

THE MADHYA PRADESH SHOPS & ESTABLISHMENTS ACT, 1958

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SCHEDULE II

M.P.
SHOPS & ESTABLISHMENTS ACT, 1958

[Act No. 25 of 1958]

Received the assent of the President on the 20th September, 1958:

Assent first published in the Madhya Pradesh Gazette

on the 3rd October, 1958

As amended subsequently by the following :-

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|-----------------------------|--|
| 1. M.P. Act No. 19 of 1967; | 3. M.P. Act No.23 of 1990, w.e.f. 5-11-1990; |
| 2. M.P. Act No. 10 of 1982; | 4. M.P. Act No. 17 of 1995, w.e.f. 1-8-1995. |

An Act to provide for the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusements or entertainment and other establishments.

Be it enacted by the Madhya Pradesh Legislature in the Ninth Year of the Republic of India as follows:-

CHAPTER 1

PRELIMINARY

1. Short title, extent, operation and application — (1) This Act may be called **the Madhya Pradesh Shops and Establishments Act, 1958**.

(2) It extends to the whole of Madhya Pradesh.

(3) It shall come into force on such date' as the Government may, by notification appoint in this behalf.

(4) This Act shall apply in the first instance to the local areas specified in Schedule I. The State Government may, by notification, direct that all or any of the provisions of this Act shall apply to any other local area as may be specified in the - notification on such date as may fixed therein and different dates may be fixed for different provisions of this Act and for different classes of establishments.

2. Definitions — In this Act unless there is anything repugnant in the subject or context —

(1) **“Apprentice”** means a person 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 is below fourteen years;

(3) **“closed”** means not open for the service of any customer, or for any business of the establishment or for any work 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) a society registered or deemed to have been registered under the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960)², and a charitable or other trust, whether registered or not which carries on whether for gain or not, any business, trade or profession or work in connection with or incidental or ancillary to such business, trade or profession;

- (b) 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;
- (c) an insurance company, joint stock company, bank , broker's office and exchange;

but does not include a 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 the case on 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 person wholly or principally employed, whether directly or through any agency, and whether for wages or other consideration, in or in connection with any establishment and include an apprentice, but does not include a member of the employer's family;
- (7) **“employer”** 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. establishment of like nature as the Government may, by notification declare to be an establishment for the purposes of this Act;
- (9) **“factory”** means any premises which is a factory within the meaning of clause (m) of section 2 of the Factories Act, 1948 (63 of 1948) or which is deemed to be a factory under section 85 of the said Act;
- (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 or deemed to be appointed under the Act, whether by name or by virtue of office;
- (13) **"Labour Commissioner"** means the person appointed as such by the Government and includes, for the purpose of such provision of the Act, and for such areas as the Government may direct, an officer not below the rank of an Assistant Labour Commissioner;
- (14) **"leave"** means leave as provided for in Chapter VII of this Act;
- (15) **"Local Authority"** means a municipal corporation or municipality constituted under any enactment in force for the time being;
- (16) **"manager"** means a person declared to be a manager under section 6;
- (17) **"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 dependant on such employer;
- (18) **"opened"** means opened for the service of any customer or for any business of the establishment or for any work connected with the establishment;
- Explanation** - An establishment in the premises of which people are present shall be deemed to be opened unless contrary is proved;
- (19) **"period of work"** means the time during which an employee is at the disposal of the employer;
- (20) **"register of establishment"** means a register maintained for the registration of establishment under this Act;
- (21) **"registration certificate"** means a certificate showing the registration of an establishment;
- (22) **"residential hotel"** means any premises in which a bona fide 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;
- (23) **"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 workers under the Factories Act, 1948 (63 of 1948);

- (24) **“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, warehouse 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 a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (63 of 1948);
- (25) **“spread-over”** means the period between the commencement and the termination of the work of an employee on any day;
- (26) **“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 a dramatic performance or for any other public amusement or entertainment;
- (27) **“wages”** means wages as defined in the Payment of Wages Act, 1936 (4 of 1936);
- (28) **“week”** means the period of seven days beginning at midnight of Saturday;
- (29) **“year”** means a year commencing on the first day of April; and
- (30) **“young person”** means a person who is not a child and has not completed his seventeenth year.

