

**THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENT
ACT, 1958
(PUNJAB ACT NO. 15 OF 1958)**

(Received the assent of the President of India on the 25th April, 1958 and was published in the Punjab Government Gazette on the first May, 1958 for general information.)

- 1. Short title, extent commencement and application** - (1) This Act may be called the Punjab Shops & Commercial Establishments Act, 1958.
- (2) It extends to the whole of the State of Punjab.
 - (3) It shall come into force on such date as Government, may by notification in the official Gazette, appoint in this behalf.
 - (4) It shall apply in the first instance to the areas specified in the schedule, but Government may by notification direct that it shall also apply to such other area and on such date as may be specified in the notification.
- 2. Definitions** - (1) In this Act, unless the context other wise requires:-
- (i) **“closed”** means not open for the service of any customer or for any other purpose whatsoever relating to business;
 - (ii) **“closed day”** means the day of the week on which a shop or commercial establishment remains closed;
 - (iii) **“closing hour”** means the hour at which a shop or commercial establishment closes;
 - (iv) **“commercial establishment”** means any premises wherein any business, trade or profession is carried on for profit, and including journalistic or printing establishments and premises in which business of banking insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment, ¹[all privately managed educational institutions, private colleges including medical colleges, computer training centers and health and fitness clubs] or any other place which the Government may declare, by notification in the official Gazette, to be a commercialestablishment for the purpose of this Act.

1. Added by Hr. Govt. Noti. No. 1/32/83-1-Lab, dated 28.2.97.

COMMENTARY**Commercial Establishment and Shop-Common and not Common features of:**

One element is common to both the expressions 'Shop' and 'Commercial establishment', namely, that there have to be premises wherein, in the case of a commercial establishment any business, trade or profession is carried on for profit and in the case of a shop where any trade or business is carried on or where services are rendered to customers. The carrying on of trade or business or profession necessarily has to have a close and intimate connection with the premises. The other requirement is that what should be carried on in those premises is trade or business or rendering of services to customers in the case of a shop, and in the case of a commercial establishment a trade or business or profession has to be carried on for profit. If the element, of rendering service is eliminated, the remaining to elements that is carrying on of trade or business are common both to a shop as well as to a commercial establishment. But a shop according to the definition does not include a commercial establishment. Therefore, the same premises cannot be at the same time a shop as well as a commercial establishment. [Ram Chander Baru Ram Vs. The State of Punjab AIR 1963 Punjab 148 (F.B.)].

Shop & Commercial Establishment - Distinction thereof:

Any premises used under this Act must be construed as any specific or defined premises. It must be a place either open or built upon and in the procession and occupation of the person throughout the day and night, but not for few hours in a day for this purpose of carrying on his trade or business or rendering service to his customers. If any good are prepared or manufacturing in a premises, but actually they are sold outside the premises and no services are rendered to the customers or it is not used in any way connected with such trade or business, such premises cannot be hold to be a "Shop" under the Shops and Commercial Establishment Act. The work of repairing watches of customers for remuneration conducted systematically is a business or trade and not a profession and the premises in the occupation of the repairer wherein the work is carried or would be a shop under the Act [Khanmohd Vs. The State of A.P. (1973-Lab IC 239) (AP)] Likewise financial institution rendering service to its customers by advancing money to purchase motor vehicles in hire purchase bases, falls within the meaning of words 'Shop'. [1981 (2) Lab IC-108 (Madras) N.O.C.]

Commercial Establishment-Integrated trade or business activity must take place :

C. It will be seen from the definition of the phrase 'Commercial establishment' in Sec. 2 (iv) that an integrated trade or business activity must take place at the given premises for profit. Activities though connected with trade or business in premises in an isolated form like the activity of a business traveler would not make the same a commercial establishment. Similarly, the residence of a businessman will not become a commercial establishment merely because he is thinking out schemes and making plans to either evolve new business or to enlarge the existing one. No one can deny that it is business activity. To put it shortly, only those premises can be said to be a commercial establishment where two minds meet to strike a business deal for profit. It is hardly material by what means they meet. Any trade or business requires two or more

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individuals dealing with one another and if such dealing does take place in any given premises, or is intended to take place therein, they can be said to a commercial establishment but not otherwise. The purpose of the meeting of the two minds has to be for profit, though the profit may not be the necessary result. **[Ram Chander Baru Ram Vs. The State of Punjab AIR 1963 Punjab 148 (F.B.)]**.

