

THE ESSENTIAL SERVICES MAINTENANCE ACT, 1968

ARRANGEMENT OF SECTIONS

SECTIONS

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THE ESSENTIAL SERVICES MAINTENANCE ACT, 1968

ACT NO. 59 OF 1968

[28th December, 1968.]

An Act to provide for the maintenance of certain essential services and the normal life of the community.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. Short title, extent and duration: — (1) This Act may be called the Essential Services Maintenance Act, 1968.

(2) It extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to Union employees.

(3) It shall cease to have effect on the expiry of three years from the date of commencement of this Act except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.

2. Definitions.—(1) In this Act.—

(a) “essential service” means—

(i) any postal, telegraph or telephone service;

(ii) any railway service or any other transport service for the carriage of passengers or goods by land, water or air with respect to which Parliament has power to make laws;

(iii) any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft;

(iv) any service connected with the loading, unloading, movement or storage of goods in any port;

(v) any service connected with the clearance of goods or passengers through the customs or with the prevention of smuggling;

(vi) any service in any mint or security press;

(vii) any service in any defence establishment of the government of India;

(viii) any service in connection with the affairs of the Union, not being a service specified in any of the foregoing sub-clauses;

(ix) any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the Official Gazette, declare to be an essential service for the purpose of this Act;

(b) “strike” means the cessation of work by a body of persons employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment, and includes—

(i) refusal to work overtime where such work is necessary for the maintenance of any essential service;

(ii) any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service.

(2) Every notification issued under sub-clause (ix) of clause (a) of sub-section (1) shall be laid before each House of Parliament immediately after it is made if it is in session and on the first day of the commencement of the next session of the House if it is not in session, and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of Parliament, as the case may be, unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.

Explanation.—Where the Houses of Parliament are summoned to re-assemble on different date, the period of forty days shall be reckoned from the later of those dates.

3. Power to prohibit strikes in certain employments.—(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit strikes in any essential service specified in the Order.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section (1),—

(a) no person employed in any essential service to which the Order relates shall go or remain on strike;

(b) any strike declared or commenced, whether before or after the issue of the Order, by persons employed in any such service shall be illegal.

4. Penalty for illegal strikes.—Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

5. Penalty for instigation, etc.—Any person who instigates, or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment of a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

6. Penalty for giving financial aid to illegal strikes.—Any person who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

7. Power to arrest without warrant.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

8. Act to override other laws.—The provisions of this Act and of any Order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force.

9. Repeal and saving.—(1) The Essential Services Maintenance Ordinance, 1968 (ord. 9 of 1968), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had come into force on the 13th day of September, 1968.