

Jammu and Kashmir Shops and Establishments Act, 1966

JAMMU & KASHMIR

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Act 39 of 1966

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Jammu and Kashmir Shops and Establishments Act, 1966(Act No.39 of 1966)[Received the assent of the Governor on 28th October ,1966 and published in Government Gazette dated 29th October,1966 Extra.]]An Act to provide for the regulation of the Conditions of work and employment in shops,commercial establishment, residential hotels, restaurants, eating house, theatres,other places of public amusements or entertainments and other establishments.Be it enacted by the Jammu Kashmir State Legislature in the Seventeenth Year of the Republic of India as follows

Chapter I Preliminary

1. Short title,extent and commencement

(1) This Act may be called the Jammu and Kashmir Shops and Establishments Act,1966.(2)It shall extend to the whole of the State.(3)[[Enforced in the cities of certain towns of Jammu and Kashmir Provinces W.e.f.15.11.1966 by SRO 445-A dated 15.11.1966 in Jammu Cantt.w.e.f.1.8.1967 by SRO-290 Dated 18.7.1967 and in Badami Bagh cantt.w.e.f. 1.2.1970 by SRO-37 dated 24.1.1970.] It shall come into force on such date as the Government may by notification in the Government Gazette,appoint in his behalf and different dates may be appointed for different areas.

2. Definitions

In this Act,unless there is any repugnant in the subject or context,-(1)"apprentice"means a person,aged not less than twelve years, who is employed,whether on payment of wages or not, for the purpose of being trained in any trade,craft,business or employment in any establishment;(2)"Child" Means A Person Who Has Not Completed His Twelfth Year;(3)"closed"

means not open for the service of any customer not open to any business connected with the establishment;(4)"commercial establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business trade or profession and includes(a)an establishment which carries on the business of advertising, commission agency, forwarding or commercial agency, or which is a clerical department of a factory or of any industrial or commercial undertaking;(b)an insurance company, joint stock company, bank, brokers office and exchange, but does not include factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;(5)"day" means the period of twenty-four hours beginning at midnight;Provided that in case of an employee whose hours of work extend beyond midnight, day means the period of twenty four hours beginning when such employment commences irrespective of midnight;(6)"employee" means(a)in the case of a shop, a person wholly or principally employed in the shop in connection with business of the shop whether on monthly, daily or contract basis;(b)in the case of a factory, a person slowly or mainly employed in a clerical capacity in such factory;(c)the case of commercial establishment, a person wholly or principally employed in connection with the business of an establishment and includes a peon;(d)in the case of restaurant or eating house, a person wholly or principally employed in the preparation or the serving of food or drink or in the attendance upon a customer or in cleaning any part of the premises or utensils used on such premises or as a clerk or a cashier or otherwise employed in connection with the business of the restaurant or eating house;(e)in the case of a theatre, or other establishment of public entertainment, a person employed as an operator, cashier, clerk, door keeper, usher, cleaner or in any other capacity;and includes an apprentice in any of such establishments, but, does not include a member of the employer's family;(7)"employee" means a person owning or having ultimate control over the affairs of an establishment and includes the manager, agent, or any other person acting in the general management or control of such establishment;(8)"establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishments as the Government may by notification in the Government Gazette, declared to be an establishment for the purpose of this Act;(9)"factory" has the same meaning as is assigned to it in the [Jammu and Kashmir Factories Act, 1957] [Now Factory Act, 1948 (Central Act No. 63 of 1948).];(10)"goods" includes all materials, commodities and articles;(11)"holiday" means a day on which an establishment shall remain closed or on which an employee shall be given a holiday under the provisions of this Act;(12)"Inspector" means an Inspector appointed under this Act;(13)"Labour Commissioner" means the person appointed as such by the Government and includes for the purposes of such provisions of this Act and for such areas as the Government may direct, an officer not below the rank of Assistant Labour Commissioner;(14)"leave" means leave as provided for the Chapter VII of this Act;(15)"member of the family of an employer" means the husband, wife, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer;(16)"opened" means opened for the service of any customer or for any business connected with the establishment;(17)"period of work" means time during which an employee is at the disposal of the employer;(18)"establishment register of" means a register maintained from the registration of establishments under this Act;(19)"registration certificate" means a certificate showing the registration of an establishment;(20)"residential hotel" means any premises in which a bonafide business is carried on of supplying for payment lodging or board and lodging to travellers and other members or class of