3. Act not applicable to certain persons and establishment — (1)

Nothing in this Act shall apply to –

- (a) persons occupying positions of management and declared as such under clause (a) of sub-section (2) of section 6 or employed in a confidential capacity not exceeding ten percent of the total number of the employees in the establishment or three in number, whichever is less;
- (b) persons whose work is inherently intermittent such as traveller, canvasser, a watchman or a caretaker;

- (c) persons exclusively engaged in preparatory or complementary work, such as clearing or forwarding clerks, responsible for the despatch of goods by rail or other means of communication and for customs formalities or messengers;
- (d) persons exclusively employed in the collection, delivery or conveyance of goods;
- (e) offices of Union or State Government or of local authorities and of the Reserve Bank of India, the State Bank of India and the Life Insurance Corporation;
- (f) establishment for the treatment or the care of the sick, infirm, destitute or mentally unfit;
- (g) bazars, fairs or exhibitions for the sale of works for charitable or other purposes from which no profit is derived;
- (h) stalls and refreshment rooms at railway stations, or railway dining cars;
- (i)
- (j) clubs not being residential clubs; and
- (k) any other class of establishments or class of persons which the Government may, by notification, exempt from the operation of this Act:

Provided that if in the opinion of the State Government the circumstances existing in any particular class of cases hereinbefore mentioned requires that all or any of the provisions of this Act should be extended thereto, the State Government may, by notification extend to such class of cases all or any of the provisions of this Act and thereupon such provisions shall apply to such class of cases.

(2) The Government may, by notification, direct that any or all of the provisions of this Act shall, subject to such terms and conditions as may be specified in such direction not apply to such classes of establishment or class of persons as may be specified therein.

4. Application of Act to other establishments and persons -- (1) Notwithstanding anything contained in this Act the Government may, by notification, declare any establishment or class of establishments to which or any person or class of persons to whom this Act or any of the provisions thereof does not for the time being apply, to be an establishment or class of

establishment or a person or class of person to which or whom this Act or any provision thereof shall apply from such date as may be specified in the notification.

(2) On such declaration under sub-section (1), any such establishment or class of establishments or such person or class of persons shall be deemed to be an establishment or class of establishments to which or to be an employee or class of employees to whom this Act applies and all or any of the provisions of this Act shall apply to such establishment or class of establishments or to such employee or class of employees.

5. Suspension of all or any of the provisions of this Act— The Government may suspend by order notified in the Gazette, the operation of all or any of the provisions of this Act for such period and subject to such conditions as it deems fit on account of any festivals or other special occasions,

CHAPTER II

REGISTRATION OF ESTABLISHMENTS

6. Registration of establishments -- (1) Every establishment to which this Act applies shall be registered in accordance with the provision of 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, the manager and the person holding positions of management, if any;
- (b) the postal address of and the date of starting the business by 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.

(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 establishment 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 Government may, by notification, require renewal of registration certificate issued under this section at such intervals not being less than five years, and on payment of such fee as may be prescribed.

(6) The registration fee and the renewal fee shall not exceed '[two hundred and fifty rupees] per establishment.

7. Change to be communicated to Inspector-- 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 establishment 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 establishments 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 general or special order in this behalf:

Provide that any custom; who was being served or was waiting to be served at the closing hour so fixed in any shop may be served in such shop during half hour immediately following such hour.

(2) The Government may fix different opening or closing hours for different classes of shops and commercial establishments or for different area or for different periods of the year.

10. Hawking prohibited before opening and after closing hours of shops- (1) No person shall carry on in or adjacent to a street or a public place the sale of any goods before the opening and after the closing hours fixed under section 9 for the shops dealing in the same class of goods in the locality in which such street or public place is situate:

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.

