal Procedure, 1973;"; and

(b) in clause (i), sub-clause (iii) shall be omitted;

(c) after clause (e), the following clause shall be inserted, namely:—

"(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.".

3. In section 3 of the principal Act,—

(i) in sub-section (2), to clause (j), the following proviso shall be inserted, namely:—

"Provided that where a person authorised under an order issued under this section to make the entry, search, examination or seizure is below the rank of a Magistrate of the first class or its equivalent, he shall obtain prior permission of an officer not below the rank of a Magistrate of the first class or its equivalent before making such entry, search, examination or seizure.";

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

(2A) An order made under this section may provide for certain allowance for difference between physical stock and stock in record of any essential commodity which may occur due to climatic conditions or handling of the essential commodity.".

4. In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

"Provided that, in case of any essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force and which is being sold through fair price shops, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed.".

5. In section 7 of the principal Act,—

(a) in sub-section (1), in clause (a),—

(ii) for sub-section (i), the following sub-clause shall be substituted, namely:—

"(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both:

Provided that, if any person is again convicted of the same offence under this sub-clause, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than three months but which may extend to one year and with fine which may extend to twenty thousand rupees or with both:

Provided further that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;";

(ii) in sub-clause (ii), for the words "seven years and shall also be liable to fine", the words "two years and shall also be liable to fine which shall not be less than twenty-five thousand rupees" shall be substituted;";
(6) in sub-section (2), for the words "seven years and shall also be liable to fine", the words "two years and shall also be liable to fine which shall not be less than twenty-five thousand rupees" shall be substituted;

(7) in sub-section (2A), for the words "seven years and shall also be liable to fine", the words "two years and shall also be liable to fine which shall not be less than fifty-thousand rupees" shall be substituted.

6. For section 10A of the principal Act, the following section shall be substituted, namely:

"10A. Notwithstanding anything contained in the Code, every offence punishable under—

(a) this Act shall be cognizable;

(b) this Act, except under sub-clause (h) or sub-clause (i) of clause (a) of sub-section (1) of section 7, shall be non-bailable;

(c) sub-clause (h) or sub-clause (i) of clause (a) of sub-section (1) of section 7, if committed more than once, shall be non-bailable for the second and every subsequent offence."

7. After section 10A of the principal Act, the following section shall be inserted, namely:

"10AA. Notwithstanding anything contained in the Code, no officer below the rank of sub-inspector of police shall arrest any person accused of committing an offence punishable under this Act."

8. Section 12 of the principal Act shall be omitted.

9. For section 12A of the principal Act, the following sections shall be substituted, namely:

"12A. (1) The State Government may, for the purposes of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation. — In this sub-section, the word "appoint" shall have the meaning given to it in the Explanation to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) He is qualified for appointment as a Judge of a High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. (1) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;
(b) A Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an Officer of the Central Government or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial;

(c) all offences under this Act shall be tried in a summary way and the provisions of section 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this Section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law:

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

12AB. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AC. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

10. (1) The Essential Commodities (Special Provisions) Second Ordinance, 1998 is hereby repealed.
(2) Notwithstanding such repeal, if any appeal, application, trial, inquiry or investigation is pending immediately before such repeal, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or raade, as the case may be, in accordance with the provisions of the principal Act as amended by the Essential Commodities (Special Provisions) Ordinance, 1998 as in force immediately before the commencement of this Ordinance, as if, this Ordinance had not come into force.

K. R. NARAYANAN, 
President.

RAGHIBIR SINGH, 
Secy. to the Govt. of India.
THE ELECTRICITY REGULATORY COMMISSIONS ORDINANCE, 1998

An Ordinance to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that the circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Electricity Regulatory Commissions Ordinance, 1998.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.
Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Central Commission" means the Central Electricity Regulatory Commission established under sub-section (1) of section 3;

(b) "Chairperson" means the Chairperson of the Commission;

(c) "Commission" means, the Central Commission or the State Commission, as the case may be;

(d) High Court means,—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where are more than one respondent ordinarily resides or carries on business or personally works for gain.

(e) "Member" means the Member of the Commission and includes the Chairperson but does not include a Member ex-officio;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) "regulations" means regulations made under this Ordinance;

(h) "State Commission" means the State Electricity Regulatory Commission established under sub-section (1) of section 17;

(i) "transmission utility" means any generating company, board, licensee or other person engaged in the transmission of energy;

(j) "utility" means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy;

(k) words and expressions used and not defined in this Ordinance but defined in the Electricity (Supply) Act, 1948 or the Indian Electricity Act, 1910 shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

CENTRAL ELECTRICITY REGULATORY COMMISSION

3. (1) The Central Government, shall, within three months from the date of the commencement of this Ordinance by notification in the Official Gazette, establish a body to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on and the functions assigned to it under this Ordinance.

(2) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Central Commission shall be at such place as the Central Government may, by notification in the Official Gazette, specify.
(4) The Central Commission shall consist of the following Members, namely:—

(a) a Chairperson and three other Members;

(b) the Chairman of the Central Electricity Authority appointed under sub-section (3) of section 3 of the Electricity Supply Act, 1948, who shall be Member ex-officio.

(5) The Chairperson and the other Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 5:

Provided that nothing contained in this sub-section shall apply to the appointment of a person as the Chairperson, where such person is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

4. (1) The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge, experience or shown capacity in dealing with problems relating to engineering, law, economics, commerce, finance or management and shall be appointed in the following manner, namely:—

(a) one person having qualification and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity;

(b) one person having qualification and experience in the field of finance; and

(c) two persons having qualification and experience in the field of economics, commerce, law or management:

Provided that not more than one Member shall be appointed under the same category under clause (c).

(2) Notwithstanding anything contained in sub-section (1), the Central Government may appoint any person as the Chairperson from amongst persons who is or has been Judge of the Supreme Court or the Chief Justice of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

(3) The Chairperson or any other Member of the Central Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the Central Commission.

5. (1) The Central Government shall, for the purpose of sub-section (5) of section 3, constitute a Selection Committee consisting of—

(a) Member of the Planning Commission in charge of the energy sector — Chairperson;

(b) Secretary-in-charge of the Ministry of the Central Government dealing with the Department of Legal Affairs — Member;

(c) Chairman of the Public Enterprises Selection Board — Member;

(d) a person to be nominated by the Central Government in accordance with sub-section (2) — Member;
(e) a person to be nominated by the Central Government in accordance with sub-section (7) — Member;

(f) Secretary-in-charge of the Ministry of the Central Government dealing with Power; — Convenor;

(2) For the purposes of clause (d) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of Chairman or Managing Director by whatever name called of any public financial institution specified in section 4A of the Companies Act, 1956.

(3) For the purposes of clause (e) of sub-section (1), the Central Government shall nominate from amongst persons holding the post of Director or the head of the institution, by whatever name called of any research, technical or management institution notified by the Central Government in the Official Gazette for this purpose.

(4) The Central Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of any Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(5) The Selection Committee shall finalise the selection of the Chairperson and Members within one month from the date on which the reference is made to it.

(6) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(7) Before recommending any person for appointment as a Chairperson or other Member of the Central Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member.

(8) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

6. (1) The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-five years, and

(b) in the case of any other Member, the age of sixty-two years.

(2) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed.

(3) The salary, allowances and other conditions of service of the Chairperson and the Members shall not be varied to their disadvantage after appointment.

(4) The Chairperson and every Member shall before entering upon his office, make and subscribe to, an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.
(5) Notwithstanding anything contained in sub-section (1), Chairperson or any Member may—

(a) relinquish his office by giving in writing to the President notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(6) The Chairperson or any Member ceasing to hold office as such shall—

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceased to hold such office;

(b) not accept any commercial employment for a period of two years from the date he ceased to hold such office;

(c) not represent any person before the Central Commission or a State Commission in any manner.

Explanation.—For the purposes of this sub-section,—

(i) employment under the Central Government or under the State Government includes employment under any local or other authority within the territory of India or under the control of the Central Government or State Government or under any corporation or society owned or controlled by the Government.

(ii) "commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

7. (1) Subject to the provisions of sub-section (3), any Member of the Central Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in, that behalf by the Supreme Court, reported that the Member, ought on any such ground to be removed.

(2) The President may suspend any Member of the Central Commission in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court.

(3) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be,—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(4) Notwithstanding anything contained in sub-section (3), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the President, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf by the Supreme Court, reported that the member ought on such ground or grounds to be removed.

8. (1) The Central Commission may appoint a Secretary to exercise and perform under the control of the Chairperson such duties and powers as may be specified by regulations made by the Central Commission.

(2) The Central Commission may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required to assist the Central Commission in the discharge of its functions.

(3) The salaries and allowances payable to and other conditions of service of the Secretary, officers and other employees shall be such as may be determined with the approval of the Central Government by regulations.

(4) The Central Commission may appoint consultants required to assist the Central Commission in the discharge of its functions on terms and conditions as may be determined by regulations made by the Central Commission.

9. (1) The Central Commission shall meet at the head office or any of its offices at such times as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be determined by regulations.

(2) The Chairperson or, if he is unable to attend a meeting of the Central Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting.

(3) All questions which come up before any meeting of the Central Commission shall be decided by a majority of votes of the Members (including the Member ex-officio) present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every Member of the Board shall have one vote.

(5) All orders and decisions of the Central Commission shall be authenticated by the Secretary or any other officer of the Central Commission duly authorised by the Chairperson in this behalf.

10. No act or proceedings of the Central Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Central Commission.
11. The expenses of the Central Commission including all salaries and allowances payable to or in respect of the Chairperson and the Members of the Central Commission shall be charged upon the Consolidated Fund of India.

12. The Central Commission shall, for the purposes of any inquiry or proceedings under this Ordinance have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely—

(a) the summoning and enforcing of attendance of any witness and examining on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisition of any public record;

(e) the issue of commission for examination of witnesses;

(f) any other matter which may be prescribed.

CHAPTER III

POWERS AND FUNCTIONS OF THE CENTRAL COMMISSION

13. The Central Commission shall discharge all or any of the following functions, namely—

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate,—

(i) the inter-state transmission of energy including tariff of the transmission utilities;

(ii) conveyance of energy by means of a main transmission line from the territory of one State to the territory of another State;

(iii) conveyance of energy across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of energy;

(iv) the transmission of energy within the territory on a system built, owned, operated, maintained or controlled by a central transmission utility or by any person...
under the supervision and control of a central transmission utility.

(d) to promote competition, efficiency and economy in the activities of the electricity industry;

(e) to aid and advise the Central Government in the formulation of tariff policy, which shall be,—

(i) fair to the consumers;
(ii) facilitate mobilisation of adequate resources for the power sector;

(f) to associate with the environmental regulatory agencies to develop appropriate policies and procedures for environmental regulation of the power sector;

(g) to frame guidelines in matters relating to electricity tariff;

(h) to arbitrate or adjudicate upon disputes involving generating companies or transmission utilities in regard to matters connected with clause (d) to (c) above;

(i) to aid and advise the Central Government on any other matter referred to the Central Commission by that Government.

The Central Advisory Committee.

14. (1) The Central Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Central Advisory Committee.

(2) The Central Advisory Committee shall consist of not more than thirty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector.

(3) The Chairperson and Members of the Central Commission shall be ex-officio Chairperson and ex-officio Members of the Central Advisory Committee.

Object of the Central Advisory Committee.

15. The objects of the Central Advisory Committee shall be to advise the Central Commission on,—

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licencees;

(iii) compliance by licencees with the conditions and requirements of their license;

(iv) protection of consumer interest; and

(v) energy supply and overall standards of performance by utilities.

Appeal to High Court in certain cases.

16. (1) Any person aggrieved by any decision or order of the Central Commission may file an appeal to the High Court.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any decision or order of the Central Commission.

(3) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the Central Commission to the person aggrieved by the said decision or order:
CHAPTER IV

STATE ELECTRICITY REGULATORY COMMISSION

17. (1) The State Government shall within three months from the commencement of this Ordinance, by notification in the Official Gazette, establish, for the purposes of this Ordinance, a (name of the State) Electricity Regulatory Commission.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification in the Official Gazette, specify.

(4) The State Commission shall consist of not more than three Members including the Chairperson.

(5) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with problems relating to, engineering, finance, commerce, economics, law or management.

(6) The Chairperson and the Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 18.

(7) Notwithstanding anything contained in sub-section (5) or sub-section (6), the State Government may appoint any person as the Chairperson from amongst person who is or has been a Judge of a High Court:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of that High Court.

(8) The Chairperson shall be the chief executive of the State Commission.

18. (1) The State Government shall, for the purposes of selecting the Members of the State Electricity Commission, constitute a Selection Committee consisting of:

(a) a person who has been a Judge of the High Court; - Chairperson;

(b) Chief Secretary of the concerned State; - Member;

(c) Chairperson or a member of the Central Electricity Regulatory Authority - Member.

Provided that nothing contained in this sub-section shall apply to the appointment of a person as the Chairperson who is or has been a judge of the High Court.
(2) No appointment of a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The State Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of any Chairperson or a Member, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall finalise the selection of the Members within one month from the date on which the reference is made to it.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) Before recommending any person for appointment as a Member, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member.

19. (1) The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-five years, and

(b) in the case of any other Member, the age of sixty-two years.

(2) The salary and allowances payable to and the other terms and conditions of service of the Members of the State Commission shall be such as may be prescribed by the State Government.

(3) The salary, allowances and other conditions of service of the Members shall not be varied to their disadvantage after appointment.

(4) Every Member of the State Commission shall, before entering upon his office, make and subscribe to, an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2), a Member may—

(a) relinquish his office by giving in writing to the Governor notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 19.

(6) Any Member ceasing to hold office as such shall—

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceased to hold such office;

(b) not accept any commercial employment for a period of two years from the date
(c) the Governor may by order remove any Member of the Council, or dismiss a Member, if—

2. (1) Subject to the provisions of sub-section (3), any Member of the Council may be removed from the office of a Member or dismissed by the Governor, on the ground of proved misbehaviour or neglect of -member or dismiss any Member of the Council, or to dismiss any Member of the Council on the ground of proved misbehaviour or neglect of duty by the Governor, after the High Court, on reference being made to it by the Governor, has, on inquiry held in accordance with such procedure as may be prescribed in this behalf by the High Court, reported that the Member ought to be removed.

3. (1) While a reference is pending under sub-section (2) of this section, the Governor shall not remove or dismiss any Member of the Council, or to dismiss any Member of the Council on the ground of proved misbehaviour or neglect of duty by the Governor, except with the previous approval of the Central Government.

4. (1) Subject to the provisions of sub-section (3), any Member of the Council may be removed from the office of a Member or dismissed by the Governor, on the ground of proved misbehaviour or neglect of duty by the Governor, after the High Court, on reference being made to it by the Governor, has, on inquiry held in accordance with such procedure as may be prescribed in this behalf by the High Court, reported that the Member ought to be removed.

5. (1) While a reference is pending under sub-section (2) of this section, the Governor shall not remove or dismiss any Member of the Council, or to dismiss any Member of the Council on the ground of proved misbehaviour or neglect of duty by the Governor, except with the previous approval of the Central Government.
21. (1) The State Commission may appoint a Secretary to exercise and perform under the control of the Chairperson such duties and powers as may be specified by regulations made by the State Commission.