members of the public and includes a residential club;(21)"restaurant or eating house" means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises, and includes a halwai's shop; but does not include a restaurant or a canteen attached to a factory if the persons employed, therein are allowed the benefits provided for the workers under the [Jammu and Kashmir Factories Act 1957] [Now Factory Act, 1948 (Central Act No. 63 of 1948).];(22)"shop" means any premises where goods are sold, either by retail or wholesale or both or where services are rendered to customers, and includes an office, a store room, godown, ware-house or workplace, whether in the same premises or otherwise used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or shop attached to factory where the person employed in the shop are allowed the benefits provided for, workers under the [Jammu and Kashmir Factories Act, 1957] [Now Factory Act, 1948 (Central Act No. 63 of 1948).];(23)"spread over" means the period between the commencement and the termination of the work of an employee on one day;(24)"theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic performance or for any other public amusement or entertainment;(25)"wages" means wages as defined in the [Payment of Wages Act, 1956] [Now Factory Act, 1948 (Central Act No. 63 of 1948).];(26)"Week" means the period of seven days beginning at midnight of Saturday;(27)"year" means a year commencing on the first day of April; and(28)"young person" means a person who is not a child and has not completed his eighteenth year.

3. Act not applicable to certain persons and establishments

Nothing in this Act shall apply to-(a)persons whose work is inherently intermittent such as a traveller, convasser, a watchman or a caretaker;(b)offices of the Union or the State Government (except commercial establishments) or of local authority and of the Reserve Bank of India, the State Bank of India and the Life Insurance Corporation;(c)establishments for the treatment of care of the sick, infirm, destitute or mentally unfit;(d)bazaars, fairs, or exhibitions for the sale of works for charitable or other purposes from which no profit is derived;(e)stalls and refreshments rooms at railway stations or railway dinning cars;(f)any commercial establishment carrying on the business of transport of passengers and goods by motor vehicles and persons exclusively employed in such business;(g)clubs not being residential clubs;(h)offices of lawyers.

4. Application of Act to other establishments and persons

(1) Notwithstanding anything contained in this Act, the Government may, by notification in the Government Gazette, declare any class of establishments or class of persons to whom this Act or any of the provisions thereof does not for the time being apply, to be a class of establishments to which or a class, of persons to whom this Act or any provisions thereof shall apply from such date as may be specified in the notification.(2)On such declaration under sub-section (1) any such class of establishments or such class of persons shall be deemed to be a class of establishments to which or a class of persons to whom this Act applies and all or any of the provisions of this Act shall apply to

such class of establishments or class of persons.

5.

The Government may, by notification in the Government Gazette, exempt either permanently or for any specified period, any establishments or class of establishments or persons or class of persons to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as the Government may deem fit.

Chapter II

Registration of Establishments

6. Registration of establishments

(1) Every establishment to which this Act applies shall be registered in accordance with the provisions this section.(2)Within thirty days from the date on which this Act applies to an establishment, its employer shall send to the Inspector of the area concerned a statement, in the prescribed form, together with such fees, as may be prescribed, containing(a)the name of the employer and the manager, if any;(b)the postal address of the establishment;(c)the name, if any, of the establishment;(d)the category of the establishment, i.e., whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment; and(e)such other, particulars as may be prescribed:[Provided that where, before the commencement of the Jammu and Kashmir Shops and Establishment (Amendment) Act, 1970, any employer of an establishment as aforesaid could not send to the Inspector of the area concerned a statement in the prescribed form together with fees, within the time specified above, for the reasons that rules prescribing the form and fee were not made, it shall be so sent within thirty days after such commencement.] [Proviso to section 6(2) inserted by Act XI of 1970.](3)On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the register of establishments in such manner as may be prescribed and shall issue in the prescribed form, a registration certificate to the employer. The registration certificate shall be prominently displayed at the establishment.(4)In the event of any doubt or difference of opinion between an employer and the Inspector as to the category to which an establishment should belong, the Inspector shall refer the matter to the Labour Commissioner who shall, after such inquiry as he thinks proper, decide the category of such establishment and his decision shall be final for the purposes of this Act.(5)[The registration certificate shall, on payment of the prescribed fees, be renewed by 31st March every year:Provided that the employer shall have the option to get his certificate renewed for a period up to three years at a time. Thirty days grace time may, however, be allowed for the renewal of the certificate.][Substituted by Act XXXI of 1973, Section 2.]