(3) The goods seized under sub- section (2) shall be returned to the persons from whom they were seized on his depositing rupees '[fifty]' as security for his appearance in the Court.

(4) If the person fails to make the deposit, the goods seized shall be produced without delay before a Court, who may give such directions as to their temporary custody, as it thinks fit.

(5) Where no prosecution is instituted for contravention of the provisions of sub-section (1) within such period as the Court may fix in this behalf the Court shall direct their return to the person from whom they were seized.

(6) Subject to the provisions of the preceding sub-section, the provisions of Code of Criminal Procedure, 1898 (No. V 1898)² shall so far as they may be applicable, apply to the disposal of the goods seized under this Section.

11. Hours of work in shops and commercial establishments — (1) (a) No employee in any shop or commercial establishment shall be required or allowed to work for more than 48 hours in a week.

(b) Subject to clause (a) no employee shall be required to work —

(i) in any shop, for more than nine hours on any day;

(ii) in any commercial establishment, for more than ten hours on any day.

(2) Any employee may be required or allowed to work in a shop or commercial establishment for any period in excess of the limit fixed under subsection (1) if such period does not exceed six hours in any week.

(3) On not more than six days in a year, which the Government may fix by rules made in this behalf, for purposes of making of accounts, stock-taking, settlements or other prescribed occasions, any employee may be required or allowed to work in a shop or commercial establishment in excess of the period fixed under sub-section (1) if such excess period does not exceed twenty four hours.

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 in cases where any shop or commercial establishment is on any day entirely closed for a continuous period of not less than three hours, the spread over shall not exceed thirteen hours on that day:

Provided also that where an employee works on any day in accordance with the provisions of sub-section (2) of Section 11, the spread-over shall not exceed fourteen hours on any such day and where he works on any day in accordance with the provisions of sub-section (3) of the said section, the spread over shall not exceed sixteen hours, on any such day:

Provided further that the Government may increase the spread-over period subject to such conditions as it may think fit either generally in the case of commercial establishments or in the case of a class of commercial establishments.

13. Holidays in a week in shops and commercial establishments --

(1) Every shop and commercial establishment shall remain closed on one day of the week. The employer shall fix such day at the beginning of the year, notify it to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment. The employer shall not alter such day more often than once in three months shall notify the alteration to the Inspector and make the necessary change in the notice in the shop or commercial establishment.

Provided that where any shop or commercial establishment comes after the beginning of any year within the purview of this Act, for the first time the employer shall also fix such day of the week on which the shop or commercial establishment shall remain closed and notify it to the Inspector within one month of the date on which the shop or establishment so comes within the purview of this Act.

(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 remain closed.

(3A) Notwithstanding anything contained in sub-section (1), the State Government or any officer authorised by it in this behalf may, if it or he thinks fit so to do in public interest, by notification, fix any day of the week to be the closed day in respect of all or any class of shops or commercial establishments in any or all the local area or part thereof, and the closed day so fixed shall be deemed to have been fixed under sub-section (1):

Provided that the employer shall have no right to alter the closed day so fixed.

(4) No deduction shall 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. If any employee is employed on daily wages he shall nonetheless be paid wages for the weekly holiday equal to the average of daily wages earned by him during the preceding six working days. If any employee is paid a piece rate wage, he shall nonetheless be paid his wage for the day on

which the shop or commercial establishment remain closed at a rate equivalent to the daily average of his wages for the days on which he has actually worked during the six days preceding such closed day, exclusive of any earning in respect of overtime:

Provided that nothing in this sub-section shall apply to any person whose total period of continuous employment is less than six days.

CHAPTER IV
RESIDENTIAL HOTELS, RESTAURANTS AND
EATING-HOUSES

14. Opening and closing hours of restaurants and eating houses --

(1) Notwithstanding anything contained in any other enactment for the time being in force, no restaurants or eating-houses shall on any day be opened earlier than 5 a.m. and be kept open later than 1-30 a.m. for service:

Provided that an employee in such restaurant or eating- house may be required to commence work not earlier than 4-30 a.m. and shall not be required to work later than 2 a.m.:

Provided also 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.