(2) The State Commission may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required to assist the State Commission in the discharge of its functions.

(3) The salaries and allowances payable to and other conditions of service of the Secretary, officers and other employees shall be such as may be determined by regulations with the approval of the State Government.

(4) The State Commission may appoint consultants required to assist the State Commission in the discharge of its functions on terms and conditions as may be determined by regulations by the State Commission.

CHAPTER V

POWERS AND FUNCTIONS OF THE STATE COMMISSION

22. (1) Subject to the provisions of Chapter III, the State Commission shall discharge the following functions, namely:

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be, in the manner provided in section 29;

(b) to determine the tariff payable for use of the transmission facilities in the manner provided in section 29;

(c) to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution and supply in the State;

(d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Ordinance.

(2) Subject to the provisions of Chapter III and without prejudice to the provisions of sub-section (1), the State Government, may by notification in the Official Gazette confer any of the following functions upon the State Commission, namely:—

(a) to regulate the investment approval for generation, transmission, distribution and supply of power to the entities operating within the State;

(b) to aid and advise the State Government, in matters concerning electricity generation, transmission, distribution and supply in the State;

(c) to regulate the operation of the power system within the State;

(d) to issue licences for transmission, bulk supply, distribution or supply of electricity and determine the conditions to be included in the licences;

(e) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the State and to promote their working in an efficient, economical and equitable manner;
(f) to require licensees to formulate perspective plans and schemes in co-ordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise proper power purchase and procurement process;

(g) to set standards for the electricity industry in the State including standards relating to quality, continuity and reliability of service;

(h) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the customers;

(i) to lay down and enforce safety standards;

(j) to aid and advise the State Government in the formulation of the State power policy;

(k) to collect and record information concerning the generation, transmission, distribution and utilisation of electricity;

(l) to collect and publish data and forecasts on the demand for, and use of, electricity in the State and to require the licensees to collect and publish such data;

(m) to regulate the assets, properties and interest in properties concerning or related to the electricity industry in the State including the conditions governing entry into, and exit from, the electricity industry in such manner as to safeguard the public interest;

(n) to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration;

(o) to co-ordinate with environmental regulatory agencies and to evolve policies and procedures for appropriate environmental regulations of the electricity sector and utilities in the State; and

(p) to aid and advise the State Government on any other matter referred to the State Commission by such Government;

(3) The State Commission shall exercise its functions in conformity with the national power plan.

23. The provisions of sections 9, 10 and 12 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—

(a) references to “Central Commission” shall be construed as references to “State Commission”;

(b) in sub-section (3) of section 9, the words and brackets “(including the Member ex-officio)” shall be omitted.

24. (1) The State Commission may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the State Advisory Committee.

(2) The State Advisory Committee shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the energy sector.
25. The objects of the State Committee shall be to advise the Commission on—

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by licensees with the conditions and requirements of their license;

(iv) protection of consumer interest; and

(v) energy supply and overall standards of performance by utilities.

26. The State Commission shall authorise any person as it deems fit to represent the interest of the consumers in all the proceedings before it.

27. (1) Any person aggrieved by any decision or order of the State Commission may file an appeal to the High Court.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any decision or order of the State Commission.

(3) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the State Commission to the person aggrieved by the said decision or order.

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the said period of sixty days.

CHAPTER VI

ENERGY TARIFF

28. The Central Commission shall determine by regulations the terms and conditions for fixation of tariff under clauses (a), (b) and (c) of section 13, and in doing so, shall be guided by the following, namely:

(a) the generating companies and transmission entities shall adopt such principles in order that they may earn an adequate return and at the same time that they do not exploit their dominant position in the generation sale of electricity or in the inter-state transmission of electricity;

(b) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the Central Commission considers appropriate;
(c) national power plans formulated by the Central Government; and

(d) financial principles and their applications as provided under Schedule VI to the Electricity (Supply) Act, 1948.

29. (1) Notwithstanding anything contained in any other law, the tariff for intra State transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail, as the case may be, in a State (hereinafter referred to as the "tariff"), shall be subject to the provisions of this Ordinance and the tariff shall be determined by the State Commission of that State in accordance with the provisions of this Ordinance.

(2) The State Commission shall determine by regulations the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following, namely:

(a) the principles and their applications provided in sections 46, 57 and 57A of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereto;

(b) in the case of the Board or its successor entities, the principles under section 59 of the Electricity (Supply) Act, 1948;

(c) that the tariff progressively reflects the cost of supply of electricity at an adequate and improving level of efficiency;

(d) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments, and other matters which the State Commission considers appropriate for the purposes of this Ordinance;

(e) the interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply of energy;

(f) the electricity generation, transmission, distribution and supply are conducted on commercial principles;

(g) national power plans formulated by the Central Government:

(3) No consumer or class of consumers shall be charged less than fifty percent. of the average cost of supply of energy:

Provided that if the State Commission considers it necessary it may allow the consumers in the agricultural sector to be charged less than fifty per cent. subject to the condition that the charges less than the said fifty per cent. shall not be allowed after the expiry of a period of three years from the commencement of this Ordinance.

(4) If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licensee or any other person concerned to implement the subsidy provided for by the State Government.

(5) Subject to the provisions of sub-section (3), the State Commission, while determining the tariff under this Ordinance, shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer’s load factor, power factor, total consumption of energy during any specified period or the time at
which the supply is required or the geographical position of any area, the nature of
supply and the purpose for which the supply is required.

(6) The holder of each licence and other persons including the Board or its successor
body authorised to transmit, sell, distribute or supply electricity wholesale, bulk or retail,
in the State shall observe the methodologies and procedures specified by the State
Commission from time to time in calculating the expected revenue from charges which
he is permitted to recover and in determining tariffs to collect those revenues.

30. Where the Commissions depart from factors specified in clauses (a) to (d) of
section 28 and clauses (a) to (f) of sub-section (2) of section 29, they shall record the
reasons for such departure in writing.

CHAPTER VII

ACCOUNTS, AUDIT AND REPORTS

31. The Central Commission shall prepare, in such form and at such time in each
financial year as may be prescribed, its budget for the next financial year, showing the
estimated receipts and expenditure of the Central Commission and forward the same to
the Central Government.

32. (1) The Central Commission shall maintain proper accounts and other relevant
records and prepare an annual statement of accounts in such form as may be prescribed
by the Central Government in consultation with the Comptroller and Auditor-General of
India.

(2) The accounts of the Central Commission shall be audited by the Comptroller and
Auditor-General at such intervals as may be specified by him and any expenditure
incurred in connection with such audit shall be payable by the Central Commission to
the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in
connection with the audit of the accounts of the Central Commission under this
Ordinance shall have the same rights and privileges and authority in connection with
such audit as the Comptroller and Auditor-General generally has in connection with the
audit of Government accounts and, in particular, shall have the right to demand the
production of books, accounts, connected vouchers and other documents and papers and
to inspect any of the offices of the Central Commission.

(4) The accounts of the Central Commission, as certified by the Comptroller and
Auditor-General or any other person appointed by him in this behalf, together with the
audit report thereon shall be forwarded annually to the Central Government by the
Central Commission and the Central Government shall cause the audit report to be laid,
as soon as may be after it is received, before each House of Parliament.

33. The State Commissions shall prepare, in such form and at such time in each
financial year as may be prescribed, its budget for the next financial year, showing the
estimated receipts and expenditure of the State Commission and forward the same to the
State Government.
34. (1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Ordinance shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

35. (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

36. (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VI

MISCELLANEOUS

37. The Commissions shall ensure transparency while exercising their powers and discharging their functions.

38. The Central Commission may carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Ordinance.
Directions by the Central Government.

39. The State Commission may carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Ordinance.

Members, officers and employees of Central Commission to be public servants.

40. The Chairperson, Members, officers and other employees of the Commissions shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, to be public servants within the meaning of section 21 of the Indian Penal Code.

Special provision relating to the Orissa Electricity Reform Act, 1995 and Haryana State Electricity Reforms Act, 1997.

41. The provisions of this Ordinance in so far as they relate to the State Commission shall not apply to the Commissions established under the Orissa State Electricity Reform Act, 1995 or the Haryana State Electricity Reform Act, 1997.

Proceedings before the Commission.

42. All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Protection of action taken in good faith.

43. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Central or State Commission or any officer of Central or State Government or any Members, officer or other employees of the Central or State Commission for anything which is in good faith done or intended to be done under this Ordinance or the rules or regulations made thereunder.

Punishment for non-compliance of orders or directions under the Ordinance.

44. Whoever fails to comply with any order or direction given under this Ordinance, within such time as may be specified in the said order or direction or contravenes, or attempts to contravene or abets the contravention of any of the provisions of this Ordinance or any rules or regulations made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to rupees one lakh or, with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to rupees four thousand for every day during which the failure continues after conviction of the first such offence.

Punishment for non-compliance of directions given by a Commission.

45. (1) In case any complaint is filed before the Commission by any person or if the Commission is satisfied that any person has contravened any directions issued by the Commission under this Ordinance, rules or regulations made thereunder, the Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Ordinance, such person shall pay, by way of penalty, which shall not exceed rupees one lakh for each contravention and in case of a continuing failure with an
additional penalty which may extend to rupees six thousand for every day during which the failure continues after contravention for the first such direction.

(2) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.

46. The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies thereof from subject to the provisions of section 190 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

47. (1) Where an offence under this Ordinance 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 provided in this Ordinance if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

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

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

48. No court shall take cognizance of an offence punishable under this Ordinance except upon a complaint, in writing, made by the Commission or by any other officer duly authorised by the Commission for this purpose.

49. Nothing contained in this Ordinance or any rule or regulations made thereunder or any instrument having effect by virtue of this Ordinance, rule or regulations shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962.

50. The Central or the State Commission may, by general or special order in writing, delegate to any Members, officer of the Central or the State Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Ordinance (except the power to settle disputes under Chapters III and V and the power to make regulations under sections 55 or 58) as it may deem necessary.

51. From such date as the Central Government may, by notification, in the Official
Gazette appoint, sub-section (2) of section 43A of the Electricity (Supply) Act, 1948 shall be omitted.

52. Save as otherwise provided in section 49, the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance.

53. The Central Government may give directions to a State Government as to the carrying out into execution of this Ordinance in the State.

54. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(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 salary and allowances payable to and the other conditions of service of the Chairperson and Members under sub-section (2) of section 6;

(b) the form, manner and the authority before whom oath of office and secrecy should be subscribed under sub-section (4) of section 6;

(c) the form in which and the time at which the Central Commission shall prepared its budget under section 31;

(d) the form in which annual statement of accounts to be prepared by the Central Commission under sub-section (1) of section 32;

(e) the form and time within which annual report should be filed under sub-section (1) of section 35;

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

55. (1) The Central Commission may by notification in the Official Gazette make regulations consistent with this Ordinance and the rules generally to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for all or any of the following matters, namely:

(a) the powers and duties of the Secretary under sub-section (1) of section 8;

(b) the salaries, allowances and other conditions of service of the Secretary, officers and other employees under sub-section (3) of section 8;

(c) the terms and conditions of the consultants appointed under sub-section (4) of section 8;

(d) the rules of procedure to be observed by the Central Commission under sub-section (1) of section 9;

(e) the manner in which charges for energy may be determined under section 28.
57. (1) The State Government may by notification in the Official Gazette, make rules to carry out the provisions of this Ordinance.

(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 salary, allowances and other conditions of service of the Members under sub-section (2) of section 19;

(b) the form and manner in which and the authority before whom the oath of office and secrecy should be subscribed under sub-section (4) of section 19;

(c) the form in which annual statement of accounts to be prepared by the State Commission under sub-section (1) of section 34;

(d) the form in which and the time at which, the State Commission shall prepare its budget under section 33;

(e) the manner and the form in which annual report shall be furnished under sub-section (1) of section 35;

(f) any other matter which is to be or may be prescribed or in respect of which provision is to be made by rules;

58. (1) The State Commission may, by notification in the Official Gazette, make regulations inconsistent with this Ordinance and the rules made thereunder to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the duties and powers of the Secretary under sub-section (1) of section 21;

(b) the salary, allowances and other conditions of service of the secretary, officers and other employees under sub-section (3) of section 21;

(c) the terms and conditions of consultants appointed under sub-section (4) of section 21;

(d) the manner in which charges for energy may be determined under sub-section (1) of section 29;

(e) any other matter which is to be, or may be specified.
59. Every rule made by the State Government and every regulation made by the State Commission under this Ordinance shall be laid, as soon as may be 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.

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

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

K.R. NARAYANAN,
President

RAGHURAM SINGH,
Secy. to the Govt. of India

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THE CENTRAL VIGILANCE COMMISSION
ORDINANCE, 1998

No. 15 of 1998

PROMULGATED by the President in the Forty-ninth Year of the Republic of India.

As Ordinance to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Central Vigilance Commission Ordinance, 1998.

(2) It shall come into force at once.
Definitions. 2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Commission is constituted under sub-section (1) of section 3;

(b) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(c) "Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3;

(d) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II

THE CENTRAL VIGILANCE COMMISSION

Constitution of Central Vigilance Commission.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon it and to perform the functions assigned to it under this Ordinance.

(2) The Commission shall consist of—

(a) a Central Vigilance Commissioner—Chairperson;

(b) not more than three Vigilance Commissioners—Members;

(c) Secretary to the Government of India in-charge of the Ministry of Personnel—Member, ex officio.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons who are or have been in an All India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration.

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The headquarters of the Commission shall be at New Delhi.

Appointment of Central Vigilance Commissioner and Vigilance Commissioners.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

(a) the Prime Minister — Chairperson;
(b) the Minister of Home Affairs — Member;
(c) the Leader of the Opposition in the House of the People — Member.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of three years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) reappointment in the Commission;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that the salary, allowances and pension payable to, and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.
6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

7. The Central Government may by rules make provision with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

8. (1) The functions and powers of the Commission shall be to--

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988;

(b) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or
controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988;

(c) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988;

(d) grant approval or otherwise for the conduct of investigation into allegations of corruption under the Prevention of Corruption Act, 1988 against the persons mentioned in section 6A of the Delhi Special Police Establishment Act, 1946 in accordance with the regulations made in this behalf;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(b) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) The persons referred to in clause (c) of sub-section (1) are as follows:—

(a) Group ‘A’ officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (c) of sub-section (1).

9. (1) The proceedings of the Commission shall be conducted at its headquarters.

(2) The Commission shall observe such rules of procedure in regard to the transaction of the business as may be provided by regulations.

(3) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(4) No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or
(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

12. The Commission shall be deemed to be a civil court for the purposes of sections 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

CHAPTER IV
EXPENSES AND ANNUAL REPORT

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.
14. (1) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission.

(2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Delhi Special Police Establishment insofar as it relates to sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946.

(3) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V
MISCELLANEOUS

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the ex officio Member, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Ordinance.

16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it may for reasons to be recorded in writing communicate the same to the Commission.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work.
in that Government and in the said corporations, Government companies, societies and local authorities.

19. The Commission shall from time to time give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

Provided that the Commission shall not exercise its powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of a particular case only in a particular manner.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the number of members of the staff and their conditions of service under section 7; and

(b) any other power of the civil court to be prescribed under clause (f) of section 11;

(c) any other matter which may be prescribed.

