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ASSAM ACT XIII OF 1948

THE ASSAM SHOPS AND ESTABLISHMENTS ACT
1948

(Received the assent of the Governor on the 17th June 1948)

[Published in the *Assam Gazette* of the 30th June, 1948]

An

Act

To provide for and regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement, and the hours of work of persons so employed.

Preamble. WHEREAS it is expedient to provide for and regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement, and the hours of work of persons so employed;

It is hereby enacted as follows:—

Short title, commerce-ment and application. 1. (1) This Act may be called the Assam Shops and Establishments Act, 1948.

(2) It shall come into force on such date ¹ as the [State]² Government may, by notification, appoint.

(3) It shall apply in the first instance to the Municipalities of Dhubri, Gauhati, Tezpur, Nowgong, Jorhat, Dibrugarh and Silchar as declared or constituted under the provisions of the Assam Municipal Act, 1923, and to [the area for the time being comprised within the Cantonment and Municipality of Shillong but excluding so much of its area as forms part of the United Khasi and Jaintia Hills District]³; and thereafter it shall apply to such other areas, or to such shops, commercial establishments or establishments for public entertainment or amusement in such other areas as the [State] Government may, by notification, specify.

Assam Act
I of 1948.

1. Came into force from 16th May, 1949—See Notification No.GGN.57/43/79, dated the 16th May, 1949.

2. Substituted by A. O., 1950 for "Provincial".

3. Substituted by A. O., 1950 for "the Dominion of India portion of the Khasi and Jaintia Hills District other than that declared to be a Partially Excluded Areas by the Government of India (Excluded and Partially Excluded Areas) Order, 1936".

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

(1) "Child" means a person who has not completed his twelfth year of age ;

(2) "Closed" means not open for the service of any customer ;

(3) "commercial establishment" means an establishment in which there is conducted the business of advertising, commission, forwarding or commercial agency, a department of a factory in which persons are employed in a clerical capacity in any room or place where no manufacturing process is being carried on, a clerical department of any industrial or commercial undertaking, including one of public transport, an insurance company, joint stock company, broker's office, or exchange, or such other establishment or class thereof as the State ¹ Government may, by notification, declare to be a commercial establishment for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement ;

(4) "day" means a period of twenty-four hours beginning at midnight ;

(5) "employer" means a person owning or having charge of the business of a commercial establishment or establishment for public entertainment or amusement, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of such establishment ;

(6) "establishment for public entertainment or amusement" means a restaurant, eating-house, cafe, cinema, theatre and such other establishment or class thereof as the State ¹ Government may, by notification, declare to be, for the purposes of this Act, an establishment for public entertainment or amusement, but does not include a shop or a commercial establishment ;

(7) "factory" means a factory as defined in, Act XXV of 1934 or declared to be a factory under, the Factories Act, 1934 ;

(8) "Half day" means a period of six consecutive hours between the hours of half past seven o'clock ante meridiem and seven o'clock post meridiem ;

1. Substituted by A. O. 1950 for "Provincial".

(9) "notification" means a notification published in the official Gazette ;

(10) "person employed" means—

(i) in the case of a shop, a person wholly or principally employed in the shop in connection with the business of the shop,

(ii) in the case of a commercial establishment, a person wholly or principally employed in connection with the business of the establishment, or in the case of a factory, a person employed in a clerical capacity in any room or place where no manufacturing process is being carried on,

(ii) in the case of an establishment for public entertainment or amusement, a person wholly or principally employed in the preparation or serving of food, or drink, or in attendance upon customers, or in cleaning any part of the establishment, or the utensils used therein, or as attendant, cashier, clerk, doorkeeper, operator or usher, or in some other similar capacity,

but does not include a shop-keeper or employer or the husband, wife, child, father, mother brother or sister of a shop-keeper or employer who lives with, and is dependent on, such shop-keeper or employer ;

(11) "prescribed" means prescribed by rules ;

(12) "rules" means rules made under this Act ;

(13) "shop" means any premises used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or on credit, and such other premises as the ¹ State/Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment or an establishment for public entertainment or amusement ;

(14) "shop-keeper" means a person owning or having charge of the business of a shop, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of a shop ;

(15) "week" means a period of seven days beginning at midnight on Saturday ; and

(16) "year" means the period beginning on January the first, and ending on December 31st.

1. Substituted by A. O. 1950 for "Provincial".

Reference to time of day 3. References to the time of day in this Act shall be deemed to be references to Indian Standard Time, or any alternative time that the State ¹ Government may prescribe as Standard time for Assam.

Powers of the State ¹ Government 4. (1) The State ¹ Government may for the purposes of all or any of the provisions of this Act, by notification declare—

- (a) to be a shop, any premises which are not premises of a commercial establishment or of an establishment for public entertainment or amusement,
- (b) to be a commercial establishment, any establishment which is not a shop or an establishment for public entertainment or amusement, and
- (c) to be an establishment for public entertainment or amusement, any establishment which is not a shop or a commercial establishment.