(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.

(3) Notwithstanding, anything contained in this section or any other enactment for the time being in force, the Government may, by notification fix for specific periods in a year on festive or special occasions such opening and closing hours for different restaurants or eating-houses or for different areas, as it thinks proper.

15. Restrictions 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 restaurants or eating-house except for consumption on premises.

16. Hours of work in residential hotels, restaurants and eating-houses — (I) No employee in any residential hotel, restaurant or eating-house shall be required or allowed to work for more than 48 hours in a week and nine hours in a day.

(2) Any employee may be required or allowed to work in a residential hotel, or restaurant or eating-house for any period in excess of the limit fixed under subsection (1) if such additional period does not exceed six hours in any week.

(3) Notwithstanding anything contained in sub-section (1) and (2), an employee may be required or allowed to work in a residential hotel, restaurant or eating-house on the day which may be notified under sub-section (3) of section 14 in excess of the period fixed under sub-section (1) if such additional period does not exceed three hours on any 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 the spread-over period subject to such conditions as it may impose on the days that may be notified under sub-section (3) of section 14.

18. Holidays 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:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in any week is less than six days.

(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 nonetheless be paid wages for the weekly holiday equal to the average of the daily wages earned by him during preceding six working days.

18A. Employers in residential hotel, etc. to furnish identity card to employees — The employer shall furnish every employee in a residential hotel, restaurant or eating house an identity card which shall be kept by the employee when on duty and shall be produced on demand by an Inspector. Such card shall contain the following and such other particulars as may be prescribed, namely:-

- (a) the name of the employer;
- (b) the name if any, and the postal address, of the establishment;
- (c) the name and age of the employee;
- (d) the hours of work, the interval for rest, if any and the holiday of the employee;

- (e) the signature (with date) of the employer;
- (f) the identity mark of an employee; and
- (g) signature or thumb- impression of the employee.

CHAPTER V

**THEATRES OR OTHER PLACES OF PUBLIC
AMUSEMENT OR ENTERTAINMENT**

19. Closing hour of theatres or other places of public amusement or entertainment -- Notwithstanding anything contained in any other enactment for the time being in force, no theatre or other place of public amusement or entertainment shall, on any day, be 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 shops after the closing hour 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. Hours of work in theatres or other places of public amusement or entertainment-- (1) No employee in a theatre or other place of public amusement or entertainment shall be required or allowed to work for more than 48 hours in a week and nine hours in a day.

(2) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for a period in excess of the limit fixed under sub-section (1) if such additional period does not exceed six hours in any week.

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 the spread-over period subject to such condition as it may impose whether generally or in the case of a particular theatre or other place of public amusement or entertainment.

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:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in any week is less than six days.

(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 nonetheless be paid wages for the weekly holiday equal to the average of the daily wages earned by him during the preceding six working days.

23A. The employer in a theatre etc. to furnish identity card to employee -- The employer shall furnish every employee in a theatre, or other places of public amusement or entertainment an identity card which shall be kept by the employee when on duty and shall be produced on demand by an Inspector. Such card shall contain the following and such other particulars as may be prescribed, namely:-

- (a) the name of the employer;
- (b) the name if any, and the postal address, of the establishment;
- (c) the name and age of the employee;
- (d) the hours of work, the interval of rest, if any and the holiday of the employee;
- (e) the signature (with date) of the employer;
- (f) the identity mark of an employee; and
- (g) signature or thumb-impression of the employee.

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 notwithstanding that such child is a member of the family of the employer.

25. Young persons and women to work between 7 a.m. to 9 p.m. -- No young person or women shall be required or allowed to work whether as an employee or otherwise in any establishment before 7 a.m. and after 9 p.m. notwithstanding that such young person or women is a member of the family of the employer.