21. (1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Ordinance and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the duties and the powers of the secretary under sub-section (4) of section 3;

(b) the grant of approval for the conduct of investigation under clause (d) of sub-section (1) of section 8;

(c) the procedure to be followed by the Commission under sub-section (2) of section 9.

22. Every notification issued and every rule made by the Central Government and every regulation made by the Commission under this Ordinance shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or regulation, or both Houses agree that the notification or the rule or regulation should not be made, the notification or the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.
23. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

24. With effect from the appointed day the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No.24/7/64- AVD dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, insofar as its functions are not inconsistent with the provisions of this Ordinance, continue to discharge the said functions and,

(a) all actions and decisions taken by the existing Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Ordinance (hereafter referred to in this section as the new Commission) shall be deemed to have been taken by the new Commission;

(b) all proceedings pending before the existing Vigilance Commission, insofar as such proceedings relate to the functions of the new Commission, shall be deemed to be transferred to the new Commission and shall be dealt with in accordance with the provisions of this Ordinance;

(c) the employees of the existing Vigilance Commission shall be deemed to have become the employees of the new Commission on the same terms and conditions;

(d) all the assets and liabilities of the existing Vigilance Commission shall be transferred to the new Commission.

25. Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or any other law for the time being in force,—

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

(i) the Central Vigilance Commissioner — Chairperson;

(ii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(iii) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;

(iv) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;

(b) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;
(c) A Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office:

(d) A Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(e) the Committee referred to in clause (a) shall recommend officers for appointment to the posts of the level above the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(f) on receipt of the recommendation under clause (e), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.

Amendment of Act 25 of 1946.

26. In the Delhi Special Police Establishment Act, 1946, with effect from the appointed day—

(a) after section 1, the following section shall be inserted, namely:—

Definition.

"1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Ordinance, 1998, shall have the meanings respectively, assigned to them in that Ordinance."

(b) for section 4, the following sections shall be substituted, namely:—

4. (1) The superintendence of the Delhi Special Police Establishment as far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of police in respect of the police force in a State as the Central Government may specify in this behalf.

Committee for appointment of Director.

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Central Vigilance Commissioner — Chairperson;

(b) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(c) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member.

(2) While making any recommendation under sub-section (1), the Committee shall consider the views of the Director.
(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951,

for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Joint Director and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation."

(c) after section 6, the following section shall be inserted, namely:-

"6A (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Commission where such allegation relates to—

(a) the employees of the Central Government of the level of Joint Secretary and above;

(b) such officers as are appointed by the Central Government in the corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving the arrest of a person on the charge of accepting or attempting to accept, any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act 1988."
THE SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:

"I, A.B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

K.R. NARAYANAN,
President.

RAGHIBIR SINGH.
Secy. to the Govt. of India.
Ministry of Law, Justice and Company Affairs
(Legislative Department)

New Delhi the 29th August, 1998/Bhadra 7, 1920 (Saka)

The Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998

No. 16 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

Whereas the Prasar Bharati (Broadcasting Corporation of India) Amendment Bill, 1998 has been passed by the House of the People and is pending in the Council of States;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill and to make certain other amendments to the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998.

(2) The provisions of section 5 shall come into force at once and remaining provisions of this Ordinance shall be deemed to have come into force on the 6th day of May, 1998.
Definitions.

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

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

(d) "Board" means the Prasar Bharati Board;

(e) "Broadcasting Council" means the Council established under section 14;

(f) "Chairman" means the Chairman of the Corporation appointed under section 4;

(g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "elected Member" means a Member elected under section 3;

(j) "Executive Member" means the Executive Member appointed under section 4;

(k) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(l) "Member" means a Member of the Board;

(m) "Member (Finance)" means the Member (Finance) appointed under section 4;

(n) "Member (Personnel)" means the Member (Personnel) appointed under section 4;

(o) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(p) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;
(q) "notification" means a notification published in the Official Gazette;

(r) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an ex officio Member, the Nominated Member or an elected Member;

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

(t) "Recruitment Board" means a board established under sub-section (1) of section 10;

(u) "regulations" means regulations made by the Corporation under this Act;

(v) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;

(w) "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);

(x) "year" means the financial year.

3. In section 3 of the principal Act, for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) The Board shall consist of—

(a) a Chairman;

(b) one Executive Member;

(c) one Member (Finance);

(d) one Member (Personnel);

(e) six Part-time Members;

(f) Director-General (Akashvani), ex officio;

(g) Director-General (Doordarshan), ex officio;

(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves.

(6) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.".
Amendment of section 4.

4. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism; the Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration."

Substitution of new section for section 6.

5. For section 6 of the principal Act, the following section shall be substituted, namely:

"6. (1) The Chairman shall be a Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, the Member (Finance) and the Member (Personnel) shall be Whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier:

Provided that any person holding office as a Whole-time Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Whole-time Member and shall not be entitled to any compensation because of his ceasing to hold such office.

(3) The term of office of Part-time Members shall be six years, but one-third of such Members shall retire on the expiration of every second year:

Provided that every Part-time Member holding office as such, immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, notwithstanding anything contained in this sub-section as amended by the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997, retire in accordance with the provisions of sub-section (3):

Provided further that no such Part-time Member shall be entitled to any compensation for curtailment of the term of his office under sub-section (3).

(4) The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit for curtailing the term of office of some of the Part-time Members then appointed in order that one-third of the Members holding office as such Part-time Members shall retire in every second year thereafter."
(9) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed or elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(7) In the event of the occurrence of any vacancy by reason of death, resignation or otherwise in the office of —

(a) the Executive Member, senior most among the members referred to in clauses (c) and (d) of sub-section (5) of section 3, failing which senior most among the Members referred to in clauses (f) and (g) of that sub-section, shall perform the duties of the Executive Member until the date on which a new Executive Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office;

(b) any other Whole-time Member, the Executive Member shall perform the duties of such Whole-time Member until the date on which a new Whole-time Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(8) The Central Government shall, in the case of occurrence of vacancy by reason of death, resignation or otherwise of any Whole-time Member, within two weeks from the date of occurrence of such vacancy, make a reference to the committee referred to in sub-section (1) of section 4.

(9) The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(10) The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.

6. In section 7 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman or any Whole-time Member from his office if such Chairman or such Whole-time Member—

(a) ceases to be a citizen of India; or

(b) is adjudged an insolvent; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is convicted of any offence involving moral turpitude; or

(e) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind;

Amendment of section 7.
Provided that the President may, by order, remove any Part-time Member from his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.

(b) for sub-section (4), the following sub-section shall be substituted, namely:

"(4) If the Chairman or any Whole-time Member, except any ex officio Member, the Nominated Member or any elected Member, is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or, participates in any way in the profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour."

Amendment of section 9.

7. In section 9 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and employees as may be necessary."

Amendment of section 10.

8. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:

Provided that for the purposes of appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex officio Members, the Nominated Member and the elected Members."

Amendment of section 11.

9. In section 11 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) The provisions of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such member intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed.

(b) for sub-section (5), the following sub-section shall be substituted, namely:

"(5) Every officer or other employee transferred by an order made under sub-section (4) shall, within six months from the date of transfer, exercise his option, in writing, to be governed—"
(a) by the scale of pay applicable to the post held by him in the Akashvani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations,

and such option once exercised under this Act shall be final;

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.”.

10. In section 12 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885.”;

(b) in sub-section (2), for clause (n), the following clause shall be substituted, namely:—

"(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;";
(c) in sub-section (3), for clause (c), the following clause shall be substituted, namely:—

"(c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;"

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement;"

(e) for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:

Provided that the fees and other service charges levied and collected under this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time."

11. After section 12 of the principal Act, the following sections shall be inserted, namely:—

"13. (1) There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provisions of this Act and, in particular, the objectives set out in section 12 and submit a report thereon to Parliament.

(2) The Committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

14. (1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.

(2) The Broadcasting Council shall consist of—

(i) a President and ten other members to be appointed by the President of India from amongst persons of eminence in public life;

(ii) four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.

(3) The President of the Broadcasting Council shall be a whole-time member and
every other member shall be a part-time member and the President or the part-time
member shall hold office as such for a term of three years from the date on which
he enters upon his office.

(4) The Broadcasting Council may constitute such number of Regional Councils
as it may deem necessary to aid and assist the Council in the discharge of its
functions.

(5) The President of the Broadcasting Council shall be entitled to such salary and
allowances and shall be subject to such conditions of service in respect of leave,
pension (if any), provident fund and other matters as may be prescribed:

Provided that the salary and allowances and the conditions of service shall not
be varied to the disadvantage of the President of the Broadcasting Council after his
appointment.

(6) The other members of the Broadcasting Council and the members of the
Regional Councils constituted under sub-section (4) shall be entitled to such
allowances as may be prescribed.

15. (1) The Broadcasting Council shall receive and consider complaints from—

(i) any person or group of persons alleging that a certain programme or broadcast
or the functioning of the Corporation in specific cases or in general is not in
accordance with the objectives for which the Corporation is established;

(ii) any person (other than an officer or employee of the Corporation) claiming
himself to have been treated unjustly or unfairly in any manner (including
unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity)
in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within
such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for the
disposal of complaints received by it.

(4) If the complaint is found to be justified either wholly or in part, the
Broadcasting Council shall advise the Executive Member to take appropriate action.

(5) If the Executive Member is unable to accept the recommendation of the
Broadcasting Council, he shall place such recommendation before the Board for its
decision thereon.

(6) If the Board is also unable to accept the recommendation of the Broadcasting
Council, it shall record its reasons therefor and inform the Broadcasting Council
accordingly.

(7) Notwithstanding anything contained in sub-sections (5) and (6), where the
Broadcasting Council deems it appropriate, it may, for reasons to be recorded in
writing, require the Corporation to broadcast its recommendations with respect to a
complaint in such manner as the Council may deem fit.4

12. In section 16 of the principal Act, for clause (a), the following clause shall be
substituted, namely:

"(a) all property and assets (including the Non-lapsable Fund) which immediately

Jurisdiction
of, and the
procedure
to be
followed by,
Broadcasting
Council.

Amendment
of section
16.
before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation.”

13. For section 25 of the principal Act, the following section shall be substituted, namely:

“25. (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action (including supersession of the Board) which may be taken against the Board.

(2) On the recommendation of Parliament, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing the notification under this sub-section, the President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall, until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), the President may reconstitute the Board by fresh appointments, and in such a case any person who had vacated his office under clause (a) of sub-section (3) shall not be disqualified for appointment:

Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(5) The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament.”.

14. After section 25 of the principal Act, the following section shall be inserted, namely:

“26. It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under section 13 shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.”.
15. For sections 27 and 28 of the principal Act, the following sections shall be substituted, namely:—

"27. The Chairman and every other Member, officer or other employee of the Corporation and every member of a Committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder."

16. For section 31 of the principal Act, the following section shall be substituted, namely:—

"31. (1) The Corporation shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

(2) The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

17. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(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 salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (9) of section 6;

(b) the allowances payable to the Chairman and Part-time Members under sub-section (10) of section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under sub-section (1) of section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;"
(e) the qualifications and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of section 14;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils under sub-section (6) of section 14;

(i) the manner in which the Corporation may invest its moneys under section 19;

(j) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 21;

(k) the form in which and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under section 31;

(l) any other matter which is required to be, or may be, prescribed."

Amendment of section 33.

18. In section 33 of the principal Act, in sub-section (2),—

(i) after clause (g), the following clause shall be inserted, namely:—

"(h) the manner in which and the period within which complaints may be made under sub-section (2) of section 15;";

(ii) clause (h) shall be re-lettered as clause (i)."

K.R. NARAYANAN,

President.

RAGHBIR SINGH,

Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 3rd September, 1998/Bhadra 12, 1920 (Saka)

THE OILFIELDS (REGULATION AND DEVELOPMENT)
AMENDMENT ORDINANCE, 1998

No. 17 OF 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Oilfields (Regulation and Development) Act, 1948.

WHEREAS a Bill further to amend the Oilfields (Regulation and Development) Act, 1948 has been introduced in Parliament but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;
New, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Oilfields (Regulation and Development) Amendment Ordinance, 1998.

(2) It shall come into force at once.

2. In section 6A of the Oilfields (Regulation and Development) Act, 1948 (hereinafter referred to as the principal Act), for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:

"(4) The Central Government may, by notification in the Official Gazette, amend the Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral oil with effect from such date as may be specified in the notification and different rates may be notified in respect of same mineral oil mined, quarried, excavated or collected from the areas covered by different classes of mining leases:

Provided that the Central Government shall not fix the rates of royalty in respect of any mineral oil so as to exceed twenty per cent. of the sale price of the mineral oil at the oilfields or the oil well-head, as the case may be.

(5) If the Central Government, with a view to encourage exploration in offshore areas, is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions, as may be specified in the notification, mineral oil produced from such areas from the whole or any part of the royalty leviable thereon."

3. In section 10 of the principal Act, for the words, brackets, figures and letter "under sub-section (4) of section 6A", the words, brackets, figures and letter "under sub-section (4) and sub-section (5) of section 6A" shall be substituted.

K.R. NarayanAn,
President.

Raghbir Singh,
Secy. to the Govt. of India.

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THE CENTRAL VIGILANCE COMMISSION (AMENDMENT) ORDINANCE, 1998

No. 18 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance to amend the Central Vigilance Commission Ordinance, 1998.

WHEREAS the Central Vigilance Commission Ordinance, 1998 was promulgated by the President on the 25th day of August, 1998;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Central Vigilance Commission (Amendment) Ordinance, 1998.

(2) It shall be deemed to have come into force on the 25th day of August, 1998.
Amendment 2. In section 3 of the Central Vigilance Commission Ordinance, 1998 (hereinafter referred to as the principal Ordinance),—

(a) in sub-section (2),—

(i) in clause (b), for the word "three", the word "four" shall be substituted;

(ii) clause (c) shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) who have been or are in an all-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; and

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than three persons shall belong to the category of persons referred to either in clause (a) or in clause (b)."

Amendment 3. In section 8 of the principal Ordinance, in sub-section (1), clause (d) shall be omitted.

Amendment 4. In section 15 of the principal Ordinance, the words "the ex-officio Member," shall be omitted.

Amendment 5. In section 21 of the principal Ordinance, in sub-section (2), clause (b) shall be omitted.

Amendment 6. Section 6A of the Delhi Special Police Establishment Act, 1946, as inserted by clause (c) of section 26 of the principal Ordinance, shall be omitted.

K.R. NARAYANAN,
President.

RAGHEEB SINGH,
Secy. to the Govt. of India

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MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  

New Delhi, the 31st October, 1998/Kartika 9, 1920 (Saka)  

THE COMPANIES (AMENDMENT) ORDINANCE, 1998  

No. 19 of 1998  

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 1956.

WHEREAS a Bill to consolidate and amend the law relating to companies and certain other associations has been introduced in Parliament and is pending consideration before the Department-related Standing Committee on Home Affairs;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to some of the provisions of the said Bill with certain modifications by amending the Companies Act, 1956;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Companies (Amendment) Ordinance, 1998.  

(2) It shall come into force at once.  