7. Change to be communicated to Inspector

(1) It shall be the duty of an employer to notify to the Inspector, in the prescribed form, any change in respect of any information contained in his statement under section 6 within seven days after the change has taken place. The Inspector shall, on receiving such notice and on being satisfied about its correctness make the change in the register of the establishments in accordance with such notice and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

8. Closing of establishment to be communicated to Inspector

The employer shall, within ten days of his closing the establishment, notify to the Inspector in writing accordingly. The Inspector shall, on receiving the information and being satisfied about its correctness, remove such establishment from the register of establishment and cancel the registration certificate.

Chapter III

Shops and Commercial Establishments

9. Opening and closing hours

(1) No shop or commercial establishment shall on any day-(a)be opened earlier than such hour as may be fixed by the Government by a general or special order in this behalf;(b)be kept open later than such hour as may be fixed by the Government by a general or special order in this behalf.

Omitted. []

[Omitted by Act XXXI of 1973.](2)The Government may fix different opening or closing hours for different class's of shops and commercial establishments or for different areas or for different periods of the year.

10. [Provision as to trading elsewhere than in shops [Submitted by Act XXXI of 1973.]

(1) No person shall carry on any retail trade or business of any class near any shop or commercial establishment at any time before the opening and after the closing hours fixed under-section 9 and on the close day. If any person carries on any such trade or business in contravention of this section, the provisions of this Act shall apply as if he was the occupier of the shop or commercial establishment which was being kept open in contravention of this Act:Provided that nothing in this section shall apply to the sale of newspapers.](2)Any person contravening the provisions of sub-section (1) shall be liable to have his goods seized by an Inspector unless such person deposit a sum of Rs. 10/- by way of security for the return of seized goods.

11. Hours of work in shops and commercial establishments

(1) Subject to the provisions of this Act, no employee shall be required or allowed to work in any shop or commercial establishment for more than nine hours on any day and forty-eight hours in any week. (2) Any employee may be required or allowed to work in a shop or a commercial establishment for any period in excess of the limit fixed under sub-section (1) if such period does not exceed three hours in any week.

12. Spread-over in shops and commercial establishments

The spread-over of an employee in a shop or commercial establishment shall not exceed twelve hours on a day: Provided that the Government may increase or decrease the spread-over period subject to such conditions as it may deem fit.

13. Holidays in a week in shops and commercial establishments

[(1) Every shop or establishment shall remain entirely closed on one day of the week. The employer shall choose between Sunday and Friday and shall fix such day at the beginning of the year or within thirty days in case establishment comes into existence at sometime during the year other than the beginning of the year, notify it to the Inspector and specify it in a notice prominently displayed at a conspicuous place in the shop or establishment and shall be maintained in a clean and legible condition.][Substituted by Act XXXI of 1973.](1a)[Notwithstanding anything contained in sub-section (1) the Government may, by notification in the Government Gazette, fix any day other than Sunday and Friday to be the close day in respect of any area specified in the notification.][Sub-section 1-a inserted by Act V of 1974.](2) If any day notified as a holiday under sub-section (1) happens, to be a day of public festival, the employer may keep the shop or commercial establishment open on such day but in that event, he shall keep the shop or commercial establishment closed on some other day, within three days before or after the date of such public festival and give notice of the change to the Inspector at least seven clear days before the day of such public festival. (3) It shall not be lawful for an employer to call an employee at, or for any employee to go to, his shop or commercial establishment or any other place for any work in connection with the business of his shop or commercial establishment on a day on which such shop or commercial establishment remains closed. (4) No deduction shall be made from the wages of any employee in a shop or commercial establishment on account of any day on which it has remained closed under this section.