25A. Daily hours of work for young person -- (1) Notwithstanding anything contained in this Act, no young person shall be required or allowed to work whether as an employee or otherwise, in any establishment for more than five hours in any day.

(2) No young person, shall be required or allowed to work whether as an employee or otherwise, in any establishment for more than three hours in any day unless he had an interval for rest of at least half an hour.

25B. Prohibition of employment of young persons and women in dangerous work -- No young person or woman working in any establishment, whether as an employee or otherwise, shall be required or allowed to perform such work as may be declared by the State Government, by notification, to be work involving danger to life, health or morals.

CHAFFER VII

LEAVE WITH PAY AND PAYMENT OF WAGES

26. Employee's right for casual and privilege leave -- (1) A person employed in an establishment to which this Act applies shall be entitled –

- (a) after every 12 month's continuous 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 or 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 any employee entitled to leave under sub-section (1) is discharged by his employer before he has been allowed leave or if, having applied for and 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 any 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 month's 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 periods of involuntary unemployment not exceeding thirty days in the aggregate, and authorised leave shall be deemed not 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 he actually worked during the preceding 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 half the total amount due to him for the period of such leave.

29. Power of Inspector to act for worker -- Any 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 — (1) '[Notwithstanding anything contained in the Payment of Wages Act 1936 (No. IV of 1936), (hereinafter referred to in this section as the said Act,) the State Government may, by notification, direct that subject to the provisions of subsection (2) all or any of the provisions of the said Act shall apply to all or any establishment or to all or any class of employees to which or whom this Act for the time being applied.

(2) On the application of 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 lime-washing, colour washing, painting, varnishing, disinfecting and deodorising.

32. Ventilation -- The premises of every establishment shall be ventilated in accordance with such standard and by such methods as may be prescribed.

33. Precaution against fire -- In every establishment except such establishment or class of establishment, as may be prescribed, such precaution against fire shall be taken as may be prescribed.

CHAPTER IX

ENFORCEMENT AND INSPECTION

34. Powers and duties of local authorities— (I) Save as otherwise provided in this Act, it shall be the duty of every local authority whom the Government may by order empower in this behalf to enforce within the area subject to its jurisdiction, the provisions of this Act, subject to the control of the Government.

(2) The local authority empowered under sub-section (1) may by order delegate any of the powers and functions (other than the powers of making bye-laws under section 35), exercisable or performable by it under this Act to any of its officers.

(3) An order empowering a local authority under sub-section (1) may at any time cancelled by the Government.

(4) To enable Government to exercise effective control over a local authority in the performance of the duties entrusted to it under this Act, Government may authorise any officer, not below the rank of a labour officer, to supervise the enforcement of this Act within the area subject to the jurisdiction of the local authority and for this purpose such officer shall have all the power of an Inspector under this chapter.

35. Power to make bye-laws -- A local authority empowered under section 34 to enforce the provisions of this Act may, with the previous sanction of the Government, make bye-laws not inconsistent with the provisions of the Act, or the rules or orders made by the Government thereunder, for the purpose of carrying out the provisions of this Act.

36. Submission of annual report, etc. -- It shall be the duty of every local authority empowered under section 34 to submit within three months after the close of the year to the government a report on the working of the Act within the local area under its jurisdiction during such year. It shall submit to the Government from time to time such annual or periodical returns as may be prescribed.

37. Delegation -- (1) The Government may, by order, direct that any power other than the power to make rules under section 59, or any duty which is conferred or imposed on the State Government, by this Act, shall in such circumstances and under such conditions, if any, as may be specified in that direction be exercised or discharged by any officer or authority subordinate to it.

(2) Nothing in this Act shall derogate from the right of the Government to exercise any or all the functions delegated to any local Authority or officer subordinate to it.