Short title and commencement.
2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 4A, in sub-section (1), after clause (v), the following clause shall be inserted, namely:

"(vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act.".

Amendment of section 58A.

3. In section 58A of the principal Act, after sub-section (10) and before the Explanations, the following sub-section shall be inserted, namely:

"(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.".

Insertion of new sections 77A and 77B.

4. After section 77 of the principal Act, the following sections shall be inserted, namely:

"77A. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") from—

(i) out of its free reserves; or

(ii) out of the securities premium account; or

(iii) out of the proceeds of an earlier issue other than fresh issue of shares made specifically for buy-back purposes.

(2) No company shall purchase its own shares or other specified securities under sub-section (1) unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed in general meeting of the company authorising the buy-back;

(c) the buy-back does not exceed twenty five per cent. of the total paid-up capital and free reserves of the company purchasing its own shares or other specified security;

(d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back;

(e) all the shares or other specified securities fully paid-up;

(f) the buy-back is in accordance with the regulations made by the Securities Exchange Board of India in this behalf.

Power of company to purchase its own securities.
**Explanation.**—For the purposes of this sub-section, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution under sub-section (2).

(5) The buy-back under sub-section (4) may be—

(a) from the existing security holders on a proportionate basis; or

(b) from the open market; or

(c) from odd lots—that is to say, where the lot of securities in a listed public company is smaller than such market lot as may be specified by the stock exchange; or

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed a special resolution to buy-back its own shares or other securities under this section, it shall, before making such purchases, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form prescribed, verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its securities under this section, it shall not make further issue of securities within a period of twenty-four months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes sweat equity or conversion of preference shares or debentures into equity shares.
(9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

77B. No company shall purchase its own shares or other specified securities—

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies; or

(c) if a default, in repayment of deposit, redemption of debenture or preference shares or repayment of a term loan to any financial institution or bank is subsisting.

5. After section 79 of the principal Act, the following section shall be inserted, namely:

79A. (1) Notwithstanding anything contained in section 79, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled, namely:

(a) the issue of sweat equity shares is authorised by a resolution passed by the company in the general meeting;

(b) the resolution specifies the number of shares, their value and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has at the date of issue elapsed since the date on which the company was entitled to commence business;

(d) the sweat equity shares are issued in accordance with the regulations made by the Securities Exchange Board of India in this behalf.

Explanation I.—For the purposes of this sub-section, the expression "a company" means the company incorporated, formed and registered under this Act and includes its subsidiary company incorporated in a country outside India.

Explanation II.—For the purposes of this sub-section, the expression "sweat equity shares" means equity shares issued at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
(2) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares issued under sub-section (1).”.

6. In section 82 of the principal Act, for the word “shares”, the words “shares or debentures” shall be substituted.

7. After section 109 of the principal Act, the following sections shall be inserted, namely:—

109A. (1) Every holder of shares in, or holder of debentures of, a company may, at any time nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in or debentures of the company, the nominee shall, on the death of the shareholder or holder of debentures of the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint in the prescribed manner any person to become entitled to shares in or debentures of the company, in the event of his death, during the minority.

109B. (1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share or debenture, as the case may be; or

(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.
(2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased shareholder or debenture holder, as the case may be, had transferred the share or debenture, as the case may be, before his death.

(3) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, as the case may be, himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(4) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(5) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with.

8. In section 205A of the principal Act,—

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of five years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C but a claim to any money so transferred to such Fund may be preferred to the authority or committee appointed under sub-section (4) of that section by the person to whom the money is due and shall be dealt with as if such transfer to the Fund had not been made;";

(b) in sub-section (6),—

(i) for the words "general revenue account of the Central Government", the words, figures and letter "Fund established under section 205C" shall be substituted;

(ii) for the words "to such officer as the Central Government may appoint", the words "authority or committee as the Central Government may appoint" shall be substituted;

(c) for sub-section (7), the following sub-section shall be substituted, namely:
"(7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof."

9. In section 205B of the principal Act, for the words "to the general revenue account of the Central Government, may apply to the Central Government", the words, figures, letter and brackets "to the Fund established under section 205C may apply to the authority or the committee appointed under sub-section (4) of that section" shall be substituted.

10. After section 205B of the principal Act, the following section shall be inserted, namely:—

"205C. (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely:

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of five years from the date they became due for payment.

(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established."
11. After section 210 of the principal Act, the following section shall be inserted, namely:

210A. (1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the "Advisory Committee on Accounting Standards" (hereafter in this section referred to as the "Advisory Committee") to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

(2) The Advisory Committee shall consist of the following members, namely:

(a) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline;

(b) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(c) one representative of the Central Government to be nominated by it;

(d) one representative of the Reserve Bank of India to be nominated by it;

(e) one representative of the Comptroller and Auditor-General of India to be nominated by him;

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university;

(g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee;

(h) two members to represent the chambers of commerce and industry to be nominated by the Central Government; and

(i) one representative of the Securities and Exchange Board of India to be nominated by it.

(3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such terms as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.
12. In section 211 of the principal Act, after sub-section (3), the following sub-
sections shall be inserted, namely:—

"(3A) Every profit and loss account and balance sheet of the company shall comply
with the accounting standards.

(3B) Where the profit and loss account and the balance sheet of the company do not
comply with the accounting standards, such companies shall disclose in its profit and
loss account and balance sheet, the following, namely:—

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the
standards of accounting recommended by the Institute of Chartered Accountants of
India constituted under the Chartered Accountants Act, 1949, as may be prescribed by the
Central Government in consultation with the National Advisory Committee on
Accounting Standards established under sub-section (1) of section 210A:

Provided that the standard of accounting specified by the Institute of Chartered
Accountants of India shall be deemed to be the Accounting Standards until the National
Advisory Committee on Accounting Standards is established under sub-section (1) of
section 210A.

13. In section 227 of the principal Act, in sub-section (3),—

(i) after clause (c), the following clause shall be inserted, namely:—

"(d) whether, in his opinion, the profit and loss account and balance sheet
complied with the accounting standards referred to in sub-section (3C) of section
211;";

(ii) in sub-section (4), for the word and brackets and letter "and (c)", the brackets,
letters and word ", (c) and (d)" shall be substituted.

14. In section 370 of the principal Act, after sub-section (5), and before the
explanation the following sub-section shall be inserted, namely:—

"(6) Nothing contained in this section shall apply to a company on and after the
commencement of the Companies (Amendment) Ordinance, 1998.".

15. In section 372 of the principal Act, after sub-section (14), the following sub-
section shall be inserted, namely:—

"(15) Nothing contained in this section shall apply to a company on and after the
commencement of the Companies (Amendment) Ordinance, 1998.".
16. After section 372 of the principal Act, the following section shall be inserted, namely:—

"372A. (1) No company shall, directly or indirectly,—

(a) make any loan to any body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital and free reserves, or hundred per cent. of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan to any body corporate shall be made at the rate of interest lower than the prevailing bank rate of interest.

(3) No loan or investment shall be made or guarantee or security given by the Board in pursuance of sub-section (1) unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A where any term loan is subsisting.

(4) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:—

(i) the name of the body corporate;

(ii) the amount, terms and purpose of the investment or loan or security or guarantee;

(iii) the date on which the investment or loan has been made; and

(iv) the date on which the guarantee has been given or security has been provided in connection with a loan.
(b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.

(5) The register referred to in sub-section (4) shall be kept at the registered office of the company concerned and—

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.

(6) The Central Government may, in consultation with the Securities and Exchange Board of India may, prescribe guidelines for the purposes of this section.

(7) Nothing contained in this section shall apply to any loan made, any guarantee given or any security provided or any investment made by—

(a) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the sole object of financing industrial enterprises, or of providing infrastructural facilities;

(b) a company whose principle business is the acquisition of shares, stock, debentures or other securities;

(c) a private company, unless it is a subsidiary of a public company;

(8) If default is made in complying with the provisions of this section, other than sub-section (4), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:

Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced:

Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the security provided by such company.

(9) If default is made in complying with the provisions of sub-section (4), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues.
Explanation.—For the purposes of this section,—

(a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) "free reserves" means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 31st December, 1998/Pausa 10, 1920 (Saka)

THE FINANCE (NO. 2) AMENDMENT ORDINANCE, 1998

No. 20 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance to amend the Finance (No.2) Act, 1998.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Finance (No.2) Amendment Ordinance, 1998. Short title and commencement.

(2) It shall come into force at once.
Amendment of section 88.

2. In the Finance (No. 2) Act, 1998, (hereinafter referred to as the principal Act), in section 88, in the opening paragraph, for the words, figures and letters "before the 31st day of December, 1998", the words, figures and letters "before the 31st day of January, 1999" shall be substituted.

Amendment of section 90.

3. In section 90 of the principal Act, in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:

"Provided also that in a case where the declaration is made on or after the 1st day of January, 1999, the provisions of this sub-section shall have effect as if for the words "within sixty days", the words "within thirty days" had been substituted."

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
THE COMPANIES (AMENDMENT) ORDINANCE, 1999

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 1956.

WHEREAS a Bill to consolidate and amend the law relating to companies and certain other associations has been introduced in Parliament and is pending consideration before the Department-related Standing Committee on Home Affairs;

AND WHEREAS the Companies (Amendment) Ordinance, 1998 was promulgated by the President on the 31st day of October, 1998;

AND WHEREAS the Companies (Amendment) Bill, 1998 was introduced in the House of the People to replace the said Ordinance, but has not been passed;
AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Companies (Amendment) Bill, 1998 with certain modifications;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

Short title and commencement.

1. (1) This Ordinance may be called the Companies (Amendment) Ordinance, 1999.

(2) It shall be deemed to have come into force on the 31st day of October, 1998.

Amendment of section 4A.

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 4A, in sub-section (1), after clause (v), the following clause shall be inserted, namely:

"(vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act."

Amendment of section 58A.

3. In section 58A of the principal Act, after sub-section (10) and before the Explanation, the following sub-section shall be inserted, namely:

"(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section."

Insertion of new sections 77A, 77AA and 77B.

4. After section 77 of the principal Act, the following sections shall be inserted, namely:

"77A. (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of—

(i) its free reserves; or

(ii) the securities premium account; or

(iii) the proceeds of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1) unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed in general meeting of the company authorising the buy-back;

(c) the buy-back is or less than twenty-five per cent. of the total paid-up capital and free reserves of the company:"
Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent. of its total paid-up equity capital in that financial year;

(d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back:

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies.

Explanation.—For the purposes of this clause, the expression “debt” includes all amounts of unsecured and secured debts;

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf;

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with the guidelines as may be prescribed.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution under clause (b) of sub-section (2).

(5) The buy-back under sub-section (1) may be—

(a) from the existing security-holders on a proportionate basis; or

(b) from the open market; or

(c) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed a special resolution under clause (b) of sub-section (2) to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the
company as a result of which they have formed and opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of the same kind of shares [including allotment of further shares under clause (a) of sub-section (1) of section 81] or other specified securities within a period of twenty-four months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Explanation.—For the purposes of this section,—

(a) "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time;

(b) "free reserves" shall have the meaning assigned to it in clause (b) of Explanation to section 372A.

Transfer of certain sums to capital redemption reserve account.

77AA. Where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account referred to in clause (d) of the proviso to subsection (1) of section 80 and details of such transfer shall be disclosed in the balance-sheet.
77B. (1) No company shall directly or indirectly purchase its own shares or other specified securities—

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies; or

(c) if a default, by the company, in repayment of deposit or interest payable thereon, redemption of debentures, or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank, is subsisting.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of sections 159, 207 and 211.

5. In section 78 of the principal Act, for the word "share" wherever it occurs, the word "securities" shall be substituted.

6. After section 79 of the principal Act, the following section shall be inserted, namely:

'79A. (1) Notwithstanding anything contained in section 79, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled, namely:

(a) the issue of sweat equity shares is authorised by a special resolution passed by the company in the general meeting;

(b) the resolution specifies the number of shares, current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of the issue elapsed since the date on which the company was entitled to commence business;

(d) the sweat equity shares of a company whose equity shares are listed on a recognised stock exchange are issued in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

Provided that in the case of a company whose equity shares are not listed on any recognised stock exchange, the sweat equity shares are issued in accordance with the guidelines as may be prescribed.

Explanation I.—For the purposes of this sub-section, the expression "a company" means company incorporated, formed and registered under this Act and includes its subsidiary company incorporated in a country outside India.

Explanation II.—For the purposes of this Act, the expression "sweat equity shares" means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
(2) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares issued under sub-section (1).

Amendment of section 80.

7. In section 80 of the principal Act, in sub-section (1), in clause (c), for the words "share premium account", the words "security premium account" shall be substituted.

Amendment of section 82.

8. In section 82 of the principal Act, for the word "shares", the words "shares or debentures" shall be substituted.

Insertion of new sections 109A and 109B.

9. After section 109 of the principal Act, the following sections shall be inserted, namely:

109A. (1) Every holder of shares in, or holder of debentures of, a company may, at any time, nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint, in the prescribed manner, any person to become entitled to shares in, or debentures of, the company, in the event of his death, during the minority.

109B. (1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share or debenture, as the case may be; or

(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send
12. After section 205B of the principal Act, the following section shall be inserted, namely:—

205C. (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely:

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

13. After section 210 of the principal Act, the following section shall be inserted, namely:—
(1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the "Advisory Committee") to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

(2) The Advisory Committee shall consist of the following members, namely:

(a) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline;

(b) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(c) one representative of the Central Government to be nominated by it;

(d) one representative of the Reserve Bank of India to be nominated by it;

(e) one representative of the Comptroller and Auditor-General of India to be nominated by him;

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university;

(g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee;

(h) two members to represent the Chambers of Commerce and industry to be nominated by the Central Government; and

(i) one representative of the Securities and Exchange Board of India to be nominated by it.

(3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such term as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank."

14. In section 211 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, namely:

"(3A) Every profit and loss account and balance-sheet of the company shall comply with the accounting standards."
(3ß) Where the profit and loss account and the balance-sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance-sheet, the following, namely:

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A:

Provided that the standard of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.

Amendment of section 217.

15. In section 217 of the principal Act, after sub-section (2A), the following sub-section shall be inserted, namely:

"(2B) The Board's report shall also specify the reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A."

Amendment of section 227.

16. In section 227 of the principal Act, in sub-section (3),—

(i) after clause (c), the following clause shall be inserted, namely:

"(d) whether, in his opinion, the profit and loss account and balance-sheet comply with the accounting standards referred to in sub-section (3C) of section 211;"

(ii) in sub-section (4), for the word, brackets and letter "and (c)", the brackets, letters and word "(c) and (d)" shall be substituted.

Amendment of section 370.

17. In section 370 of the principal Act, after sub-section (f), and before the Explanation, the following sub-section shall be inserted, namely:

"(g) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1999.".

Amendment of section 372.

18. In section 372 of the principal Act, after sub-section (14), the following sub-section shall be inserted, namely:

"(15) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1999.".
19. After section 372 of the principal Act, the following section shall be inserted, namely:

'372A. (1) No company shall, directly or indirectly,—

(a) make any loan to any other body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital and free reserves, or hundred per cent. of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the Board may give guarantee, without being previously authorised by a special resolution, if,—

(a) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section;

(b) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee; and

(c) the resolution of the Board under clause (a) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board resolution, whichever is earlier:

Provided also that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty per cent. specified in sub-section (1), if there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution:
Provided also that nothing contained in sub-sections (1) and (2) shall apply to—

(a) any loan made by a holding company to its wholly owned subsidiary;

(b) any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary; or

(c) acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary.

