

Report on the Working of the Industrial Employment (Standing Orders) Act, 1946 for the year 2008

1. Scope and Objectives

1.1 The Industrial Employment (Standing Orders) Act, 1946 came into force on April 23, 1946. The Act applies to the whole of India. It was initially made applicable to only those industrial units/undertakings/establishments wherein 100 or more workers were employed on any day of the preceding 12 months. Subsequently, the Act was amended in 1961, 1963 and 1982. The Act empowers the appropriate Governments to extend the provisions of this Act to establishments employing less than 100 workers after giving not less than two months' notice, of its intention to do so, in the official gazette. The Act applies to all the Industrial Establishments as defined in clause (II) of Section 2 of the Payment of Wages Act, 1936; Factories as defined in clause (II) of Section 2 of the Factories Act, 1948; the Railways as defined in the Indian Railways Act, 1890 and Establishment of a contractor who employs workmen for the purpose of fulfilling the contract with the owner of any Industrial Establishment. The Act does not, however, apply to workmen who are governed by the Fundamental and Supplementary Rules, Civil Service Temporary Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railways Establishments Code or any other rules or regulations that may be notified in this behalf by the appropriate Government. The provisions of the Act also apply to newspaper establishments wherein 20 or more employees are employed by virtue of the enforcement of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.

1.2 The main objectives of the Act, besides maintaining harmonious relationship between the employers and the employees, are to regulate the conditions of recruitment, discharge, disciplinary action, leave, holidays, etc. of the workers employed in industrial establishments. The Act amended in 1982 also provides for payment of subsistence allowance to the workmen who are kept under suspension pending domestic enquiry. The rules regarding payment of subsistence allowance to the suspended workmen were further amended by a notification in 1984 facilitating payment during the suspension period, the subsistence allowance at the rate of 50 per cent of the wages, which he was entitled to, immediately preceding the date of

suspension, for the first 90 days and 75 per cent of such wages for the remaining period of suspension, if the delay in completion of the disciplinary proceedings is not directly attributable to his conduct. The employer shall normally complete the enquiry within 10 days and the payment of subsistence allowance shall also be subject to the workman not taking any employment elsewhere during the period of suspension.

1.3 By virtue of the definition of “Appropriate Government” under Section 2 (b) of the Act, the following categories of industrial establishments fall within the purview of the Central Government for the purpose of the Act and the rest coming under the jurisdiction of the respective State Governments:

- (i) Railways;
- (ii) Mines and Quarries;
- (iii) Oil fields;
- (iv) Industrial Establishments in Major Ports;
- (v) Establishments under the control of the Central Government such as Central Public Sector Companies and Corporations; and
- (vi) Industrial Establishments run departmentally by the Central Government, e.g., Post and Telegraph Workshops, Government of India Presses, Mints, Central Public Works Departments, etc.

2. Main Provisions

The main provisions of the Act relate to:-

- (i) procedure for submission of draft Standing Orders;
- (ii) conditions for certification;
- (iii) date of operation and display of these Orders;
- (iv) procedure for modification; and
- (v) machinery for the implementation of the Act.

3. Procedure for Certification of the Standing Orders

3.1 Section 3 of the Act provides that within 6 months from the date on which the Act becomes applicable to an industrial establishment, the employer shall submit to

the Certifying Officer, 5 copies of the draft Standing Orders proposed by him for adoption in his industrial establishment. It further provides that provision shall be made in such draft for every matter set out in the Schedule applicable to the establishment and shall be, as far as practicable, in conformity with the Model Standing Orders applicable to the establishment. Therefore, the draft Standing Orders should normally provide for the following matters:

- (i) Classification of Workmen, i.e., Permanent, Temporary, Apprentices, Probationers or Badlis;
- (ii) Manner of intimating to workmen the periods and hours of work, holidays, pay days and wage rates;
- (iii) Shift working;
- (iv) Attendance and late coming;
- (v) Conditions of procedure in applying for and the authority, which may grant leave and holidays;
- (vi) Requirement to enter premises by certain gates and liability to search;
- (vii) Closing and re-opening of sections of the industrial establishment and temporary stoppages of work, and the rights and liabilities of the employer and workmen arising therefrom;
- (viii) Termination of employment and the notice thereof to be given by employer to workmen;
- (ix) Suspension or dismissal for misconduct and acts of omission which constitute misconduct;
- (x) Means of redressal for workmen against unfair treatment or wrongful action by the employer or his agents or servants; and
- (xi) Any other matter, which may be prescribed from time to time.