Chapter IV

Residential Hotels, Restaurants and Eating Houses

14. Opening and closing hours of restaurants and eating houses

(1) No restaurant or an eating house shall on any day be opened earlier than 5-30 A.M. and be

kept open later than 12 A.M.:Provided that any customer who was being served or waiting to be served at the closing hour of such restaurant or eating house may be served in such restaurant or eating house during the half hour immediately following such hour:Provided further that an employee in such restaurant or eating house may be required to commence work not earlier than 5 A.M. and shall not be required to work later than 12-30 A.M.(2)Subject to the provisions of sub-section (1), the Government may fix later opening or earlier closing hours for different restaurants or eating houses or for different areas or for different periods of the year.

15. Restriction on selling of goods

Before and after the hours fixed for the opening and closing of shops under section 9, no goods of the kind sold in such shops shall be sold in any restaurant or eating house except for consumption on premises.

16. Daily hours of work in residential hotels, restaurants and eating houses

No employee shall be required or allowed to work in a residential hotel, restaurant or eating house for more than nine hours on a day.

17. Spread-over

The spread-over of an employee in a residential hotel, restaurant or eating house shall not exceed fourteen hours:Provided that the Government may increase or decrease the spread-over period subject to such conditions as it may impose.

18. Holiday in a week

(1)Every employee in a residential hotel, restaurant or eating house shall be given at least one day in a week as a holiday.(2)It shall not be lawful for an employer to call an employee at, or for an employee to go to, his residential hotel, restaurant or eating house or any other place for any work in connection with the business of his residential hotel, restaurant or eating house on a day on which such employee has a holiday.(3)No deduction shall be made from the wages of any employee in a residential hotel, restaurant or eating house on account of any holiday given to him under sub-section (1), if any employee is employed on a daily wage, he shall none the less be paid wages for the weekly holiday equal to the average of the daily wages earned by him during preceding six working days.

Chapter V

Theatres or Other Places of Public Amusement or Entertainment

19. Opening and closing hours of theatres or other places of public amusement or entertainment

Notwithstanding any other enactment for the time being in force no theatre or other place of public amusement or entertainment shall, on any day, be opened earlier than 10 A.M. and closed later than 1 A.M.

20. Theatres or other places of public amusement or entertainment not to sell goods of the kind sold in shop after the closing hours of shops

After the hour fixed for the closing of shops under section 9, no goods of the kind sold in shop shall be sold in any theatre or other place of public amusement or entertainment except for consumption on premises.

21. Daily hours of work in theatre or other places of public amusement or entertainment

No employee shall be required or allowed to work in any theatre or other place of public amusement or entertainment for more than nine hours on any day.

22. Spread-over

The spread-over of an employee in a theatre or other place of public amusement or entertainment shall not exceed twelve hours on any day: Provided that the Government may increase or decrease the spread-over period subject to such conditions as it may impose.

23. Holiday in a week

(1) Every employee in a theatre or other place of public amusement or entertainment shall be given at least one day in a week as a holiday. (2) It shall not be lawful for an employer to call an employee, at, or for an employee to go to, his theatre or other place of public amusement or entertainment or any other place for any work in connection with the business of his theatre or place of public amusement or entertainment on a day on which such employee has a holiday. (3) No deduction shall be made from the wages of an employee in a theatre or other place of public amusement or entertainment on account of any holiday given to him under sub-section (1), if any employee is employed on a daily wage he shall none the less be paid wages for weekly holiday equal to the average of the daily wages earned by him during the preceding six working days.

Chapter VI

Employment of Children, Young Persons and Women

24. No child to work in any establishment

No child shall be required or allowed to work whether as an employee or otherwise in any establishment.

25. Daily hours of work for young persons

Notwithstanding anything contained in this Act, no young person or woman shall be required or allowed to work, whether as an employee or otherwise in any establishment for more than six hours on any day and before 7 A. M. and after 9 P. M.