(3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934.

(4) No company, which has defaulted in complying with the provision of section 58A, shall, directly or indirectly,—

(a) make any loan to any body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

till such default is subsisting.

(5) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:—

(i) the name of the body corporate;

(ii) the amount, terms and purpose of the investment or loan or security or guarantee;

(iii) the date on which the investment or loan has been made; and

(iv) the date on which the guarantee has been given or security has been provided in connection with a loan;

(b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.

(6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and—

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.
(7) The Central Government may prescribe guidelines for the purposes of this section.

(8) Nothing contained in this section shall apply,--

(a) to any loan made, any guarantee given or any security provided or any investment made by--

(i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities;

(ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities;

(iii) a private company, unless it is a subsidiary of a public company;

(b) to investment made in shares allotted in pursuance of clause (a) of sub-section (7) of section 81.

(9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:

Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced:

Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company.

(10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues.

Explanation.—For the purposes of this section,—

(a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) "free reserves" means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money."
Amendment to section 642.

20. In section 642 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:

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

Repeal and saving.

21. (1) The Companies (Amendment) Ordinance, 1998 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,

President.

RAGHIBIR SINGH,

Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 7th January, 1999 / Pausa 17, 1920 (Sakai

THE PRASAR BHARATI (BROADCASTING CORPORATION OF
INDIA) AMENDMENT ORDINANCE, 1999

(No. 2 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Prasar Bharati (Broadcasting Corporation of
India) Act, 1990.

WHEREAS the Prasar Bharati ( Broadcasting Corporation of India) Amendment Bill,
1998 has been passed by the House of the People and is pending in the Council of
States;

AND WHEREAS the Prasar Bharati (Broadcasting Corporation of India) Amendment
Ordinance, 1998, to give effect to the provisions of the said Bill and to make certain
other amendments to the Prasar Bharati (Broadcasting Corporation of India) Act, 1990
was promulgated by the President on the 29th day of August, 1998;

AND WHEREAS Parliament is not in session and the President is satisfied that
circumstances exist which render it necessary for him to take immediate action to give
continued effect to the provisions of the said Ordinance;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123
of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Prasar Bharati ( Broadcasting Corporation of
India) Amendment Ordinance, 1999.

(2) The provisions of sections 5 and 19 shall be deemed to have come into force on
the 29th day of August, 1998 and remaining provisions of this Ordinance shall be
deemed to have come into force on the 6th day of May, 1998.
2. For section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990
(hereinafter referred to as the principal Act), the following section shall be substituted,
namely:—

Definitions.

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

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

(d) "Board" means the Prasar Bharati Board;

(e) "Broadcasting Council" means the Council established under section 14;

(f) "Chairman" means the Chairman of the Corporation appointed under section 4;

(g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "elected Member" means a Member elected under section 3;

(j) "Executive Member" means the Executive Member appointed under section 4;

(k) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(l) "Member" means a Member of the Board;

(m) "Member (Finance)" means the Member (Finance) appointed under section 4;

(n) "Member (Personnel)" means the Member (Personnel) appointed under section 4;

(o) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(p) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;
(q) "notification" means a notification published in the Official Gazette;

(r) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an ex officio Member, the Nominated Member or an elected Member;

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

(t) "Recruitment Board" means a board established under sub-section (1) of section 10;

(u) "regulations" means regulations made by the Corporation under this Act;

(v) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;

(w) "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);

(x) "year" means the financial year."

3. In section 3 of the principal Act, for sub-sections"(s) and (t), the following subsections shall be substituted, namely:

"(s) The Board shall consist of—

(a) a Chairman;

(b) one Executive Member;

(c) one Member (Finance);

(d) one Member (Personnel);

(e) six Part-time Members;

(f) Director-General (Akashvani), ex officio;

(g) Director-General (Doordarshan), ex officio;

(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves.

(j) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote.".
4. In section 4 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics or journalism, the Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration."

5. For section 6 of the principal Act, the following section shall be substituted, namely:—

"6. (1) The Chairman shall be a Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, the Member (Finance) and the Member (Personnel) shall be Whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier:

Provided that any person holding office as a Whole-time Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Whole-time Member and shall not be entitled to any compensation because of his ceasing to hold such office.

(3) The term of office of Part-time Members shall be six years, but one-third of such Members shall retire on the expiration of every second year:

Provided that every Part-time Member holding office as such, immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, notwithstanding anything contained in this sub-section as amended by the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997, retire in accordance with the provisions of sub-section (5):

Provided further that no such Part-time Member shall be entitled to any compensation for curtailment of the term of his office under sub-section (5).

(4) The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit for curtailting the term of office of some of the Part-time Members then appointed in order that one-third of the Members holding office as such Part-time Members shall retire in every second year thereafter.

(6) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed to be a casual vacancy and the person appointed or
elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(7) In the event of the occurrence of any vacancy by reason of death, resignation or otherwise in the office of —

(a) the Executive Member, senior most among the members referred to in clauses (c) and (d) of sub-section (3) of section 3, failing which senior most among the Members referred to in clauses (f) and (g) of that sub-section, shall perform the duties of the Executive Member until the date on which a new Executive Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office;

(b) any other Whole-time Member, the Executive Member shall perform the duties of such Whole-time Member until the date on which a new Whole-time Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(9) The Central Government shall, in the case of occurrence of vacancy by reason of death, resignation or otherwise of any Whole-time Member, within two weeks from the date of occurrence of such vacancy, make a reference to the committee referred to in sub-section (1) of section 4.

(9) The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(10) The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.

6. In section 7 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman or any Whole-time Member from his office if such Chairman or such Whole-time Member—

(a) ceases to be a citizen of India; or

(b) is adjudged an insolvent; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is convicted of any offence involving moral turpitude; or

(e) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.

Provided that the President may, by order, remove any Part-time Member from
his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.

(b) for sub-section (4), the following sub-section shall be substituted, namely:

"(4) If the Chairman or any Whole-time Member, except any ex officio Member, the Nominated Member or any elected Member, is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or participates in any way in the profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour."

Amendment of section 9.

7. In section 9 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and employees as may be necessary."

Amendment of section 10.

8. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:

Provided that for the purposes of appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the ex officio Members, the Nominated Member and the elected Members."

Amendment of section 11.

9. In section 11 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:

"(2) The provisions of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such member intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed;"

(b) for sub-section (5), the following sub-section shall be substituted, namely:

"(5) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option, in writing, to be governed—"
(a) by the scale of pay applicable to the post held by him in the Akashvani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations,

and such option once exercised under this Act shall be final:

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

10. In section 12 of the principal Act,—

(a) for sub-section (f), the following sub-section shall be substituted, namely:—

"(f) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885;"

(b) in sub-section (2), for clause (n), the following clause shall be substituted, namely:—

"(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;"
(c) in sub-section (3), for clause (c), the following clause shall be substituted, namely:—

"(c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;";

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement;";

(e) for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:

Provided that the fees and other service charges levied and collected under this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time.".

11. After section 12 of the principal Act, the following sections shall be inserted, namely:—

13. (1) There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provisions of this Act and, in particular, the objectives set out in section 12 and submit a report thereon to Parliament.

(2) The Committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

14. (1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.

(2) The Broadcasting Council shall consist of—

(i) a President and ten other members to be appointed by the President of India from amongst persons of eminence in public life;

(ii) four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.
12. In section 15 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

"(a) all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akshaya or Doordarshan or both shall stand transferred to the Corporation on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation;"

13. For section 25 of the principal Act, the following section shall be substituted, namely:—

"25. (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action (including supersession of the Board) which may be taken against the Board.

(2) On the recommendation of Parliament, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing the notification under this sub-section, the President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), the President may reconstitute the Board by fresh appointments, and in such a case any person who had vacated his office under clause (a) of sub-section (3) shall not be disqualified for appointment:

Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(5) The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament."
(3) The President of the Broadcasting Council shall be a whole-time member and every other member shall be a part-time member and the President or the part-time member shall hold office as such for a term of three years from the date on which he enters upon his office.

(4) The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.

(5) The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed.

Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

15. (1) The Broadcasting Council shall receive and consider complaints from—

(i) any person or group of persons alleging that a certain programme or broadcast or the functioning of the Corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established;

(ii) any person (other than an officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for the disposal of complaints received by it.

(4) If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Member to take appropriate action.

(5) If the Executive Member is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board for its decision thereon.

(6) If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.

(7) Notwithstanding anything contained in sub-sections (5) and (6), where the Broadcasting Council deems it appropriate, it may, for reasons to be recorded in writing, require the Corporation to broadcast its recommendations with respect to a complaint in such manner as the Council may deem fit.
14. After section 25 of the principal Act, the following section shall be inserted, namely:—

"20. It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under section 13 shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament."

15. For sections 27 and 28 of the principal Act, the following sections shall be substituted, namely:—

"21. The Chairman and every other Member, officer or other employee of the Corporation and every member of a Committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder."

16. For section 31 of the principal Act, the following section shall be substituted, namely:—

"31. (1) The Corporation shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

(2) The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament."

17. In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(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 salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (9) of section 6;

(b) the allowances payable to the Chairman and Part-time Members under sub-section (10) of section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint
officers and other employees under sub-section (1) of section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;

(e) the qualifications and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (2) of section 14;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils under sub-section (8) of section 14;

(i) the manner in which the Corporation may invest its moneys under section 19;

(j) the form and manner in which the annual statement of accounts shall be prepared under sub-section (7) of section 21;

(k) the form in which and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under section 31;

(l) any other matter which is required to be, or may be, prescribed.

Amendment of section 33.

18. In section 33 of the principal Act, in sub-section (2),—

(i) after clause (g), the following clause shall be inserted, namely:—

"(h) the manner in which and the period within which complaints may be made under sub-section (2) of section 15;"

(ii) clause (h) shall be re-lettered as clause (i).

Repeal and saving.

19. (1) The Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K.R. NARAYANAN,
President.

RAGHUBIR SINGH,
Secy. to the Govt. of India.

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(Legislative Department)  

New Delhi, the 8th January, 1999 / Pausa 18, 1920 (Saka)  

THE PATENTS (AMENDMENT) ORDINANCE, 1999  
(No. 3 of 1999)  

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Patents Act, 1970.

WHEREAS a Bill further to amend the Patents Act, 1970 has been passed by the Council of States and is pending in the House of the People;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Patents (Amendment) Ordinance, 1999.

(2) It shall be deemed to have come into force on the 1st day of January, 1995.
Amendment of section 5.

2. Section 5 of the Patents Act, 1970 (hereinafter referred to as the principal Act) shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:

"(2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug, except the medicine or drug specified under sub-clause (c) of clause (i) of sub-section (1) of section 2, may be made and shall be dealt with, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA."

Insertion of new Chapter IVA.

3. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:

"CHAPTER IVA

EXCLUSIVE MARKETING RIGHTS"

Application for grant of exclusive rights.

24A. (1) Notwithstanding anything contained in sub-section (1) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (2) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(2) Where the Controller, on receipt of a report under sub-section (1) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(3) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (1) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24B.

Explanation.—It is hereby clarified that for the purposes of this section, the exclusive right to sell or distribute any article or substance under this section shall not include an article or substance based on the system of Indian medicine as defined in clause (e) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970 and such article or substance is already in the public domain.

Grant of exclusive rights.

24B. (1) Where a claim for patent covered under sub-section (2) of section 5 has been made and the applicant has,—

(a) where an invention has been made whether in India or in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent and the approval to sell or distribute the article or substance on the basis of appropriate tests conducted on or after the
1st day of January, 1995, in that country has been granted on or after the date of making a claim for patent covered under sub-section (2) of section 5; or

(b) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted in India the patent therefor on or after the date of making a claim for patent covered under sub-section (2) of section 5,

and has been received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(2) Where, the specifications of an invention relating to an article or a substance covered under sub-section (2) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infringement of exclusive right to sell or distribute under sub-section (1):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to sell or distribute the same, the details of invention relating thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

24C. The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:—

(a) throughout Chapter XVI,—

(i) working of the invention shall be deemed to be selling or distributing of the article or substance;

(ii) references to “patents” shall be deemed to be references to “right to sell or distribute”;

(iii) references to “patented article” shall be deemed to be references to “an article for which exclusive right to sell or distribute has been granted”;

(b) three years from the date of scaling of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B;

(c) the time which has elapsed since the scaling of a patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute under section 24B;

(d) clauses (d) and (e) of section 90 shall be omitted.
24D. (1) Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (1) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (1) of section 24, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

(2) The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf.

24E. All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as if they are suits concerning infringement of patents under Chapter XVIII.

24F. The examination and investigations required under this Chapter shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.”

4. Section 39 of the principal Act shall be omitted.

5. In section 40 of the principal Act, the words and figures “or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39” shall be omitted.

6. In section 64 of the principal Act, in sub-section (1), in clause (b), the words and figures “or made or caused to be made an application for the grant of a patent outside India in contravention of section 39” shall be omitted.

7. In section 118 of the principal Act, the words and figures “or makes or causes to be made an application for the grant of a patent in contravention of section 39” shall be omitted.

8. After section 157 of the principal Act, the following section shall be inserted, namely :-

157A. Notwithstanding anything contained in this Act, the Central Government shall—

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of security of India;

(b) take action including the revocation of any patent which it considers necessary in the interest of security of India;
Provided that the Central Government shall, before taking any action under this clause, issue a notification in the Official Gazette declaring its intention to take such action.

Explanation.— For the purposes of this section, the expression ‘security of India’ means any action necessary for the security of India which—

(i) relates to fissile materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in matters of international relations."

9. (1) Anything done or any action taken under the principal Act as amended by the Patents (Amendment) Ordinance, 1994, which ceased to operate, shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Ordinance.

(2) All applications made in respect of claims for patent of invention specified under sub-section (2) of section 5 of the principal Act, from the date of cesses of the Patents (Amendment) Ordinance, 1994 till the date on which this Ordinance is promulgated by the President (both days inclusive) shall be deemed to have been validly made as if the provisions of the principal Act, as amended by this Ordinance, had been in force at all material times.

K.R. NARAYANAN,
President.

RAGHURAJ SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 8th January, 1999 / Pascha 18, 1920 (Saka)

THE CENTRAL VIGILANCE COMMISSION ORDINANCE, 1999
(No. 4 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

WHEREAS the Central Vigilance Commission Ordinance, 1998 was promulgated by the President on the 25th day of August, 1998;

AND WHEREAS the said Ordinance was amended by promulgation of the Central Vigilance Commission (Amendment) Ordinance, 1998 on the 27th day of October, 1998;
AND WHEREAS the Central Vigilance Commission Bill, 1998 to replace the aforesaid Ordinances was introduced in the House of the People on the 7th day of December, 1998 but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the aforesaid Bill:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:--

CHAPTER I
PRELIMINARY

1. (1) This Ordinance may be called the Central Vigilance Commission Ordinance, 1999.