38. Power of Government to provide for performance of duties on default by local authority — (1) If any local authority makes default in the performance of any duty imposed by or under this Act, the Government may appoint some person to perform it and may direct that the expense of performing it with a reasonable remuneration to the person appointed to perform it shall be paid forthwith by the local authority.

(2) If the expense and remuneration are not so paid, the Government may notwithstanding anything contained in any law relating to the municipal fund or local fund or any other law for the time being in force, make an order directing the bank in which any moneys of the local authority are deposited or the person in charge of the local Government Treasury or of any other place of security in which the moneys of the local authority are deposited, to pay such expense and remuneration from such moneys as may be standing to the credit of the local authority in such bank or may be in the hands of such person or as may from time to time be received from or on behalf of the local authority by way of deposit by such bank or person; and such bank or person shall be bound to obey such order. Every payment made pursuant to such order shall be sufficient discharge to such bank or person from all liability to the local authority in respect of any sum or sums so paid by it or him out of the moneys of the local authority so deposited with such bank or person.

39. Expenses of local authority to be paid out of its fund -- Notwithstanding anything contained in any enactment in regard to any municipal or local fund, all expenses incurred by a municipality or local authority under and for the purposes of this Act, shall be paid out of the municipal or local fund, as the case may be.

40. Appointment of Inspectors —(1) Every local authority empowered under section 34 shall appoint a sufficient number of persons with the prescribed qualifications as Inspectors for the area subject to its jurisdiction, as it may deem fit, for the purpose of carrying out the provisions of this Act.

(2) The Government may, by notification, appoint such persons having the prescribed qualifications, as it thinks fit, by name or virtue of office to be Inspector for the purposes of this Act within such local limits and for such classes of establishments, as it may assign to each such person.

41. 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 reasons 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 criminate himself.

(2) For the purposes of investigation of offences under this Act, an Inspector shall have the same powers as an officer-in-charge of a Police Station has under the Code of Criminal Procedure, 1898 (V of 1898)¹ for investigation of the cognizable offences except that he shall not have the power of arrest.

42. Inspectors to be public servants — Every Inspector appointed under section 40 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (XLV of 1860).

43. 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

44. 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 provision of section 9, 13, 14, 15, 19, 20, 31, 32, or 33 or any orders 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 sections 24, 25A or 25B; or

(e) If any employer contravenes the provisions of section 43, 54, 57 or 58; 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 3[fifty rupees] and which may extend to 4[five hundred rupees].

Provided that if the contravention of the provisions of sub-section (2) and (5) of section 6 is continued after the expiry of the tenth day after conviction, the employer shall on conviction be punished with a further fine which may extend to fifty rupees for each day on which the contravention is so continued;

45. Contravention of section 10-- If any person contravenes, the provisions of section 10 he shall, on conviction, be punished with fine which may extend to one hundred rupees.

46. Employees contravening sections 13(3), 18,25 and 57— If an employee contravenes the provisions of sub-section (3) of section 13 or sub-section (2) of section 18 or sub-section (2) of section 25 or section 57, he shall, on conviction be punished with fine which may extend to fifty rupees.

47. False entries by employer and manager -- (1) If any employer or manager with intent to deceive, makes or causes or allows to be made, in any register, record or notice prescribed to be maintained under the provisions of

this Act or the rules made thereunder, on 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 allow 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, on conviction, be punished with imprisonment not exceeding one year or with fine which may extend to one thousand rupees or with both.

(2) An offence under sub-section (1) shall be triable by a Court of Judicial Magistrate of competent jurisdiction.

48. Enhance penalty in certain cases after previous conviction — If any employer who has been convicted of any offence under sub-section (1) of section 9 or section 11, 12, or 13 of sub-section (1) of section 14 or sections 16, 17, 18, 19, 21, 22, 23, 24, 25, 25A, 25-B, 43, 2[49, 54 or 58] is again guilty of an offence involving contravention of the same provision he shall be punished on a subsequent conviction with fine which shall not be less than 3[fifty rupees] and which may extend to one thousand five hundred rupees.