Chapter VII

Leave With Pay and Payment of Wages

26. Employee's fight for casual and privilege leave

(1) A person employed in an establishment to which this Act applies shall be entitled-(a)after every 12 months continues employment, to privilege leave for a total period of one month; and(b)in every year to casual leave for a total period not exceeding 14 days:Provided that the leave under sub-clause (a) shall not at any time accumulate for a total period exceeding 3 months;Provided further that holidays under sections 13, 18, 23 falling during the period of such leave shall be included in the leave so granted;Provided further that casual leave shall not be combined with privilege leave.(2)If an employee entitled to leave under sub-section (1) is discharged by his employer before he has been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him the amount payable under section 27 in respect of the leave.(3)If an employee entitled to leave under sub-section (1) is refused the leave, he may give intimation to the Inspector or any other officer authorised in this behalf by the Government regarding such refusal. The Inspector shall enter such information in a register kept in such form as may be prescribed.Explanation. An employee shall be deemed to have completed a period of twelve months continuous service in an establishment notwithstanding any interruption in the service during those twelve months brought about by sickness, accident or authorised leave not exceeding ninety days in the aggregate for all three, or by a lockout or by a strike which is not an illegal strike, or by intermittent period of involuntary unemployment not exceeding thirty days in the aggregate, and authorised leave shall be deemed not to include any weekly holiday allowed under this Act which occurs at the beginning or end of an interruption brought about by the leave.

27. Pay during leave

Every employee shall be paid for the period of his leave at a rate equivalent to the daily average of his Wages for the days on which actually worked during the proceeding three months, exclusive of any earnings in respect of overtime.

28. Payment when to be made

An employee who had been allowed leave under section 26 shall, before his leave begins, be paid not less than one-fourth of the total amount due to him for the period of such leave.

29. Power of Inspector to act for worker

An Inspector may institute proceeding on behalf of any employee in an establishment to which this Act applies to recover any sum required to be paid under this Chapter by an employer which the employer has not paid.

30. Application and amendment of the [Payment of Wages Act, 1956.] [Now Payment Wages Act, 1936 (Central Act No. 4 of 1936).]

(1) Notwithstanding anything contained in the [Payment of Wages Act, 1956] [Now Payment Wages Act, 1936 (Central Act No. 4 of 1936).] (herein referred to as 'the said Act') the Government may, by notification, direct that subject to the provisions of sub-section (2), the said Act, shall apply total or any establishment or to all or any class of employees to which or whom this Act for the time being applies. (2) On the application of the provisions of the said Act to any establishment or to any employee under sub-section (1), the Inspector, appointed under this Act, shall be deemed to be the Inspector for the purposes of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

Chapter VIII

Health and Safety

31. Cleanliness

The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. These methods may include limewashing, colour-washing, painting, varnishing, disinfecting and deorising.

32. Ventilation

The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

33. Precautions against fire

In every establishment, except such establishment or class of establishment, as may be prescribed, such precautions against fire shall be taken as may be prescribed. [33A. Safety of employees]

[Section 33A inserted by Act XVII of 1968.] (1) In establishments where manufacturing process as defined in the [Jammu and Kashmir Factories Act, 1957] [Now Factories Act, 1948 (Central Act No. 63 of 1948)] is carried on, the employers shall observe general rules of safety such as fencing of machinery, encasing dangerous fumes and providing of suitable safety equipment to their employees. (2) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in an establishment involves imminent danger to human life or safety, he shall serve on the employer of the establishment an order in writing prohibiting its use unless it has been properly repaired or altered. (3) Any person aggrieved by an order of the Inspector under sub-section (2) shall have right of appeal to the Deputy Labour Commissioner: Provided that such appeal shall be filed within 30 days of the date of the order. The order of the Deputy Labour Commissioner passed in appeal shall be final.

Chapter IX

Enforcement and Inspection

34. Appointment of Inspectors

(1) The Government may, by notification in the Government Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively. (2) The Government may, by notification in the Government Gazette, appoint any person to be the Chief Inspector who shall in addition to such powers as may be prescribed for the Chief Inspector, exercise the powers of Inspector throughout the State. (3) The Government may also, by notification in the Government Gazette, appoint such persons as it thinks fit to be Deputy Chief Inspectors who shall exercise the powers of Inspector within such local limits as it may assign to them respectively.