(2) It shall be deemed to have come into force on the 25th day of August, 1998.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Commission is constituted under sub-section (1) of section 3;

(b) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(c) "Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3;

(d) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946; 25 of 1946.

(e) "prescribed" means prescribed by rules made under this Ordinance;

(f) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II
THE CENTRAL VIGILANCE COMMISSION

Constitution of Central Vigilance Commission.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Ordinance.

(2) The Commission shall consist of—

(a) a Central Vigilance Commissioner— Chairperson;

(b) not more than four Vigilance Commissioners — Members.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—
(a) who have been or are in an all-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration, and

(b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than three persons shall belong to the category of persons referred to either in clause (a) or in clause (b).

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The headquarters of the Commission shall be at New Delhi.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Minister of Home Affairs — Member;

(c) the Leader of the Opposition in the House of the People — Member.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of three years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—
(a) reappointment in the Commission;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity;

Provided further that the salary, allowances and pension payable to, and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.
(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

7. The Central Government may by rules make provision with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III
Functions and Powers of the Central Vigilance Commission

8. (1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988;

(b) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988;

(c) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988;

(d) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988;

(e) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(f) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(g) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.
(2) The persons referred to in clause (e) of sub-section (1) are as follows:

(a) Group 'A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (c) of sub-section (1).

Proceedings of Commission.

9. (1) The proceedings of the Commission shall be conducted at its headquarters.

(2) The Commission shall observe such rules of procedure in regard to the transaction of the business as may be provided by regulations.

(3) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the seniormost Vigilance Commissioner present at the meeting, shall preside at the meeting.

(4) No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission, or

(b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Vigilance Commissioner to act as Central Vigilance Commissioner in certain circumstances.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

Power relating to inquiries.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;
(c) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

CHAPTER IV
EXPENSES AND ANNUAL REPORT

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

14. (1) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission.

(2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Delhi Special Police Establishment insofar as it relates to sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946.

(3) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V
MISCELLANEOUS

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Ordinance.
16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant therefor, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it may, for reasons to be recorded in writing, communicate the same to the Commission.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.

19. The Commission shall from time to time give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

Provided that the Commission shall not exercise its powers in such a manner as to require the Delhi Special Police Establishment to investigate or dispose of a particular case only in a particular manner.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Ordinance.

(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 number of members of the staff and their conditions of service under section 7,
(b) any other power of the civil court to be prescribed under clause (f) of section 11; and

(c) any other matter which is required to be, or may be, prescribed.

21. (1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Ordinance and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the duties and the powers of the secretary under sub-section (4) of section 3; and

(b) the procedure to be followed by the Commission under sub-section (2) of section 9.

22. Every notification issued under clause (b) of sub-section (2) of section 9 and every rule made by the Central Government and every regulation made by the Commission under this Ordinance shall be laid, as soon as may be, after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or regulation, or both Houses agree that the notification or the rule or regulation should not be made, the notification or the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

23. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty.

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

24. With effect from the appointed day the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-avo dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, insofar as its functions are not inconsistent with the provisions of this Ordinance, continue to discharge the said functions and—

(a) all actions and decisions taken by the existing Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Ordinance (hereafter referred to in this section as the new Commission) shall be deemed to have been taken by the new Commission;
(b) all proceedings pending before the existing Vigilance Commission, insofar as such proceedings relate to the functions of the new Commission, shall be deemed to be transferred to the new Commission and shall be dealt with in accordance with the provisions of this Ordinance;

(c) the employees of the existing Vigilance Commission shall be deemed to have become the employees of the new Commission on the same terms and conditions;

(d) all the assets and liabilities of the existing Vigilance Commission shall be transferred to the new Commission.

25. Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1973 or any other law for the time being in force,—

(a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

(i) the Central Vigilance Commissioner — Chairperson;

(ii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(iii) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;

(iv) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;

(b) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(c) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(d) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(e) the Committee referred to in clause (a) shall recommend officers for appointment to the posts of the level above the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(f) on receipt of the recommendation under clause (e), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.

Amendment of Act 25 of 1946.

26. In the Delhi Special Police Establishment Act, 1946, with effect from the appointed day—

(a) after section 1, the following section shall be inserted, namely:—
"1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Ordinance, 1999, shall have the meanings, respectively, assigned to them in that Ordinance;"

(b) for section 4, the following sections shall be substituted, namely—:

"4. (1) The superintendence of the Delhi Special Police Establishment as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Central Vigilance Commissioner — Chairperson;

(b) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(c) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member.

(2) While making any recommendation under sub-section (1), the Committee shall consider the views of the Director.

(3) The Committee shall recommend a panel of officers—

(a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(b) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951,

for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.
4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Joint Director and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such order as it thinks fit to give effect to the said recommendation.

Repeal and saving.


(2) Notwithstanding such repeal, anything done or any action taken under the Central Vigilance Commission Ordinance, 1998, as amended by the Central Vigilance Commission (Amendment) Ordinance, 1998 shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.
THE SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:

"I, A.B., having appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of God solemnly affirm

that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

K.R. NARAYANAN,

President.

RAGHBIR SINGH,

Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  

New Delhi, the 11th January, 1999/Pausa 21, 1920 (Saka)  

THE URBAN LAND (CEILING AND REGULATION) REPEAL ORDINANCE, 1999  
(No. 5 OF 1999)  

Promulgated by the President in the Forty-ninth Year of the Republic of India.  
An Ordinance to repeal the Urban Land (Ceiling and Regulation) Act, 1976.  

WHEREAS it is considered necessary to repeal the Urban Land (Ceiling and Regulation) Act, 1976;  

AND WHEREAS Parliament has no power to make laws for the States with respect to the aforesaid matter except as provided in articles 249 and 250 of the Constitution;  

AND WHEREAS in pursuance of clause (2) of article 252 of the Constitution resolutions have been passed by the Legislatures of the States of Haryana and Punjab to the effect that the aforesaid Act should be repealed in those States by Parliament by law;  

AND WHEREAS the Urban Land (Ceiling and Regulation) Repeal Bill, 1998 has been introduced in Parliament but has not yet been passed;  

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;  

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—  

1. (1) This Ordinance may be called the Urban Land (Ceiling and Regulation) Repeal Ordinance, 1999.  

(2) It applies in the first instance to the whole of the States of Haryana and Punjab and to all the Union territories; and it shall apply to such other State which adopts this Ordinance by resolution passed in that behalf under clause (2) of article 252 of the Constitution.
2. The Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the principal Act) is hereby repealed.

3. (1) The repeal of the principal Act shall not affect—

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Ordinance, before any court, tribunal or any authority shall abate:

Provided that this section shall not apply to proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 18th January, 1999/Pusa 28, 1920 (Saka)

THE SALARIES, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT) ORDINANCE, 1999

(No. 6 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

I. (1) This Ordinance may be called the Salaries, Allowances and Pension of Members of Parliament (Amendment) Ordinance , 1999.

(2) It shall come into force at once.
2. After section 8A of the Salary, Allowances and Pension of Members of Parliament Act, 1954, the following section shall be inserted, namely:

"8AA. With effect from the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 1999, every person who is not a sitting member but has served for any period as a member of either House of Parliament shall be entitled along with a companion to travel in any train by any railway in India in air-conditioned two-tier class without payment of any charges on the basis of an authorisation issued for this purpose by the Secretariat of either House of Parliament, as the case may be."

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department)  

New Delhi, the 1st July, 1999/Asadh 10, 1921 (Saka)  

THE INCOME-TAX (AMENDMENT) ORDINANCE, 1999  

No. 7 of 1999  

Promulgated by the President in the Fiftieth Year of the Republic of India.  

An Ordinance further to amend the Income-tax Act, 1961.  

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;  

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—  

I. (1) This Ordinance may be called the Income-tax (Amendment) Ordinance, 1999.  

(2) It shall come into force at once.
2. In section 80G of the Income-tax Act, 1961, in sub-section (i), in clause (ii), for the words, brackets, figures and letter “in sub-clause (iiia)”, the words, brackets, figures and letter “in sub-clause (i) or in sub-clause (iiia)” shall be substituted with effect from the 1st day of April, 2000.

K.R. NARAYANAN,
President.

RAGHIBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 21st July, 1999/Asadha 30, 1921 (Saka)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ORDNANCE, 1999

No. 8 of 1999

Promulgated by the President in the Fiftieth Year of the Republic of India.

An Ordinance further to amend the Representation of the People Act, 1951.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Representation of the People (Amendment) Ordinance, 1999.

(2) It shall come into force at once.
2. In the Representation of the People Act, 1951, in section 60, after clause (b), the following clause shall be inserted, namely:

"(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS  
(Legislative Department) 

New Delhi, the 28th July, 1999/Sravana 6, 1921 (Saka)

THE CONTINGENCY FUND OF INDIA (AMENDMENT) ORDNANCE, 1999  

NO. 9 OF 1999

Promulgated by the President in the Fiftieth Year of the Republic of India.

An Ordinance further to amend the Contingency Fund of India Act, 1950.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance——

1. (1) This Ordinance may be called the Contingency Fund of India (Amendment) Ordinance, 1999.

(2) It shall come into force at once.

Short title and commencement.
2. During the period of operation of this Ordinance, the Contingency Fund of India Act, 1950 (hereinafter referred to as the principal Act) shall have effect subject to the amendment specified in section 3.

3. In section 2 of the principal Act, for the provisos, the following proviso shall be substituted, namely:

‘Provided that during the period beginning on the date of commencement of the Contingency Fund of India (Amendment) Ordinance, 1999 and ending on the 31st day of March, 2000, this section shall have effect subject to the modification that for the words “fifty crores of rupees”, the words “five hundred and fifty crores of rupees” shall be substituted.’.

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 18th November, 1999/Kartika 27, 1920 (Saka)

THE SPECIAL PROTECTION GROUP (AMENDMENT) ORDINANCE, 1999

No. 10 OF 1999

Promulgated by the President in the Fiftieth Year of the Republic of India.

An Ordinance further to amend the Special Protection Group Act, 1988.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

1. (1) This Ordinance may be called the Special Protection Group (Amendment) Ordinance, 1999.

(2) It shall come into force at once.
2. In section 4 of the Special Protection Group Act, 1988, for sub-section (1), the following sub-sections shall be substituted, namely:

"(1) There shall be an armed force of the Union called the Special Protection Group for providing proximate security to—

(i) the Prime Minister and the members of his immediate family; and

(ii) any former Prime Minister or to the members of his immediate family—

(a) for a period of ten years from the date on which the former Prime Minister ceased to hold the office of the Prime Minister; and

(b) for any period beyond the period of ten years referred to in sub-clause (a) in a case where the level of threat faced by the former Prime Minister or by any member of his immediate family is of such a nature that such level of threat justifies the provision of proximate security to such former Prime Minister or such member of his immediate family, as the case may be:

Provided that, while assessing the level of threat, the Central Government shall take into account the following factors, namely:—

(A) that the threat emanates from any militant or terrorist organisation; and

(B) that the threat is of a grave and continuing nature:

Provided further that the Central Government shall assess the level of threat periodically in such a manner that not more than twelve months shall elapse between two consecutive assessments.

(A) Notwithstanding anything contained in sub-section (1)—

(a) any former Prime Minister or any member of his immediate family may decline proximate security;

(b) where the proximate security is withdrawn from a former Prime Minister, whether before or after the commencement of the Special Protection Group (Amendment) Ordinance, 1999, such proximate security shall also stand withdrawn from the immediate family-members of such former Prime Minister.

Provided that where the level of threat faced by any member of the immediate family of a former Prime Minister warrants proximate security or any other security, such security shall be provided to that member."

K.R. NARAYANAN,
President.

RAGHIBIR SINGH,
Secy to the Govt. of India.
The Gazette of India

EXTRAORDINARY

PART II—Section 1

PUBLISHED BY AUTHORITY

No. 1] NEW DELHI. MONDAY, JANUARY 17, 2000 / PAUSA 27, 1921

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 17th January, 2000 (Pausa 27, 1921) (Saka)

THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (AMENDMENT) ORDINANCE, 2000

No. 1 of 2000

Promulgated by the President in the Fiftieth Year of the Republic of India.

An Ordinance further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance—

1. (1) This Ordinance may be called the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000.

(2) It shall come into force at once.
Substitution of designation.

2. In the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the principal Act), for the words "the Presiding Officer of the Appellate Tribunal", "the Presiding Officer of an Appellate Tribunal", "the Presiding Officer of a Tribunal or an Appellate Tribunal", wherever they occur, the words "the Chairperson of the Appellate Tribunal", "the Chairperson of an Appellate Tribunal", "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall respectively be substituted.

Amendment of section 2.

3. In section 2 of the principal Act,—

(i) after clause (c), the following clause shall be inserted, namely:—

"(ee) "Chairperson" means a Chairperson of an Appellate Tribunal appointed under section 9;"

(ii) for clause (g), the following clause shall be substituted, namely:—

"(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

(iii) after clause (j), the following clause shall be inserted, namely:—

"(ja) "Presiding Officer" means the Presiding Officer of the Debts Recovery Tribunal appointed under sub-section (1) of section 4;".

Amendment of section 7.

4. In section 7 of the principal Act,—

(a) in sub-section (1), for the words "with a Recovery Officer", the words "with one or more Recovery Officers" shall be substituted;

(b) in sub-section (2), for the words "The Recovery Officer", the words "The Recovery Officers" shall be substituted;

(c) in sub-section (3), for the words "Recovery Officer", the words "Recovery Officers" shall be substituted.

Amendment of section 8.

5. In section 8 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may authorise the Chairperson of an Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal.”.

Amendment of section 13.

6. In section 13 of the principal Act, in the proviso, for the words "the said Presiding Officers shall be varied to their", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall be varied to his", shall be substituted.
7. In section 15 of the principal Act,—

(a) in sub-section (1), in the proviso, for the words "the said Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(b) in sub-section (2), for the words "the Presiding Officer concerned", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted;

(c) in sub-section (3), for the words "the aforesaid Presiding Officer", the words "the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal" shall be substituted.

8. After section 17 of the principal Act, the following section shall be inserted, namely:—

"17A. (1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of apprising the work and recording the annual confidential reports of Presiding Officers.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal."

9. For section 19 of the principal Act, the following section shall be substituted, namely:—

"19. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arise.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:"
Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (4) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (2) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,—

(i) is about to dispose of the whole or any part of his property; or
(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(8) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(9) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(10) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (6).

(11) If an order of attachment is made without complying with the provisions of sub-section (5), such attachment shall be void.

(12) In the case of disobedience of an order made by the Tribunal under sub-sections (8), (9) and (10) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(13) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(14) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the said proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.
(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date of or before which payment of the amount is found due, the date of realisation or actual payment, or the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Amendment of section 27.

10. In section 27 of the principal Act, in sub-section (4), after the words "is reduced", the words "or enhanced" shall be inserted.

Amendment of section 28.

11. In section 28 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:

"(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets."

Substitution of new section for section 30.

12. For section 30 of the principal Act, the following section shall be substituted, namely:

"30. (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems
13. In section 31 of the principal Act, in sub-section (2), in clause (b), the words "or de novo" shall be omitted.

14. After section 31 of the principal Act, the following section shall be inserted, namely:—

"31A. (1) Where a decree or order has been passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Ordinance, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate of recovery to a Recovery Officer.