Business and profession-Distinction thereof:

A business must be distinguished from a profession. In the former, the very object and motive is only to earn profit, where as in the case of a profession, although a professional earns some money and carries it on as a means of livelihood, it can by no stretch of reasoning be called a trade or business. **[Khan Mohamad Vs. State of AP (1973 Lab. IC 239)]**. A legal practitioner who attends his establishment for a period of one and a half days each week cannot but be said to be a restriction which is not reasonable nor in public interest. The legal profession as such cannot be equated at par with any other shop or establishment under the Shop Act because of embargo, the legal practitioner will not have his chamber opened for any purpose but so ever for one and a half days in a week. Even for exercise of his intellectual skill. Hence inclusion of establishment of legal practitioners within the definition of commercial establishment is violative of Article 19(1) (g) of Constitution of India. **[Dipti Kumar Basu & others Vs. Chief Inspector of (Shops & Establishment) and others 1986 Lab IC 1718 (Cal.)]**. Likewise, the inclusion of the establishment of legal practitioners in definition of commercial establishment, does not answer the text of business and the inclusion would be violative of Article 14 of the Constitution of India and also on the ground of business. **[Narendera K. Chand Fuladi & others V/s. State of Maharashtra 1986 Lab IC 318 (Bom.)]**. It has also been laid down by the Hon'ble Punjab & Haryana High Court that doctor's clinics are not termed as commercial establishment. **[Kuldeep Singh Gill Vs. State of Punjab & others 1989 (2) CIR-87 (P&H)]**. Work incidental or ancillary to any business or trade is a commercial activities, but activities of State Marketing Board or its constituent Market Committee would not be incidental or ancillary to any business. Hence State Marketing Board or its constituent Committee are not commercial establishment. **[Bihar State Marketing Board Vs. The Chief Inspecting Officer, Bihar and others (1985) Lab IC-1820 (Patna)]**.

Distinction between Charitable Institution & Commercial Establishment :-

A club, which does not carry out any commercial activity but confines its activity for rendering service or entertainment to its members only, cannot be said to be an commercial establishment within the meaning of the professions of the Act, **[Management of Tata Iron & Steel Ltd. Chief Inspecting Officer, Govt. of Bihar & others (1997 LLR 816 (Patna)]** but in the club's property including its premises are let out on hire regularly to the members of the public or if its restaurant is also made open to the general public or activity of the club are such so as to enable it to make regular income by dealing with the out sides, in such a case the club may be said to be engaged in commercial activities. **[Beldih Club, Jamshedpur Vs. The Presiding Officer, Labour Court Jamshedpur & others 1991 (1) Patna Law Journal Reports 811 (Patna) (D.B.)]**. The test charitable purpose is satisfied by the proof of any of the three conditions, namely, relief of the poor, education or medical relief. **[P.C. Raja Ratnama Institution Vs. M/s Municipal Corp. of Delhi and others 1990 AIR 816 (S.C.)]**. There

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cannot be any doubt whatsoever that where business activities or trade activities are being carried out, profit motive is not a relevant factor for the purpose of consideration as to whether the same comes within the purview of the word 'Industry' or establishment or not. [**Beldih Club, Jamshedpur Vs. The Presiding Officer, Labour Court Jamshedpur & others 1991 (1) Patna Law Journal Reports 811 (Patna) (D.B.)**]. It has been laid down by the apex court that if payment is made in the shape of fee by way of voluntary contribution, the purpose would be still remain to be charitable one. [**P.C. Raja Ratnama Institution Vs. M/s Municipal Corp. of Delhi and others 1990 AIR 816 (S.C.)**]. If the same is paid under compulsion than it cannot be said that the hospital is run for charitable object and since the object is not charitable, it cannot be said that the hospital is exempted from the provisions of the Act. [**Management of Tata Iron & Steel Ltd. Chief Inspecting Officer, Govt. of Bihar & others (1997 LLR 816 (Patna))**] But a public charitable trust established to provide scholarship to the ladies and also to provide books etc. to them and further to provide means to the widows, helpless ladies and orphans etc. is not doing any commercial activity, but is established for charitable purposes and if for the purpose of carrying out the object of the Trust certain properties of the Trust are sold by it then those activities of selling its own land etc. do not fall within the definition of a commercial establishment. For treating an activity, a commercial activity, there must be some investment of capital and there activities must be run with the risk of profit or loss and only in that circumstances the activities can be said to be commercial in nature. Trust is not being used for commercial purposes and the activities of trust cannot be said to be commercial activities, the office of trust does not fall within definition of shop or a commercial establishment under the Act and therefore the provisions of the Act are not applicable to it and the authorities under the Act has no jurisdiction to entertain and decide dispute regarding reinstatement made by it by the Chokidars of the trust. [**M/s Rajmata B.S.K. Junagarh Vs. State of Rajasthan 1994- Lab IC 1877 (Raj.)**]. Likewise the main objects of Pinjrapole Sanstha is to take care and maintain sick and lame cattle and has other objects also such as raising of cattle, improving the breed, carrying of cattle which come to the Pinjrapole so they can be of use to others, to run a dairy farms in order to supply good milk and ghee in the interest of public to do agricultural operations, to grow grass to cut it or have it cut and to buy or sell the same or store it and the Sanstha had lot of land and had rental and other income and also agriculture income, hence the Pinjrapole Sanstha is a commercial establishment and liable to pay minimum wages to its workers. [**Ahmedabad Pinjrapole Sanstha**

Vs. Misc. Majdur Sabha and others 1987 Lab IC 577 (Gujrat)].