35. Powers and duties of Inspectors

(1) Subject to any rules made by the Government in this behalf, an inspector may within the local limits for which he is appointed—(a) enter at all reasonable times and with such assistants, if any, being person in the service of the Government or of any local authority as he thinks fit, any place which is or which he has reason to believe is an establishment; (b) make such examination of the premises and of any prescribed registers, records and notices, and take on the spot or otherwise evidence of any persons as he may deem necessary, for carrying out the purposes of this Act; and (c) exercise such other powers, as may be prescribed or may be necessary for carrying out the purposes of this Act: Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself. (2) The Inspector shall for the purposes of any enquiry under this Act have the same powers regarding the summoning and attendance of witnesses and compelling the production of documents as a Civil Court has under the Code of Criminal Procedure, Svt. 1977.

36. Inspectors to be public servants

Every Inspector appointed under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Ranbir Penal Code.

37. Employer to produce, registers, records etc. for inspection

Every employer shall on demand produce for inspection of an Inspector all registers, records and notices required to be kept under and for the purposes of this Act.

Chapter X

Offences and Penalties

38. Contravention of certain provisions and offences

(a) If any employer fails to send to the Inspector of the area concerned a statement within the period specified in section 6 or to notify a change within the period specified in section 7 or to notify the closing of his establishment under section 8; or(b)if in any establishment there is any contravention of the provisions of section, 9 13, 14, 15, 19, 20, 31, 32 or 33 or any order made thereunder; or(c)if in any establishment any person is required or allowed to work in contravention of sections 11, 12, 16. 17, 18, 21, 22, or 23; or(d)if in any establishment a child, young person or woman is required or allowed to work in contravention of section 24 or 25; or(e)if any employer contravenes the provisions of sections 37, 47, 50, 51 or 52; or(f)if in any establishment there is any contravention of any section, rule or order for which no specific punishment is provided in this Act;the employer and the manager shall, on conviction, each be punished with fine which shall not be less than [two hundred rupees] [Substituted by Act XV of 2002 (Section 2).] and which may extend to [one thousand rupees.][Substituted by Act XV of 2002 (Section 2).]

39.

Employees contravening sections 13 (3), 18, 23 or 50 If any employee contravenes the provisions of sub-section (3) of section 13 or section 18, 23 or 50 he shall, on conviction, be punished with fine which may extend to fifty rupees.

40. False entries by employer and manager

If any employer or manager, with intent to deceive makes or causes or amount to be made, in any register, record or notice prescribed to be maintained under the provisions of this Act., or the rules made thereunder, an entry which, to his knowledge, is false in any material particular, or wilfully omits, or causes or allows to be omitted, from any such register, record or notice, an entry which is required to be made therein under the provisions of this Act or the rules made thereunder, or maintains or causes or allows to be maintained more than one set of any register, record or notice

except the office copy of such notice, or sends or causes or allows to be sent, to an Inspector, any statement, information or notice prescribed to be sent under the provisions of this Act, or the rules made thereunder which to his knowledge is false in any material particular, he shall, on conviction, be punished with imprisonment not exceeding six months, or with fine which may extend to five hundred rupees, or with both.

41.

Enhanced penalty in certain cases after previous conviction If any employer or manager who has been convicted of any offence under sub-section (1) of section 9 or sections 11, 13 14 or 23, under sub-section (2) or (3) of section 11 or under sections 14, 17, 19, 22, 37, 51, or 52 is again guilty of an offence involving contravention of the same provision, they shall each be punished on a subsequent conviction with fine which shall not be less than [four hundred rupees] [Substituted by Act 15 of 2002, Section 3.] and extend to [two thousand rupees.][Substituted by Act 15 of 2002 (Section 3).]

42.

Penalty for obstructing Inspector Whoever wilfully obstructs an Inspector in the exercise of any power under section 35 or conceals or prevents any employee in an establishment from appearing before or being examined by an Inspector shall, on conviction, be punished with fine which shall not be less than twenty-five rupees and which may extend to [one thousand rupees.] [Substituted by Act 15 of 2002, Section 3.]