(2) The provisions of this Act specified in a notification under sub-section (1) shall apply to any premises or establishment which, under the provisions of that sub-section, has been declared to be a shop or a commercial establishment or an establishment for public entertainment or amusement, as the case may be.

(3) The State ¹ Government may, by notification on account of such holiday or other occasion as may be prescribed, suspend the operation of all or any of the provisions of this Act in respect of any shop or commercial establishment, or establishment for public entertainment or amusement, or of any class of shops or establishments as aforesaid for such period and subject to such conditions as it thinks fit.

Act not applicable to certain establishments, shops and persons.

5. (1) Nothing in this Act shall apply to—

- (a) offices of or under the Central or State ¹ Government, the Reserve Bank of India or any other bank, any railway administration ² or any local authority;
- (b) any railway service, water transport service, tramway or motor service, postal, telegraph or telephone service, any system of public conservancy or sanitation, any industry, business or undertaking which supplies power, light or water to the public and such other public utility companies or associations or classes thereof as the State ¹ Government may, by notification, exempt from the operation of this Act;

1. Substituted by A. O., 1950 for "Provincial"

2. Substituted by A. O., 1950 for "any Federal Railway"

- (c) clubs, residential hotels and boarding-houses;
- (d) stalls and refreshment rooms at railway stations, docks, wharves and airports;
- (e) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;
- (f) shops or classes of shops, dealing mainly in vegetables, meat, fish, dairy produce, bread, pastries, sweetmeats, flowers so far as the retail sale of these articles is concerned;
- (g) pharmacies or shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites, so far as the sale of these articles is concerned;
- (h) shops dealing in articles required for funerals, burials or cremations so far as the sale of these articles is concerned;
- (i) shops dealing in tobacco, cigars, cheeroots, cigarettes, biris, pan, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned;
- (j) shops dealing in supplies, stores or other articles necessary for ships, so far as the sale of these articles for ships is concerned;
- (k) shops or stalls in any public exhibition or show, so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show;
- (l) shops or stalls in any public fair or bazar held for a charitable purpose;
- (m) barber's and hairdresser's shops;
- (n) shops dealing in petroleum products or spare parts for motor vehicles or cycles;
- (o) excise shops;
- (p) any person employed in a managerial or confidential capacity, or as a traveller, canvasser, messenger, watch-man or caretaker, or exclusively in connection with the collection, despatch, delivery, and conveyance or customs formalities of goods;

1. Substituted by A. O., 1950 for "Provincial".

(q) such seasonal commercial establishments engaged in the purchase of raw jute or cotton or in cotton ginning or cotton or jute pressing, and the clerical departments of such seasonal factories, as the State¹ Government may, by notification, exempt from the operation of this Act;

(r) such other establishments, shops or persons or classes of establishments, shops or persons, as the State¹ Government may, by notification, exempt from the operation of all or any of the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), the State¹ Government may, by notification, declare that any shop, establishment or person specified in that sub-section shall not be exempt from the operation of such provisions of this Act as may be specified in the notification and that the provisions of this Act specified in such notification shall apply to such shop, establishment or person.

Exemption
of child.

6. No child shall be employed in any shop, commercial establishment, or establishment for public entertainment or amusement.

Closing of
shops.

7. (1) Every shop shall be closed on one day in each week.

(2) The State¹ Government may, by notification, require in respect of every shop, or of any specified class of shops that they shall be closed at such hour as may be specified in the afternoon of one specified day in each week, in addition to the day referred to in sub-section (1):

Provided that, when there are conducted in a shop two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this Act would not apply to that shop, such shop shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section, and of sub-section (1).

(3) No deduction on account of any closure of a shop under the provisions of sub-section (1) or sub-section (2) shall be made from the wages of any person employed in such shop.

(4) The day on which a shop shall be closed in each week under the provisions of sub-section (1) shall be such day as may be specified by the shop-keeper in a notice, which shall be displayed in a conspicuous place in the shop:

1. Substituted by A. O., 1950 for "Provincial"

Hours of
works in
shop.

Provided that no shop-keeper shall, more often than once in every three months, alter the day so specified.

8. (1) No shop shall remain open after the hour of seven o'clock post meridiem ; but any customer who was being, or was waiting in the shop to be, served at such hour may be served during the period of thirty minutes immediately following such hour :

Provided that, when there are conducted in a shop two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this Act would not apply to that shop, such shop shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No person employed in a shop shall be required or permitted to work in such shop for more than nine hours in any one day, and for more than forty eight hours² in any one week, and after the hour of seven o'clock post meridiem.

(3) No person employed in a shop shall be required or permitted to work in such shop for more than seven hours in any one day, unless he has been allowed an interval for rest of at least one hour during that day, such interval to occur after the first four hours' continuous work.

(4) The periods of work and intervals for rest of each person employed in a shop shall be arranged by the shopkeeper so that together they do not extend over more than twelve hours in any one day.