3.2 On receipt of the draft, the Certifying Officer shall initiate to certify the Standing Orders in accordance with the procedure laid down in Section 5 of the Act which, *inter-alia*, provides that all the registered trade unions, and in the absence of the registered trade unions, five elected representatives of the workmen, shall be given an opportunity to raise objections to the proposed draft Standing Orders. The Certifying Officer is also required to ensure that provision is made in the Standing

Orders for every matter set out in the Schedule applicable to the industrial establishment and the Standing Orders are in conformity with the provisions of the Act. For this purpose, the Certifying Officer shall adjudicate upon the fairness or reasonableness of the Standing Orders and shall then certify them and send, authenticated copies together with the orders referred to above, to the parties within 7 days from the date of his orders. The Certified Standing Orders become enforceable on the expiry of 30 days from the date on which the authenticated copies of the same are sent to the parties provided no appeal has been preferred against them. Certifying Officers and appellate authorities have been vested with powers of Civil Courts for the purpose of receiving evidence, administering oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and are deemed to be civil courts within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2) of 1974.

4. Modification of Standing Orders

4.1 Under Section 10 of the Act the provision exists for modification of the Certified Standing Orders. The Standing Orders can be modified even before expiry of the prescribed time limit of 30 days provided both the management and its workmen agree for it. The employer or the workmen desiring the change can make application for modification to the Certifying Officer. The procedure for submission of application for modification is the same as for initial certification under the Act. When it is proposed to make modifications by agreement between the employer and workmen, a certified copy of that agreement has also to be filed along with application for modification.

5. Enforcement of the Act during 2008

5.1 The Act makes provision for appointment of Inspectors for its strict enforcement. The following offences are punishable under Section 18 of the Act and the Central Industrial Relations Machinery is to take suitable action wherever infringements of the provisions come to their notice:

- (i) Failures on the part of an employer to submit draft Standing Orders as per the requirement under Section 3 of the Act.

- (ii) Modification by employer of the Certified Standing Orders otherwise than in accordance with the prescribed procedure, and
- (iii) Any action of the employer, which is in contravention of the provisions of the Certified Standing Orders.

5.2 Sphere-wise and State-wise details of establishments coming within the purview of the Industrial Employment (Standing Orders) Act, 1946 along with the progress of Certification / Modification of Standing Orders during the years 2007 and 2008 are given in Table – I. The analysis of the Table – I reveals that in the State Sphere the percentage of establishments having certified Standing Orders in respect of all or a group of employees at the end of year out of the total number of establishments covered under the Act shows a decline from 35.63 per cent in 2007 to 33.22 per cent in 2008. Similarly, the number of workers employed in these establishments out of total number of workers employed in the establishments covered under the Act also declined from 54.93 per cent to 50.19 per cent.

5.3 The number of Industrial Establishments coming under the purview of the Industrial Employment (Standing Orders) Act of 1946 and workers employed therein during the year 2008 are presented in Table-II. During this year, 51,639 establishments, employing 64,63,201 workers were under the purview of the Industrial Employment (Standing Orders) Act, 1946 in the States which submitted the returns. Out of these 16,241 (31.45%) establishments employing 33,05,260 (51.14%) workers were having certified Standing Orders in respect of all or only a group of employees. The applications of 2,318 establishments were pending for certification of Standing Orders with the concerned Authorities at the beginning of 2008. During the year 891 applications were received and 873 applications were disposed of. At the end of the year 2,336 applications were pending with the concerned Certifying Officers. At the end of the year 17,152 (33.22%) establishments employing 32,43,740 (50.19%) workers were having certified Standing Orders in respect of all or only a group of employees.

5.4 Table – II shows that in the State of Punjab maximum number of applications for certification i.e. 715 (30.85 per cent) were pending at the commencement of the year followed by Assam 405 (17.47 per cent), West Bengal 317 (13.68 per cent), Himachal Pradesh 160 (6.90 per cent) and Haryana 132 (5.69 per cent). During the year 2008 maximum number of applications for certification i.e. 417 (46.80 per cent)

were received in the state of Tamil Nadu followed by Uttarakhand 107 (12.01 per cent) and Haryana 97 (10.89 per cent). Out of these applications the maximum i.e. 485 (55.56 per cent) were disposed of in the State of Tamil Nadu followed by Haryana 148 (16.95 per cent) and Uttarakhand 91 (10.42 per cent). At the end of the year, 2008 the state of Tamil Nadu had the maximum number of establishments having Certified Standing Orders i.e. 7,120 (41.51 per cent) followed by West Bengal 1,815 (10.58 per cent), Punjab 1,388 (8.09 per cent) and Haryana 1,316 (7.67 per cent). However, the number of employees covered were highest in West Bengal i.e. 8,63,489 (26.62 per cent) followed by Tamil Nadu 7,15,327 (22.05 per cent), Assam 4,63,763 (14.30 per cent), Punjab 2,40,515 (7.41 per cent) and Haryana 2,10,459 (6.49 per cent).