(v) “**day**” means the period of twenty-four hours beginning at mid night:

Provided that in the case of any employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences;

(vi) “**employee**” means a person wholly or principally employed in, or in connection with an establishment, where working on permanent, periodical, contract or piece rate wages or on commission basis even though he receives no reward for his

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- labour but does not include a member of the employer's family;
- (vii) **“employer”** means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes member of the family of an employer, a manager, agent or other person acting in the general management or control of the establishment;
- (viii) **“establishment”** means a shop or a commercial establishment;
- (ix) **“factory”** has the meaning assigned to it in the Factory Act, 1948;
- (x) **“family”** in relation to an employer, means -
- (i) spouse,
 - (ii) children and step children; and
 - (iii) parents, sisters and brothers if residing with and wholly dependent upon him;
- (xi) **“festival”** means any festival which Government may notification declare to be a festival or the purpose of this Act;
- (xii) **“Government”** means the Punjab Government;
- (xiii) **“hours of the work or working hours”** means the time during which the person employed are at the disposal of the employer exclusive of an interval allowed for rest and means;
- (xiv) **“inspector”** means an inspector appointed under this Act;
- (xv) **“leave”** means leave provided for in section 14;
- (xvi) **“manager”** in relation to an establishment where five or more persons are employed or an establishment or whose owner does not ordinarily carry on the business personally, means a person declared as such by the prescribed manner;
- (xvii) **“night”** means a period of at least twelve consecutive hours which shall include the interval between 8 p.m. and 6 a.m.
- ¹[(xviii) **“opened”** in relation to a shop or commercial establishment whose entrance is the only entrance to the residence, means opened for the service of any customers or for any business connected with the establishment.]
- (xix) **“opening hour”** means the hour at which an establishment opens.

1. Substituted by Punjab Act 1 of 1964 section 2 clauses (1)

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- (xx) **“prescribed”** means prescribed by rules made under this Act;
- (xxi) **“prescribed authority”** means the authority prescribed under the rules made under this Act;
- ¹[(xxi-A) **“quarter”** means a period of three months commencing on the first day of January, first day of April, first day of July, and first day of October, every year;]
- (xxii) **“retail trade or business”** includes the business of barber or hair dresser, the sale of refreshment or intoxicating liquors and retail sales by auction;
- (xxiii) **“register of establishment”** means a register maintained for the registration of establishment under this Act;
- (xxiv) **“registration certificate”** means a certificate showing the registration of an establishment;
- (xxv) **“shop”** means any premises where any trade or business is carried on or where services are rendered to customers and includes office store rooms, godowns, ²[sale depots] or ware houses whether in the same premises or otherwise used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factory Act, 1948 (LXIII of 1948).

“Shop”-Essential Features of :-

The word 'Shop' is to be taken to mean a premises where trade or business is carried on in the shape of buying and selling of goods at the spot. It is rather axiomatic that in all trades it is the buying or selling which is going on in one form or the other in present or in future or even on speculative basis. But in a shop the buying and selling is at the premises or in other words on the spot for cash consideration or may be barter, or on credit. The significant factor is the availability of the goods, there and then and so also of services. The crux of the definition of the word 'shop' in S. 2 (xxv) is that the business or trade vis-a-vis the shop is the actual buying and selling of goods and that must take place in the premises. **[Ram**

Chander Baru Ram Vs. The State of Punjab

AIR 1963 Punjab 148 (F.B.)].

- (xxvi) **“Spread over”** means the period between the commencement and termination of a employee on any day;

1. Inserted by Pb. Act No. 1 of 1964 section 2 clauses (2).

2. Substituted by Punjab Act 1 of 1964 section 2 (3)

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(xxvii) **“Wages”** shall have the meaning assigned to it in the Payment of Wages Act, 1936 (IV of 1936);

(xxviii) **“Wages period”** means the period after which the wages of an employed person shall be paid;

(xxix) **“Week”** means the period between midnight on Saturday and mid night on the following Saturday;

(xxx) **“Young person”** means a person who has attained the age of fourteen but has not attained the age of eighteen years; and

(xxxi) **“Years”** means a year commencing on the first day of April.