43. Determination of employer for the purposes of this Act

(1) Where the owner of an establishment is a firm or other association of individuals, any one of the individual partners or members thereof, may be prosecuted and punished under his Act for any offence for which an employer in an establishment is punishable: Provided that the firm or association may give the notice to the Inspector that it has nominated one of its members who is resident in the State to be the employer for the purposes of this Act and such individual shall, so long as he is so resident, be deemed to be the employer for the purposes of this Act, until further notice cancelling the nominations received by the Inspector or until he ceases to be partner or members of the firm or association. (2) Where the owner of an establishment is a company, any one of the directors thereof, or, in the case of a private company, any one of the share-holders thereof, may be prosecuted and punished under this Act for any offence for which the employer in the establishment is punishable: Provided that the company may give notice to the Inspector that it has nominated a director, or in the case of a private company a shareholder who is resident in the State to be employer in establishment for the purposes of this Act, and such director or share-holder shall, so long as he is so resident be deemed to be the employer in the establishment for the purposes of this Act, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or share-holder.

44. Cognizance of offence

No prosecution under this Act or the rules or orders made thereunder shall be instituted by an Inspector except with the previous permission of an authority appointed by the Government in this behalf.

45.

Limitation of prosecutions No Court shall take cognizance of any offence under this Act or any rule or order made thereunder, unless complaint thereof is made within three months of the date on which the offence is alleged to have been committed.

46. Composition of offences

[(1) The Labour Commissioner or any officer not below the rank of Assistant Labour Commissioner, if so authorised by the Labour Commissioner, by notification generally or specially, may accept from any person who is reasonably suspected of having violated any of the provisions of sections 6, 9, 13, 16, 18, 21, 23, 26, 47, 48, 52 or 52-A, a sum of money which shall not be less than fifty rupees and which may extend to five hundred rupees by way of composition for such offence or offences".][Substituted by Act XV of 2002 (Section 5).](2)On the composition of the offence, no further action in respect thereof shall be taken against the person accused of it and if any proceeding have already been instituted against him in any Court, the composition shall have the effect of acquittal of such person.

Chapter XI

Miscellaneous and Supplementary

47. Maintenance of registers and records and display of notices

Subject to the general or special order of the Government an employer shall maintain or cause to be maintained such registers and records and display on the establishment such notice as may be prescribed. All such registers and record shall be kept on the premises of the establishment to which they relate.

48. Wages for overtime work

Where an employee in any establishment is required to work in excess of the limits of hours of work, he shall be entitled, in respect of the overtime work, to wages at the rate of twice his ordinary rate of wages.Explanation. For the purposes of this section of the expression "limit of hours of work" shall mean(a)in the case of employees in shops and commercial establishments, nine hours on any day and forty-eight hours in any week;(b)in the case of employees in residential hotels, restaurants, eating houses, theatres or other places of public amusement at entertainment, nine

hours on any day; and(c)in the case of employees in any other establishment, such number of hours as may be prescribed.

49. Evidence as to age

(1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the burden shall be on the accused to prove that such person is not under or over such age.(2)Where no school, municipal or revenue records with regard to age are available, a declaration in writing by a medical officer not below the rank of a Superintendent of a Central Hospital or a District Medical Officer that he has personally examined him and believes him to be under or over the age set forth in such declaration, shall for the purposes of this Act be admissible as evidence of the age of the employee.

50. Restriction on double employment on a holiday or during leave

No employee shall work in any establishment, nor shall any employer engage an employee to work in any establishment on a day on which such employee is given a holiday or is on leave in accordance with the provisions of this Act.