5.5 Table – III reveals that during the year 2008 out of 126 applications for modification of Standing Orders (89 from previous year and 37 received during 2008) 50 applications were disposed of. The State of West Bengal alone disposed of 22 applications. Similarly, out of 28 appeals (all 28 from previous year and no appeals received during the current year) against the orders of Certifying Officers, 9 appeals in the states of West Bengal and Uttarakhand were disposed of during the year 2008.

6. Limitations of Statistics

6.1 The present review is based on the annual returns received under the Act from various States and Union Territories. **It does not include data pertaining to States of Chhattisgarh, Delhi (NCT), Gujarat, Jharkhand, Uttar Pradesh, Union Territory of Andaman & Nicobar Islands and C.L.C. (Central) which have not submitted the returns.** The data received from the States of Karnataka and Madhya Pradesh are incomplete and thus it could not be taken into account. The Act has not been enforced in the States of Mizoram, Nagaland, Sikkim and Union Territories of Dadra & Nagar Haveli, Daman & Diu and Lakshadweep. The exact comparison over years is not possible as different States and Union Territories have submitted the returns in these years.

Table – I

Sphere-wise Progress of Certification / Modification of Standing Orders during the years 2007 and 2008

Item	Sphere	Year		Percentage Increase or Decrease
	State/ Central	2007	2008	
1	2	3	4	5
1 No. of Establishments covered under the Act	State	46489	51639	+11.08
	Central	..	..	..
	Total	46489	51639	+11.08
2 No. of workers employed in the Establishments covered under the Act	State	6286411	6463201	+2.81
	Central	..	..	..
	Total	6286411	6463201	+2.81
3 No. of Establishments having Certified Standing Orders at the end of the year	State	16565 (35.63%)	17152 (33.22%)	+3.54
	Central	..	..	..
	Total	16565 (35.63%)	17152 (33.22%)	+3.54
4 No. of workers employed in establishments having Certified Standing Orders at the end of the year	State	3453289 (54.93%)	3243740 (50.19%)	-6.07
	Central	..	..	..
	Total	3453289 (54.93%)	3243740 (50.19%)	-6.07
5 No. of applications pending for certification at the end of the year	State	2367	2336	-1.31
	Central	..	..	..
	Total	2367	2336	-1.31
6 No. of applications pending for modification of Standing Orders at the end of the year	State	88	76	-13.64
	Central	..	..	..
	Total	88	76	-13.64
7 No. of appeals pending against orders of Certifying Officers at the end of the year	State	26	19	-26.92
	Central	..	..	..
	Total	26	19	-26.92

.. = Not available due to non-receipt of information

- Note. 1. Figures in brackets against items 3 & 4 indicate percentages to corresponding figures against items 1 & 2 respectively.
 2. Percentage increase or decrease in case of Central Sphere totals could not be worked out due to the non-availability of information for the years 2007 and 2008.