49. Penalty for obstructing Inspector — Whoever wilfully obstructs an Inspector in the exercise of any power under section 41 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 fifty rupees and which may extend to one thousand rupees.

50. Persons who may be liable to be prosecuted against and punished -- (1) Where the owner of an establishment is a firm or other association of individuals, all the partners or members thereof may be prosecuted and punished under this Act for any offence for which an employer in an establishment is punishable.

(2) Where the owner of an establishment is a company, all the directors thereof, or in the case of a private company, all the share-holders thereof, may be prosecuted and punished under this Act for any offence for which the employer in an establishment is punishable.

(3) Notwithstanding anything contained in sub-sections (1) and (2) where an offence under this Act has been committed for the first time the employer or the manager shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

51. Cognizance of Offences — (1) No prosecution under this Act or the rules or orders made thereunder shall be instituted except by an Inspector and except with the previous sanction of local authority or any officer authorised by the Government in that behalf.

(2)

51A. Summary disposal of cases — (1) The Court taking cognizance of an offence under this Act shall, unless the offence is an offence under Section 47, 48 or 49, state upon the summons to be served on the accused person that he—

- (a) may appear by a pleader and not in person; or
- (b) may, by such date prior to the hearing of the charge as may be specified therein, plead guilty to the charge by a registered letter and remit to the Court such sum as the Court may, subject to the minimum and maximum limits of fine prescribed for the said offence, specify.

(2) Where an accused person plead guilty and remits the sum in accordance with the provisions of sub-section (1), no further proceedings in respect of the offence shall be taken against him.

51B. Offences to be tried by Executive Magistrate -- Save as provided in section 47, the State Government may confer on any Executive Magistrate the power of a Judicial Magistrate of the First Class or the Second Class for the trial of offences under Act, and on such conferment of powers the Executive Magistrate, on whom powers are so conferred shall be deemed for the purposes of the Code of Criminal Procedure, 1973 (No. 2 of 1974), to be a Judicial Magistrate of the first Class or the Second Class, as the case may be.

52. Limitation of prosecutions — No Court shall take cognizance of an 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 alleged commission of the offence came to the knowledge of an Inspector.

53. Composition of offence -- (1) Subject to the conditions as may be prescribed, the Labour Commissioner or any other officer not below the rank of a Labour Officer, if so authorised by the Labour Commissioner by Notification, may either before or after the institution of proceedings under this Act, permit any person charged with an offence punishable under sections 44, 45 or 46 to compound the offence on payment of such sum which shall not be less than rupees fifty and not more than the maximum amount of fine prescribed for the offence.

(2) On payment in full of such sum as may be determined by the Labour Commissioner or the officer authorised by the Labour Commissioner under subsection (1)—

- (a) no proceedings shall be commenced against any person as aforesaid; and
- (b) if any proceedings have already been commenced against any person as aforesaid, such proceedings shall not be further proceeded with.

CHAPTER XI

MISCELLANEOUS AND SUPPLEMENTARY

54. Maintenance of Registers and records and display of notices—

Subject to the general or special orders of the Government an employer shall maintain or for sub-section (1) of section 53 of the Principal Act, the following sub-section shall be substituted cause to be maintained such registers and records and display on the establishment such notice, as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

55. Wages for overtime work — Where an employee in any establishment - is required to work in excess of the limit 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 “limit of hours of work” shall mean –

- (a) in respect of establishment to which sections 11, 16, or 21 apply, the limits prescribed in the respective sections; and
- (b) in respect of other establishments, such number of hours of work as may be prescribed.

56. Evidence as to age -- (1) When an act or commission 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) A declaration in writing by a qualified Medical Practitioner relating to an employee 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.

Explanation — For the purpose of this section, a qualified Medical Practitioner shall have the same meaning as in the Factories Act, 1948 (LXIII of 1948).