51. Notice of dismissal

(1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than six months, without giving such person at least thirty days notice in writing or wages in lieu of such notice:Provided that such notice shall not be necessary where the services of such employee are dispensed with for misconduct established according to the rules to be made by the Government in this behalf.(2)No employee, who has been, in the continuous employment of an employer for not less than six months, shall leave the service of such employer without giving him at least fifteen days notice in writing, and if he fails to give such notice, or gives notice of less than fifteen days, he shall forfeit his wages for fifteen days or for the number of days by which the notice falls short of fifteen days as the case may be.(3)Any employee in respect of whom the provisions of subsection (1) are contravened may apply to the nearest Magistrate of the first class having jurisdiction in the case or authority appointed under the [Payment of Wages Act, 1956] [Now Payment of Wages Act, 1936 (Central Act 4 of 1936).] and if such Magistrate or such authority is satisfied that such person has been dismissed without sufficient cause, he may, for reasons to be recorded in writing, direct that the employer shall pay one and half month's wages, as compensation to the person so dismissed and thereupon the employer shall pay, the amount of compensation to such person.(4)The amount of compensation payable under this section shall, for purposes of its recovery, be deemed to be a fine imposed under this Act.(5)No person who has been awarded compensation under this section shall be at liberty to bring any civil suit or proceeding in respect of the same claim and no Civil Court shall entertain any such suit or proceeding.

52. Every employee to be furnished with service card

Every employee in an establishment shall be furnished by his employer with a service card in such form as may be prescribed.[52A. Interval for rest No employee, in any establishment shall be required or allowed to work in such establishment for more than five hours continuously in any day unless he has had an interval for rest of at least half an hour:Provided that no young person or woman shall be required or allowed to work for more than three hours continuously unless such person or woman has had an interval for rest of at least half an hour.][Section 52A inserted by Act XVII of 1968.]

53. Rules

(1)The Government may make rules to carry out the purposes of the Act.(2)In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following matters, namely:(a)(i)the form of submission of a statement to the Inspector and the fees and other particulars which shall be given along with such statement under sub-section (2) of section 6;(ii)the manner of registration of establishment in the register of establishments and the form in which a registration certificate shall be issued to the employer under subsection (3) of section 6;(iii)prescribing fee for renewal of registration certificate under sub-section (5) of section 6;(b)the form in which a change shall be notified to the Inspector under section 7;(c)the form of register for entering refusal of leave to be kept under section 26;(d)fixing times and methods for cleaning the establishments under section 31; fixing standards and methods for ventilation under section 32; and prescribing such establishments as are to be exempted from the provisions of, and precautions against-fire to be taken under section 33;(e)the qualifications of Inspectors to be appointed under section 34 and the powers which such Inspectors shall exercise under section 35;(f)the registers and records to be maintained and the notices to be displayed on the premises of the establishment under section 47;(g)prescribing what shall amount to misconduct for the purpose of the proviso to sub-section (1) of section 51; and the manner in which such misconduct is to be established; and(h)any other matter which is to be or may be prescribed.(3)The rules made under this section shall be subject to the condition of previous publication and, when so made, shall be deemed to be part of this Act.

54. Protection to persons acting under this Act

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 under this Act.

55. Rights and privileges under other laws etc. not affected

Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to at the date this Act comes into force in a local area, under any other law, contract, custom, or usage applicable to such establishment or any award, settlement, or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more

favourable to him than those to which he would be entitled under, this Act.

56. Provisions of Workmen's Compensation Act to apply mutatis-mutandis

The provisions of the Workmen's Compensation Act for the time being in force in the State and of rules made thereunder shall, mutatis-mutandis, apply to every employee of a shop or commercial establishment.

57. Repeal and savings

(1) The Jammu and Kashmir Shops and Commercial Establishments Ordinance, 1966 is hereby repealed: Provided that such repeal shall not (a) affect the previous operation of the said Ordinance or anything duly done or suffered thereunder; or (b) affect any right, privilege, obligation or liability acquired, accrued, or incurred under that Ordinance; or (c) affect any penalty, forfeiture or punishment incurred in respect of anything done against that Ordinance; or (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had commenced on the day the said Ordinance was promulgated. (2) All appointments, notifications, notices, orders, rules or forms made or issued or continued under the said Ordinance shall, so far as these are not inconsistent with the provisions of this Act, continue in force, and be deemed to have been made or issued under this Act unless and until these are superseded by any appointment, notification, order, rule or form made or issued under this Act.