Table – II
State-wise progress of Certification of Standing Orders during 2008

State/Union Territory	Establishments coming within the purview of the Industrial Employment (Standing Orders) Act		Establishments having Certified Standing Orders in respect of all or only a group of employees at the beginning of the year		Number of applications for certification either for all or any group of employees in respect of establishments (i) which had Standing Orders only for a group or groups of employees (ii) which had no certified Standing Orders				Establishments having certified Standing Orders in respect of all or only a group of employees at the end of the year	
	Number	Number of employees covered	Number	Number of employees covered	Pending at the commencement of the year	Received during the year	Disposed of during the year	Pending at the end of the year	Number	Number of employees covered
1	2	3	4	5	6	7	8	9	10	11
1 Andhra Pradesh	4103	421749	900	143691	34 (1.47)	39 (4.38)	33 (3.78)	40	954 (5.56)	154894 (4.78)
2 Arunachal Pradesh	-	-	-	-	-	-	-	-	-	-
3 Assam	1575	515326	1140	464553	405 (17.47)	10 (1.12)	11 (1.26)	404	1166 (6.80)	463763 (14.30)
4 Bihar	72	19493	72	19493	-	-	-	-	72 (0.47)	19493 (0.82)
5 Goa	1971	108747	203	15734	46 (1.98)	9 (1.01)	1 (0.11)	54	204 (1.19)	15932 (0.49)
6 Haryana	5124	579792	1168	201569	132 (5.69)	97 (10.89)	148 (16.95)	81	1316 (7.67)	210459 (6.49)
7 Himachal Pradesh	1263	164005	182	22739	160 (6.90)	53 (5.95)	14 (1.60)	199	196 (1.14)	25213 (0.78)
8 Jammu & Kashmir	60	11746	59	11636	5 (0.22)	1 (0.11)	2 (0.23)	4	60 (0.35)	11746 (0.36)
9 Kerala	1516	258346	688	99362	57 (2.46)	22 (2.47)	27 (3.09)	52	713 (4.16)	90975 (2.80)
10 Maharashtra	2845	694386	435	87252	64 (2.76)	9 (1.01)	2 (0.23)	71	437 (2.55)	88304 (2.72)
11 Manipur	-	-	-	-	-	-	-	-	-	-
12 Meghalaya	5	640	-	-	-	-	-	-	5 (0.03)	640 (0.02)
13 Orissa	536	96242	237	57387	83 (3.58)	23 (2.58)	16 (1.83)	90	253 (1.48)	60297 (1.86)
14 Punjab	9589	514305	1371	237099	715 (30.85)	75 (8.42)	17 (1.95)	773	1388 (8.09)	240515 (7.41)
15 Rajasthan	2986	415089	904	196215	35 (1.51)	8 (0.90)	13 (1.49)	30	917 (5.35)	198213 (6.11)
16 Tamil Nadu	16955	1448862	6635	814708	129 (5.57)	417 (46.80)	485 (55.56)	61	7120 (41.51)	715327 (22.05)
17 Tripura	98	20480	63	14120	-	-	-	-	63 (0.37)	14120 (0.44)
18 Uttarakhand	492	52055	266	28198	105 (4.53)	107 (12.01)	91 (10.42)	121	357 (2.08)	41367 (1.28)
19 West Bengal	2122	1099976	1804	862797	317 (13.68)	17 (1.91)	11 (1.26)	323	1815 (10.58)	863489 (26.62)
20 Chandigarh	228	13690	61	7375	2 (0.09)	-	-	2	61 (0.36)	7375 (0.23)
21 Puducherry	99	28272	53	21332	29 (1.25)	4 (0.45)	2 (0.23)	31	55 (0.32)	21618 (0.67)
Total State Sphere Undertakings	51639	6463201	16241	3305260	2318 (100.00)	891 (100.00)	873 (100.00)	2336	17152 (100.00)	3243740 (100.00)
Total Central Sphere Undertakings	..	..	..	..	..	..	..	..	..	..
Grand Total	51639	6463201	16241 (31.45)	3305260 (51.14)	2318	891	873	2336	17152 (33.22)	3243740 (50.19)

- = Nil

.. = Not Available due to non-receipt of information

NOTE: 1. Figures in brackets are percentages to total.

2. Percentages in brackets of Grand Total in cols. 4 and 5 as well as cols. 10 and 11 are with reference to cols. 2 and 3.

Table – III

State-wise progress of Modification of Standing Orders and disposal of appeals during 2008

State/Union Territory	Number of applications for modification of Standing Orders				Number of appeals against the orders of Certifying Officers			
	Pending at the commencement of the year	Received during the year	Disposed of during the year	Pending at the end of the year	Pending at the commencement of the year	Received during the year	Disposed of during the year	Pending at the end of the year
1	2	3	4	5	6	7	8	9
1 Andhra Pradesh	-	1	1	-	-	-	-	-
2 Arunachal Pradesh	-	-	-	-	-	-	-	-
3 Assam	-	-	-	-	-	-	-	-
4 Bihar	-	-	-	-	-	-	-	-
5 Goa	-	-	-	-	-	-	-	-
6 Haryana	-	-	-	-	-	-	-	-
7 Himachal Pradesh	2	8	8	2	1	-	-	1
8 Jammu & Kashmir	-	-	-	-	-	-	-	-
9 Kerala	8	8	5	11	5	-	-	5
10 Maharashtra	27	15	11	31	1	-	-	1
11 Manipur	-	-	-	-	-	-	-	-
12 Meghalaya	-	-	-	-	-	-	-	-
13 Orissa	3	-	-	3	2	-	-	2
14 Punjab	-	-	-	-	-	-	-	-
15 Rajasthan	6	3	3	6	8	-	-	8
16 Tamil Nadu	-	1	-	1	2	-	-	2
17 Tripura	-	-	-	-	-	-	-	-
18 Uttarakhand	-	1	-	1	2	-	2	-
19 West Bengal	43	-	22	21	7	-	7	-
20 Chandigarh	-	-	-	-	-	-	-	-
21 Puducherry	..	..	..	..	..	..	..	..
Total State Sphere Undertakings	89	37	50	76	28	-	9	19
Total Central Sphere Undertakings	..	..	..	..	..	..	..	..
Grand Total	89	37	50	76	28	-	9	19

- = Nil

.. = Not Available due to non-receipt of information