(3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act."

15. For section 32 of the principal Act, the following section shall be substituted, namely:—

"32. The Chairperson of an Appellate Tribunal, the Presiding Officer of a Tribunal, the Recovery Officer and other officers and employees of an Appellate Tribunal and a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."

16. In section 34 of the principal Act, in sub-section (2), for the words, brackets and figures "and the Sick Industrial Companies (Special Provisions) Act, 1985", the following shall be substituted, namely:—

"the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989".

17. In section 36 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (a), for the words "the Presiding Officers", the words "the Chairpersons, the Presiding Officers" shall be substituted;

(ii) in clause (b), for the words "the Presiding Officer of the Tribunal and Appellate Tribunals", the words "the Chairpersons of Appellate Tribunals and the presiding Officers of the Tribunals" shall be substituted.
(b) for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Every notification issued under sub-section (4) of section 1, section 3 and section 8 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule."

K. R. NARAYANAN,

President.

RAJIBH SINGH,

Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 24th January, 2000/Magha 4, 1921 (Saka)

THE TELCOM REGULATORY AUTHORITY OF INDIA
(AMENDMENT) ORDINANCE, 2000

No. 2 of 2000

Promulgated by the President in the Fiftieth Year of the
Republic of India.

An Ordinance to amend the Telecom Regulatory Authority of India

WHEREAS Parliament is not in session and the President is satisfied that circumstances
exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of
the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Telecom Regulatory Authority of India

(2) It shall come into force at once.
2. In the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the principal Act), in the long title, for the words "Telecom Regulatory Authority of India to regulate the telecommunication services.,” the words "Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector” shall be substituted.  


Amendment of section 3.

3. In section 2 of the principal Act,—

(a) after clause (a), the following clause shall be inserted, namely:—

“(ae) "Appellate Tribunal" means the Telecom Disputes Settlement and Appellate Tribunal established under section 14;”

(b) after clause (e), the following clause shall be inserted, namely:—

“(ed) "licensor" means the Central Government or the telegraph authority who grants a licence under section 4 of the Indian Telegraph Act, 1885;”

13 of 1885.

(c) in clause (j), for the word "Government", the words "Government as a service provider" shall be substituted;

(d) in clause (k), the following proviso shall be inserted, namely:—

"Provided that the Central Government may notify other service to be telecommunication service including broadcasting services."

Amendment of section 3.

4. In section 3 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Authority shall consist of a Chairperson, and not more than two whole-time members and not more than two part-time members, to be appointed by the Central Government."

Substitution of new section for section 4.

5. For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. The Chairperson and other members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management or consumer affairs:

Provided that a person who is, or has been, in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years.”."

Amendment of section 5.

6. In section 5 of the principal Act,—

(a) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—
"(2) The Chairperson and other members shall hold office for a term not exceeding three years, as the Central Government may notify in this behalf, from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

(3) On the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, a person appointed as Chairperson of the Authority and every other person appointed as member and holding office as such immediately before such commencement shall vacate their respective offices and such Chairperson and such other members shall be entitled to claim compensation not exceeding three months pay and allowances for the premature termination of the term of their offices or of any contract of service."

(b) in sub-section (5), for the words "other members", the words "whole-time members" shall be substituted;

(c) after sub-section (6), the following sub-section shall be inserted, namely—

"(6A) The part-time members shall receive such allowances as may be prescribed."

(d) in sub-section (7), the words, brackets and figure "or sub-section (3)" shall be omitted;

(e) in sub-section (8),—

(i) in clause (b), for the words "two years", the words "one year" shall be substituted;

(ii) after clause (b), the following proviso shall be inserted, namely—

"Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the Appellate Tribunal."

7. In section 7 of the principal Act, for sub-sections (2) and (3), the following sub-section shall be substituted, namely—

"(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (3) unless he has been given a reasonable opportunity of being heard in the matter."

8. In section 10 of the principal Act, in sub-section (2),—

(a) for the words "determined by regulations", the word "prescribed" shall be substituted;

(b) after sub-section (2), the following proviso shall be inserted, namely—

"Provided that any regulation, in respect of the salary and allowances payable to and other conditions of service of the officers and other employees of the Authority, made before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall cease to have effect immediately on the notification of rules made under clause (ca) of sub-section (2) of section 35."
9. In section 11 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to—

(i) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:—

(ii) terms and conditions of licence to a service provider;

(iii) revocation of licence for non-compliance of terms and conditions of licence;

(iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(v) technological improvements in the services provided by the service providers;

(vi) type of equipment to be used by the service providers after inspection of equipment used in the network;

(vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(viii) efficient management of available spectrum;

(b) discharge the following functions, namely:—

(i) ensure compliance of terms and conditions of licence;

(ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, fix the terms and conditions of inter-connectivity between the service providers;

(iii) ensure technical compatibility and effective inter-connection between different service providers;

(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

(vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;
(vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

(ix) ensure effective compliance of universal service obligations;

(c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall, refer the recommendation back to the Authority for its reconsideration, and the Authority may within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.

(b) in sub-section (3), for the words, brackets and figure "under sub-section (1)", the words, brackets and figures "under sub-section (1) or sub-section (2)" shall be substituted.

10. In section 13 of the principal Act, the following proviso shall be inserted, namely:

"Provided that no direction under sub-section (d) of section 12 or under this section shall be issued except on the matters specified in clause (b) of sub-section (1) of section 11."
11. For Chapter IV of the principal Act, the following Chapter shall be substituted, namely:—

CHAPTER IV

APPELLATE TRIBUNAL

14. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to—

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969;

54 of 1969.

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986;

68 of 1986.

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885;

13 of 1885.

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

14A. (1) The Central Government or a State Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of section 14.

(2) The Central Government or a State Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Central Government or the State Government or the local authority or the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.
(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The application made under sub-section (1) or the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or appeal finally within ninety days from the date of receipt of application or appeal, as the case may be:

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within the said period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

14B. (1) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by notification, by the Central Government.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.

(3) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by the Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with one or two Members of such Tribunal as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(4) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of such Tribunal from one Bench to another Bench.

(5) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member of the Appellate Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson to such Bench as the Chairperson may deem fit.
14C. A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he—

(a) in the case of Chairperson, is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court;

(b) in the case of a Member, who has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication industry, commerce or administration.

14D. The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for a term not exceeding three years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-five years.

14E. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

14F. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

14G. (1) The Central Government may remove from office, the Chairperson or any Member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as the Chairperson or a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or a Member of the Appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme
Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, reported that the Chairperson or a Member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

14H. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal shall be such as may be prescribed.

14J. Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

14J. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

14K. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority who have heard the case, including those who first heard it.

14L. The Chairperson, Members and other officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

14M. All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal:

Provided that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Teleconi Regulatory Authority (Amendment) Ordinance, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in that Chapter, till the establishment of the Appellate Tribunal under the said Ordinance:

Provided further that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate Tribunal immediately on its establishment under section 14.
14N. (1) All appeals pending before the High Court immediately before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall stand transferred to the Appellate Tribunal on its establishment under section 14.

(2) Where any appeal stands transferred from the High Court to the Appellate Tribunal under sub-section (1),—

(a) the High Court shall, as soon as may be after such transfer, forward the records of such appeal to the Appellate Tribunal; and

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from an earlier stage or de novo as the Appellate Tribunal may deem fit.

15. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

16. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure:

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters,

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it, ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and

(i) any other matter which may be prescribed.

(2) Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
17. The applicant or appellant may either appeal in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

18. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

(3) Every appeal under this section shall be prefered within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

19. (1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

20. If any person wilfully fails to comply with the order of the Appellate Tribunal, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.
12. In section 23 of the principal Act, after sub-section (2), the following Explanation shall be inserted, namely:—

"Explanation.—For the removal of doubts it is hereby declared that the decisions of the Authority taken in discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of section 11 and section 13, being matters appealable to the Appellate Tribunal, shall not be subject to audit under this section."

Amendment of section 35.

13. In section 35 of the principal Act,—

(c) after clause (a), the following clause shall be inserted, namely:—

"(ca) the allowances payable to the part-time members under sub-section (6A) of section 5;"

(b) after clause (c), the following clause shall be inserted, namely:—

"(cb) the salary and allowances and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;"

(c) after clause (e), the following clauses shall be inserted, namely:—

"(da) the manner of its verification and the fee under sub-section (3) of section 14A;

(db) the salary and allowances payable to and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 14E;

(dc) the salary and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (j) of section 14H;

(dd) any other power of a civil court required to be prescribed under clause (i) of sub-section (2) of section 16;"

Amendment of section 36.

14. In section 36 of the principal Act, in sub-section (2),—

(a) clause (2) shall be omitted;

(b) in clause (d), for the words, brackets and letter "under clause (f)", the words, brackets and letters "under sub-clause (vii) of clause (b)" shall be substituted;

(c) in clause (f), for the words, brackets and letter "under clause (m)", the words, brackets and letters "under sub-clause (viii) of clause (b)" shall be substituted;

(d) in clause (f), for the word, brackets and letter "under clause (p)", the words and letter "under clause (c)" shall be substituted.

K.R. NARAYANAN,
President.

RAGHIBIR SINGH,
Secy. to the Govt. of India.
THE INDIAN COUNCIL OF WORLD AFFAIRS ORDINANCE, 2000

No. 3 of 2000

Promulgated by the President in the Fifty-first Year of the Republic of India.

An Ordinance to declare the Indian Council of World Affairs to be an institution of national importance and to provide for its incorporation and matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the Indian Council of World Affairs Ordinance, 2000.

(2) It shall come into force at once.

2. Whereas the objects of the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 are such as to make the institution one of national importance, it is hereby declared that the institution, known as the Indian Council of World Affairs, is an institution of national importance.

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

(a) “appointed day” means the date of commencement of this Ordinance;
(b) "Chairperson" means the Chairperson of the Governing Body;

(c) "Council" means the Indian Council of World Affairs incorporated under section 4;

(d) "Director-General" means the Director-General of the Council;

(e) "existing Council" means the Indian Council of World Affairs, a society registered under the Societies Registration Act, 1860 and functioning as such immediately before the appointed day;

(f) "Fund" means the Fund of the Council referred to in section 18;

(g) "Governing Body" means the Governing Body of the Council;

(h) "member" means a member of the Council and includes the President and Vice-President;

(i) "President" means the President of the Council;

(j) "regulations" means regulations made under this Ordinance;

(k) "rules" means rules made under this Ordinance;

(l) "Vice-President" means the Vice-President of the Council.

4. (1) The Indian Council of World Affairs is hereby constituted a body corporate by the name of the Indian Council of World Affairs and as such body corporate it shall have perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by that name sue and be sued.

(2) The head office of the Council shall be at Delhi and the Council may, with the previous approval of the Central Government, establish branches at other places in India.

5. (1) On and from the appointed day,—

(a) all properties and other assets vested in the existing Council immediately before that day, shall vest in the Council;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Council immediately before that day for or in connection with the purposes of the existing Council, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Council;

(c) all sums of money due to the existing Council, immediately before that day, shall be deemed to be due to the Council;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Council, immediately before that day, may be continued or instituted by or against the Council; and

(e) every employee holding any office under the existing Council immediately before that day, shall, on that day, hold his office or service under the Council with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting; and shall continue to do so unless and until his employment under the Council is duly terminated or until his remuneration and other conditions of service are duly altered by the Council.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the absorption of any employee by the Council in its regular service under this section shall not entitle such employee to any compensation under that Act or any other law and no such claim shall be entertained by any court, tribunal or other authority.
6. (1) Every person having possession, custody or control of property forming part of the properties and other assets referred to in clause (a) of sub-section (1) of section 5 shall deliver forthwith such property to the Director General.

(2) Any person in charge of the property and other assets of the existing Council immediately before the commencement of this Ordinance shall, within ten days from that day, furnish to the Director General a complete inventory of all properties and assets (including particulars of books, debts and investments and belongings) immediately before the commencement of this Ordinance and also of all agreements entered into by the existing Council or any person on its behalf.

7. (1) The Council shall consist of the following members, namely:

(a) the Union Minister for External Affairs who shall be the President, ex-officio;

(b) a Vice-President, who shall be elected by the Council from amongst its members;

(c) a Director-General, who shall be appointed by the Central Government;

(d) three members to be nominated by the Central Government who are distinguished in the field of diplomacy, international affairs and law;

(e) four members to be nominated by the Central Government from amongst experts in the fields of history, economics, security studies and social sciences;

(f) two members to be nominated by the Central Government from amongst the Vice-Chancellors of Universities;

(g) four members to be nominated by the Council.

(2) It is hereby declared that the office of the member of the Council shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.

(3) A person shall be disqualified for being nominated as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court.

8. (1) Save as otherwise provided in this section, the term of office of a member shall be three years from the date of his nomination.

(2) The term of office of the member nominated to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated.

(3) A member shall, unless the Central Government otherwise directs, continue in office until another person is nominated as a member in his place.

(4) The Central Government shall remove a member if he—

(a) becomes subject to any of the disqualifications mentioned in sub-section (3) of section 7, or

(b) refuses to act or becomes incapable of acting; or

(c) is, without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council; or
(d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

(5) A member shall, unless disqualified under sub-section (3) of section 7, be eligible for re-nomination.

(6) A member may resign his office by writing under his hand addressed to the Central Government but shall continue in his office until his resignation is accepted by that Government.

(7) The manner of filling vacancies among members shall be such as may be prescribed by rules.

9. The President shall exercise such powers and discharge such functions as are laid down in this Ordinance or as may be prescribed by rules.

16. The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be prescribed by rules or as may be delegated to him by the President.

11. Members shall receive such allowances, if any, from the Council as may be prescribed by rules.

12. The Council shall hold its first meeting at such time and place as may be appointed by the Central Government and shall observe such rules of procedure in regard to the transaction of business at the first meeting as may be laid down by that Government, and thereafter the Council shall meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.

13. The objects of the Council shall be—

(a) to promote the study of Indian and international affairs so as to develop a body of informed opinion on international matters;

(b) to promote India's relations with other countries through study, research, discussion, lectures, exchange of ideas and information with other organisations within and outside India engaged in similar activities;

(c) to serve as a clearing house of information and knowledge regarding world affairs;

(d) to publish books, periodicals, journals, reviews, papers, pamphlets and other literature on subjects covered under clauses (a) and (b);

(e) to establish contacts with organisations promoting objects mentioned in this section;

(f) to arrange conferences and seminars to discuss and study the Indian policy towards international affairs; and

(g) to undertake such other activities for the promotion of ideas and attainment of the above-mentioned objects.

14. (1) There shall be a Governing Body of the Council which shall be constituted by the Council from amongst the members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Council and shall exercise such powers and discharge such functions as the Council may, by regulations made in this behalf, confer or impose upon it.

(3) The President shall be the Chairperson of the Governing Body and as Chairperson thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.
(4) The procedure to be followed by the Governing Body in the exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among the members of, the Governing Body, shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Council may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power of discharging any function of the Council or for inquiring into, or reporting or advising upon, any matter which the Council may refer to them.

(6) The Chairperson and members of the Governing Body or a standing Committee or an ad hoc committee shall receive such allowances as may be prescribed by regulations.