57. Restriction of 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.

58. Notice of dismissal — (1) No employer shall dispense with the services of an employee who has been employed for a period of three months or more except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice:

Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2) (a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) The appellate authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall be final and binding on both the parties and be given effect to within such time as may be specified in the order of the appellate authority.

59. 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 provisions, 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 establishment and the form in which a registration certificate shall be issued to the employer under sub-section (3) of section 6;
- (iii) prescribing fee for renewal of registration certificate under subsection (5) of section 6;

- (b) the form in which a change shall be notified to the Inspector under section 7;
- (c) fixing six days in a year additional overtime and prescription of occasion under sub-section (3) of section 11;
- (d) the form of register for entering refusal of leave to be kept under section 26;
- (e) 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;
- (f) annual or periodical returns which shall be submitted to Government under section 36;
- (g) the qualifications of Inspectors to be appointed under section 40 and the powers which such Inspectors shall exercise under section 41;
- (h) the registers and records to be maintained and the notice to be displayed on the premises of the establishment under section 54;
- (i) the limit of hours of work under clause (c) of the Explanation to section 55;
- (j) the authority to which and the time within which an appeal may be filed by a dismissed, discharged or retrenched employee;
- (k) 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.

60. 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.

61. Rights and privileges under other law, 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.

62. Persons employed in factories to be governed by Factories Act, 1948 and not by this Act — Nothing in this Act shall be deemed to apply to a factory to which the provisions of the Factories Act, 1948 (No. 63 of 1948) apply:

Provided that, where any shops or commercial establishments situated within the precincts of a factory is not connected with the manufacturing process of the factory, the provisions of this Act shall apply to it:

Provided further that, the State Government may, by notification, apply all or any of the provisions of the Factories Act, 1948 (No. 63 of 1948) to any shop or commercial establishment situate within the precincts of a Factory and on the application of that Act to such shop or commercial establishment, the provisions of this Act shall cease to apply to it.

63. Provisions of the Workmen's Compensation Act, to apply mutatis mutandis — The provisions of the Workmen's Compensation Act, 1923 (VIII of 1923) and of rules made thereunder shall mutatis mutandis apply to every employee of an establishment.

64. Provisions of Provident Fund — Every employer shall, in accordance with the rules made by the Government, provide a provident fund for the benefit of every employee and shall contribute to this fund an amount equal to the amount contributed by the employee not exceeding six and a quarter per cent of his wages:

Provided that this section shall apply only to such places and such classes of employers as may be notified in this behalf by the Government.

65. Repeal — As from the date appointed under sub-section (3) of section 1 the enactments specified in Schedule II shall stand repealed:

Provided that —

- (a) every appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under the provisions of any enactment shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under this Act;

- (b) any proceeding relating to the trial of any of offence punishable under the provisions of any enactment so repealed shall be continued and completed as if such enactment had not been repealed but had continued in operation and any penalty imposed in such proceedings shall be recovered under the enactment so repealed.

SCHEDULE I

[See section 1(4)]

1. Limits of the Jabalpur Corporation.
2. The Municipal limits of Raipur, Rajnandgaon, Khandwa, Burhanpur, Sagar, Raigarh, Bilaspur, Chhindwara, Seoni, Damoh, Katni-Murwara, Itarsi and Durg.
3. Limits of the Sagar Cantonment.
4. Bilaspur Railway Market Area.
5. The Municipal (Corporation) limits of Indore and three miles around such limit.
6. The Municipal (Corporation) limits of Lashkar, Gwalior, Morar including the industrial area.
7. The Municipal limits of Ujjain, Madhonagar, Ashoknagar, Mandsaur, Vidisha, Dewas, Morena, Neemuch, Guna, Badnagar and Khargone.
8. The Municipal limits of Ratlam and two miles around such limits.

SCHEDULE II

[See section 65]

No. and year of enactment	Name of enactment
No. 22 of 1947	The Central Provinces and Berar Shops and Establishments Act, 1947
No. 7 of 1952	The Madhya Bharat Shops Establishments Act, Samvat 2009