Holidays in
commercial
establish-
ments.

9. (1) Every person employed in a commercial establishment shall be allowed as holidays at least one and a half days in each week :

Provided that, when there are conducted in a commercial establishment two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this Act would not apply to that commercial establishment, such commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under the provisions of sub-section (1) shall be made from the wages of any person employed in such commercial establishment.

Holidays in
establishment
for public
entertainment
of amuse-
ment

10. (1) Notwithstanding anything contained in the Weekly Holidays Act, 1942, every person employed in an establishment for public entertainment or amusement shall be allowed as holidays at least one and a half days in each week :

Act XVIII
of 1942.

2. Substituted for the words "fifty hours" by the amendment Act XI of 1964

Provided that, when there are conducted in an establishment for public entertainment or amusement two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this Act would not apply to that establishment, such establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under the provisions of sub-section (1) shall be made from the wages of any person employed in such establishment for public entertainment or amusement.

Hours of
work in esta-
blishments
for public
entertain-
ment or
amusement.

11. (1) No person employed in an establishment for public entertainment or amusement shall be required or permitted to work in such establishment for more than ten hours in any one day.

(2) No person employed in an establishment for public entertainment or amusement shall be required or permitted to work in such establishment—

(a) for more than eight hours in any one day unless he has been allowed an interval for rest of at least one hour during that day, and

(b) for more than six hours in any one day unless he has been allowed an interval for rest of at least half an hour during that day.

(3) The periods of work and intervals for rest of each person employed in an establishment for Public entertainment or amusement shall be arranged by the employer of such person so that together they do not extend over more than fourteen hours in any one day.

Payment of
wages.

12. All wages payable to any person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be payable not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable.

Leave.

13. Every person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be entitled—

(a) after every twelve months' continuous employment, to privilege leave on full pay for a total period not exceeding sixteen days,

- (b) in every year, to casual leave on full pay for a total period not exceeding ten days, and
- (c) after every twelve months' continuous employment, to leave on medical certificate on half pay for a period not exceeding one month, such certificate to be provided by a registered practitioner as defined in clause (b) of section 2 of Assam Medical Act, 1916:

Provided that neither privilege leave admissible under clause (a) nor casual leave admissible under clause (b) shall be accumulated.

Holidays for religious purposes.

14. Every person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be entitled to leave of absence for any days he may select, not exceeding three in number in any one year, for the purpose of attending ceremonies or performing functions or duties connected with or enjoined by his religion.

Maintenance of records, registers and notices.

15. (1) Every shop-keeper and employer of an establishment for public entertainment or amusement shall for the purposes of this Act maintain such records and registers, and display such notices, as may be prescribed.

(2) Every employer of a commercial establishment shall for the purposes of this Act maintain such records and registers as may be prescribed.

Inspection.

16. (1) The State Government may, by notification, appoint such persons or such class of 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) All Inspectors appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. Act XLV of

Powers of Inspectors.

17. Subject as may be prescribed, an Inspector appointed under section 16 may, for the purposes of this Act and within the local limits for which he is appointed, at all reasonable times enter into any place which is, or which he has reason to believe is, a shop or a commercial establishment or an establishment for public entertainment or amusement, with such assistants, being public servants, as may be prescribed, and make such examination of that place and of any record, register or notice maintained therein under the provisions of section 15 and may require such explanation of any such record, register or notice as he may consider necessary for the purposes of this Act:

Provided that no person shall be required under this section to answer any question or give any evidence tending to criminate himself.

Penalties. 18 (1) Whoever, being an employer or shop-keeper, contravenes any of the provisions of sections 7, 8, 9, 10 or 11 shall, on conviction, be punishable with fine which, for a first offence, may extend to two hundred and fifty rupees and, for a second or any subsequent offence, may extend to five hundred rupees.

(2) Whoever, being an employer or shop-keeper, contravenes any of the provisions of sections 6, 12, 13, 14 or 15 and whoever, having custody of any record, register or notice maintained under the provisions of section 15, refuses or, without sufficient cause, fails to produce it on being so required by an Inspector under the provisions of section 17, shall, on conviction, be punishable with fine which may extend to fifty rupees.

Procedure. 19. (1) No Court inferior to a Magistrate of the First Class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by an Inspector appointed under section 16.

Indemnity. 20. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything in good faith done or intended to be done under this Act or the rules.

Saving of certain rights and privileges. 21. Nothing in this Act shall affect any right or privilege to which any person employed in any shop, commercial establishment or establishment for public entertainment or amusement is entitled at the date of the commencement of this Act under any other law for the time being in force or under any contract, custom or usage which is in force on that date, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act.

Power to make rules. 22. (1) The State¹ Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In making any rule under this section the State¹ Government may direct that any person committing a breach thereof shall, on conviction, be punishable with fine, which may extend to fifty rupees, and where the breach is a continuing one, with a further fine which may extend to ten rupees for every day, after the first, during which the breach continues.

1. Substituted by A. O., 1950 for "Provincial".