15. (1) There shall be a chief executive officer of the Council who shall be designated as the Director-General and shall be appointed by the Ministry of External Affairs.

(2) The Director-General shall act as the Secretary to the Council as well as to the Governing Body.

(3) The Director-General shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Council or the President or the Governing Body or the Chairperson.


(5) Subject to such rules as may be made in this behalf, the Council may appoint such number of other officers and employees as may be necessary for the exercise of its powers and efficient discharge of its functions and may determine the designations and grades of such other officers and employees.

(6) Subject to such rules as may be made in this behalf, the Director-General and other officers and employees of the Council shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, gratuity, provident fund and other matters, as may be prescribed by regulations made in this behalf.

16. The Council shall undertake various plans to promote, organise and implement various programmes for efficiently achieving the objects of the Council specified in section 13 and shall also perform such other functions as the Central Government may, by rules, prescribe.

17. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Council in each financial year such sums as may be considered necessary for the exercise of powers and efficient discharge of functions of the Council under this Ordinance.

18. (1) The Council shall maintain a Fund to which shall be credited—

(a) all moneys received from the Central Government;

(b) all moneys received by the Council by way of grants, gifts, donations, benefactions, bequests or transfers; and

(c) all moneys received by the Council in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited in such banks or invested in such manner as the Council may, subject to the approval of the Central Government, decide.

(3) The Fund shall be applied towards meeting the administrative and other expenses of the Council, including expenses incurred in the exercise of its powers and discharge of its functions under section 16 or in relation to any of the activities referred to therein or for anything relatable thereto.
19. The Council shall prepare, in such form and at such time every year, as may be prescribed by rules, a budget in respect of the financial year next ensuing, showing the estimated receipts and expenditure of the Council and shall forward to the Central Government such number of copies thereof as may be prescribed by rules.

20. (1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may, by rules, prescribe and in accordance with such general direction as may be issued by that Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office or offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

21. The Council shall prepare every year, in such form and at such time as may be prescribed by rules, an annual report giving a true and full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

22. All orders and decisions of the Council shall be authenticated by the signature of the President or the Vice-President and all other instraments issued by the Council shall be authenticated by the signature of the Director-General or any other officer of the Council authorised by the Council in this behalf.

23. No act or proceeding of the Council, Government Body or any standing or ad hoc committee under this Ordinance shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Council; or

(b) any defect in the appointment of a person acting as a member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

24. The Council shall furnish to the Central Government such reports, returns and other information as that Government may require from time to time.

25. Any person who—

(a) having in his possession or custody or his control any property vested in the existing Council, wrongfully withholds such property from the Director General; or

(b) fails to deliver any property or any other assets or removes or destroys it;

(c) willfully withholds or fails to account for any books, papers or other documents which may be in his possession or custody or under his control to the Director General;
shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

26. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of filling vacancies among members under sub-section (7) of section 8;

(b) the powers and functions to be exercised and discharged by the President and the Vice-President under section 9 and section 10, as the case may be;

(c) the allowances to be paid to the members under section 11;

(d) the control and restrictions in relation to the constitution of standing and ad-hoc committees under sub-section (5) of section 14;

(e) the filling up of vacancies under sub-section—section (7) of section 14;

(f) the number of other officers and employees that may be appointed by the Council and the manner of such appointment under sub-section (5) of section 15;

(g) the salaries and allowances and other conditions of service of the Director and other officers and employees of the Council under sub-section (6) of section 15;

(h) the other functions to be performed by the Council under section 16;

(i) the form in which, and the time at which, the budget shall be prepared by the Council and the number of copies thereof to be forwarded to the Central Government under section 19;

(j) the form in which an annual statement of accounts including the balance-sheet shall be prepared by the Council under sub-section (I) of section 20;

(k) the form in which and the time at which the report of the activities of the Council shall be submitted to the Central Government under section 21;

(l) any other matter which has to be or may be prescribed by rules.

27. (1) The Council may, with the previous approval of the Central Government, make regulations consistent with the provisions of this Ordinance and the rules to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

(a) the summoning and holding of meetings, other than the first meeting of the Council, the time and place where such meetings are to be held and the transaction of business at such meetings under section 12;

(b) the manner in which the Governing Council shall be constituted under sub-section — section (7) of section 14;

(c) the powers and functions to be exercised and discharged by the Governing Body and the Chairperson under sub-sections (2) and (3) of section 14;

(d) the procedure to be followed by the Governing Body in exercise of its powers and discharge of its functions and the term of office of, and the manner of filling vacancies among, the members of the Governing Body under sub-section (4) of section 14;

(e) the allowances to be paid to the members of the standing and ad hoc committees under sub-section (6) of section 14.
(f) the powers and functions to be exercised and discharged by the Director-
General under sub-section (3) of section 15.

(g) any other matter which has to be or may be prescribed by regulations.

(3) Notwithstanding anything contained in sub-section (1), the first regulations
under this Ordinance shall be made by the Central Government and any regulations so
made may be altered or rescinded by the Council in exercise of its powers under sub-
section (1).

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

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

Provided that no order shall be made under this section after the expiry of two years
from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is
made, before each House of Parliament.

K. R. NARAYANAN,
President.

SUBHASH C. JAIN,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
Legislative Department

New Delhi, the 26th September, 2000/Asvina 4, 1922 (Saka)

THE NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT (AMENDMENT) ORDINANCE, 2000

No. 4 of 2000

Promulgated by the President in the Fifty-first Year of the Republic of India.

An Ordinance further to amend the National Bank for Agriculture and Rural Development Act, 1981

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called the National Bank for Agriculture and Rural Development (Amendment) Ordinance, 2000.

(2) It shall come into force at once.
2. In section 19 of the National Bank for Agriculture and Rural Development Act, 1981 (hereinafter referred to as the principal Act), for clause (a), the following clause shall be substituted, namely:—

"(a) issue and sell bonds, debentures and other financial instruments with or without the guarantee of the Central Government on such terms and conditions as may be prescribed;"

3. In section 60 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

"(ca) such terms and conditions subject to which the National Bank may issue and sell bonds, debentures and other financial instruments with or without the guarantee of the Central Government;"

K. R. NARAYANAN,
President.

SUBHASH C. JAIN,
Secy. to the Govt. of India.
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 1st November, 2000/Karrika 10, 1922 (Saka)

THE CENTRAL ROAD FUND ORDINANCE, 2000

No. 5 of 2000

Promulgated by the President in the Fifty-first Year of the Republic of India

An Ordinance to give statutory status to the existing Central Road Fund governed by the Resolution of Parliament passed in 1988, for development and maintenance of national highways and improvement of safety at railway crossings, and for these purposes to levy and collect by way of cess a duty of excise and duty of customs on motor spirit commonly known as petrol, high speed diesel oil and for other matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Central Road Fund Ordinance, 2000.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Ordinance, it shall come into force at once.
In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Fund is established under sub-section (1) of section 6;

(b) "cess" means a duty in the nature of duty of excise and customs, imposed and collected on motor spirit commonly known as petrol and high speed diesel oil for the purposes of this Ordinance;

(c) "Fund" means the Central Road Fund established under sub-section (1) of section 6;

(d) "national highways" means the highways specified in the Schedule to the National Highways Act, 1956 or any other highway declared as national highway under sub-section (2) of section 2 of the said Act;

(e) "National Highways Authority of India" means an authority constituted under sub-section (1) of section 3 of the National Highways Authority of India Act, 1988;

(f) "prescribed" means prescribed by rules made under this Ordinance.

CHAPTER II

CENTRAL ROAD FUND

3. (1) With effect from such date as the Central Government may, by notification in Official Gazette, specify, there shall be levied and collected, as a cess, a duty of excise and customs for the purposes of this Ordinance, on every item specified in column (2) of the Schedule, which is produced in or imported into India and—

(a) removed from a refinery or a factory or an outlet; or

(b) transferred by the person, by whom such item is produced or imported, to another person,

at such rates not exceeding the rate set forth in the corresponding entry in column (3) of the Schedule, as the Central Government may, by notification in the Official Gazette, specify:

Provided that until the Central Government specifies by such notification the rate of the cess in respect of petrol and high speed diesel oil (being items specified in the Schedule), the cess on petrol and high speed diesel oil under this sub-section shall be levied and collected at the rate of rupee one per litre:

Provided further that the additional duty of customs and the additional duty of excise on petrol levied under sub-section (1) of section 103 and sub-section (1) of section 111, as the case may be, of the Finance (No. 2) Act, 1998 and the additional duty of customs and the additional duty of excise on high speed diesel oil levied under sub-section (1) of section 116 and sub-section (1) of section 133, as the case may be, of the Finance Act, 1999 shall be deemed to be a cess for the purposes of this Ordinance from the date of its levy and the proceeds thereof shall be credited to the Fund.

(2) Every cess leviable under sub-section (1) on any item shall be payable by the person by whom such item is produced, and in the case of imports, the cess shall be imposed and collected on items so imported and specified in the Schedule.

(3) The cess leviable under sub-section (1) on the items specified in the Schedule shall be in addition to any cess or duty leviable on those items under any other law for the time being in force.

(4) The provisions of the Central Excise Act, 1944 and the rules made thereunder and the provisions of the Customs Act, 1962 and the rules made thereunder, as the case may be, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of cess leviable under this section and for this purpose, the provisions of the Central Excise Act, 1944 and of the Customs Act, 1962 as the case may be, shall have effect as if the aforesaid Acts provided for the levy of cess on all the specified in the Schedule.
4. The proceeds of the cess levied under section 3 shall first be credited to the Consolidated Fund of India, and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, credit such proceeds to the Fund from time to time, after deducting the expenses of collection, for being utilised exclusively for the purposes of this Ordinance.

5. The Central Government may, after due appropriation made by Parliament by law in this behalf, credit by way of grants or loans such sums of money as the Central Government may consider necessary in the Fund.

6. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Ordinance, a Fund to be called as the "Central Road Fund".

   (2) The Fund shall be under the control of the Central Government and there shall be credited thereto—

       (a) any sums of money paid under section 4 or section 5;

       (b) unspent part of the cess, being already levied for the purposes of the development and maintenance of national highways;

       (c) the sums, if any, realised by the Central Government in carrying out its functions or in the administration of this ordinance;

       (d) any fund provided by the Central Government for the development and maintenance of State roads;

   (3) The balance to the credit of the Fund shall not lapse at the end of the financial year.

7. The Fund shall be utilised for the—

   (i) development and maintenance of national highways;

   (ii) development of the rural roads;

   (iii) development and maintenance of other State roads including roads of inter-State and economic importance;

   (iv) construction of roads either under or over the railways by means of a bridge and erection of safety works at unmanned rail-road crossings; and

   (v) disbursement in respect of such projects as may be prescribed.

8. (1) The concerned departments of the Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance-sheet in respect of allocations of their shares of fund in such form, as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

   (2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

CHAPTER III

MANAGEMENT OF CENTRAL ROAD FUND

9. (1) The Central Government shall have the power to administer the Fund and shall—

       (a) take such decisions regarding investment on projects of national highways and expressways as it considers necessary;

       (b) take such measures as may be necessary to raise funds for the development and maintenance of the national highways.
functions of the central government

16. The Central Government shall be responsible for the—

(i) administration and management of the share of Fund allocated to the development and maintenance of the national highways;

(ii) co-ordination and complete and timely utilization of all sums allocated out of the Fund;

(iii) sanction of schemes for State roads of inter-State and economic importance in such manner as may be prescribed;

(iv) formulation of criteria on the basis of which the specific projects of State roads of inter-State and economic importance are to be approved and financed out of share of State roads;

(v) release of funds to the States for specific projects and monitoring of such projects and expenditure incurred thereon;

(vi) formulation of the criteria for allocation of the funds for such projects which are required to be implemented by the National Highways Authority of India and also for other projects for the development and maintenance of the national highways;

(vii) allocation of share of funds to each State and Union territory specified in the First Schedule to the Constitution;

(viii) allocation of—

(a) fifty per cent of the cess on high speed diesel oil for the development of rural roads in such manner as may be prescribed; and

(b) the balance amount of fifty per cent of cess on high speed diesel oil and the entire cess collected on petrol as follows:—

(i) an amount equal to fifty seven and one half per cent of such sum for the development and maintenance of national highways;

(ii) an amount equal to twelve and one half per cent for the construction of road either under or over the railways by means of a bridge and erection of safety works at unmanned rail-road level crossings; and

(iii) the balance thirty per cent on development and maintenance of roads other than national highways and out of this amount, ten per cent. that is three percent of the total share of State roads shall be kept as reserve by the Central Government for allocation to States for implementation of State road schemes of inter-State and economic importance to be approved by the Central Government in terms of clauses (iii) and (iv) of this section.

14. (1) The share of the fund to be spent on development and maintenance of roads, other than national highways, as specified under sub-clause (b) of clause (viii) of section 10, after deducting the reserve kept by the Central Government for State road schemes of inter-State and economic importance, shall be allocated to various States and Union territories in such manner as may be decided by the Central Government.
(2) The portion of the fund allocated for expenditure in the various States and Union territories shall be retained by the Central Government until it is actually required for expenditure.

(3) If in the opinion of the Central Government, the Government of any State or the administration of any Union territory has at any time—

(a) failed to take such steps as the Central Government may recommend for the regulation and control of motor vehicles within the State or the Union territory; or

(b) delayed without reasonable cause the application of any portion of the fund allocated or re-allocated, as the case may be, for expenditure within the State or Union territory,

the Central Government may resume the whole or part of any sums which it may have at that time held for expenditure in that State or the Union territory.

(4) All sums resumed by the Central Government from the account of any State Government or Union territory administration as aforesaid shall be re-allocated between the credit accounts of the defaulting and other State Governments and Union territory administrations in the ratio of the main allocation for the financial year preceding the year in which the re-allocation is made.

(5) The balance to the credit of the Fund in respect of any allocation shall not lapse at the end of the financial year.

12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) specify the projects in respect of which the funds may be disbursed under section 7;

(b) the manner in which the accounts shall be maintained and the annual statement of accounts may be prepared including the profit and loss account and the balance sheet under sub-section (1) of section 8;

(c) the manner in which the schemes for development and maintenance of State roads of inter-State and economic importance are to be formulated and sanctioned under section 10;

(d) any other matter for which rule is to be made, or may be, prescribed.

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

14. With effect from the appointed day the Central Road Fund governed by the Parliamentary Resolution dated the 13th May, 1988 (hereafter referred to in this section as the existing Fund) shall be deemed to be the Fund established under this Ordinance and, —

(a) all schemes relating to development and maintenance of national highways and State roads sanctioned under the existing Fund in so far as such schemes are relatable to the schemes under this Ordinance, shall be deemed to be the schemes sanctioned under this Ordinance;  

(b) all funds accrued under the existing Fund including assets and liabilities shall be transferred to the Fund established under this Ordinance.
### THE SCHEDULE

*(See section 3)*

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Name of item</th>
<th>Rate of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Motor spirit commonly known as petrol</td>
<td>Rupee one per litre</td>
</tr>
<tr>
<td>2</td>
<td>High speed diesel oil</td>
<td>Rupees one per litre</td>
</tr>
</tbody>
</table>

K. R. NARAYANAN,

President.

SUBHASH C. JAIN,

Secy. to the Govt. of India.