(2) For the purpose of this Act, any employment in the service of the employer of an establishment upon any work whether within establishment or outside it, which relates to, or is connected with or is ancillary to the business carried on at the establishment shall be deemed to be about the business of the establishment.

3. Act not applicable to certain establishment and persons - Nothing in this Act shall apply to:-

- (a) offices of or under the Central or State Government (except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority;
- (b) any railway service, water transport service, tramway, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry business or undertaking which supply powers, light or water to the public;
- (c) railway dinning cars;
- (d) office of lawyers;
- (e) any person employed about the business of any establishment mentioned in paragraphs (a) to (d) aforesaid;
- (f) any person whose hours of employment are regulated by or under the Factories Act, 1948, except the provision of sub- section (3), (4) and (5) of section 7 of this Act, in so far as they relate to employment in a factory;
- (g) any person whose work is inherently intermittent;
- ¹[(h) establishment of stamp vendors and petition writers.]

1. Added by Pb. Act. 1 of 1964.

4. Provision of section 9 and sub-section (1) section 10 of not applicable to certain establishment - (1) Nothing in section 9 and ¹[sub-section (1) of section 10] shall apply to

- (a) clubs, hotels, boarding houses, stalls and refreshment rooms at the railway station;
- (b) shops of barbers and hairdressers;]
- ²[(c) establishment dealing exclusively in meat, fish confectionery, poultry, eggs daily produce (except ghee), bread, sweet, chocolate ice, ice cream, cooked food, fresh fruit, flowers of vegetables.]
- (d) shops dealing ³[exclusively] in medicines or medical or surgical requisites or appliances and establishments for the treatment or care of the sick, infirm, destitute or mentally unfit.
- (e) shops dealing in articles required for the funerals, burials, or cremations;
- (f) shops dealings ²[exclusively] in pans (betel leaves), beedis or cigarettes or liquid refreshments sold retails for consumption on the premises;
- (g) shops dealing ⁴[exclusively] in newspapers or periodicals, editing and dispatching section of the newspaper offices and offices of the news agencies;
- ⁵[(h) places of public entertainment except cinema houses;]
- (i) establishment for the retail sale of petrol and petroleum products used for transport;
- (j) shops in regimental institutes, garrison shops and troop canteen in cantonments;
- (k) tanneries;
- (l)⁶[establishment engaged in] retail trade carried on at an exhibition or show, such retails trade in subsidiary or ancillary only to the main purpose of the exhibition or show;

1. Inserted by Pb. Act No. 1 of 1964.

2. Substituted by *ibid.*

3. Substituted by *ibid.*

4. Inserted by *ibid.*

5. Substituted by *ibid.*

6. Added by *ibid.*

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- (m) oil mills not registered under the Factories Act, 1948;
- (n) brick and lime kilns;
- (o) commercial establishments engaged in the manufacture of bronze and brass utensils so far as it is confined to the process of melting in furnaces;
- ¹[(p) saltpeter refineries;
- (q) establishments of commercial colleges of shorthand or typewriting and other educational academies;
- (r) booking offices of the passenger and goods transport companies; [(s) establishments dealing exclusively in green and dry fodder and chaff cutting, and
- (t) cycle stands, and cycle repairs shops]

²[(2) Nothing in sub section (2) of section 10 shall apply to-

- (i) establishments of cinema houses;
- (ii) establishment dealing in hides and skins;
- (iii) ice factories;
- (iv) establishments engaged exclusively in repairs of cycles or motor vehicles or the service of motor vehicles (not being an establishment dealing in cycles or motor vehicles or exclusively in spare parts thereof);
- (v) establishments dealing exclusively in providing on hire tents, chhauledaries and other articles such as crockery, furniture, loudspeakers, gas lights and fans required for ceremonial purposes, and
- (vi) establishments, dealing exclusively in the retail sale of phullian, murmura, sugar coated grams, reories, or other similar commodities.]

5. Powers of Government to extend the provisions of Act (1) - Notwithstanding anything contained in section 3 of section 4, Government may by notification declare that any class of establishments or persons specified therein shall not be exempt from the operation of such provisions of the Act as may be specified in the notification and that the provisions of this Act specified in such notification shall apply to such

1. New clause (p) to (t) added vide Pb. Act No. 1 of 1964.

2. Added by Pb. Act. 1 of 1964.

class of establishments or persons as the case may be.

(2) Every notification made under sub-section (i) shall as soon as possible, after it is made, be laid before both Houses of the State Legislature.

6. Conditions of employment for young persons. (1) - The total number of hours worked by a young person employed about the business of an establishment, exclusive of intervals for meals and rest, shall not exceed thirty hours in any one week or five hours in any one day.

(2) A young person employed about the business of an establishment shall not be employed continuously for more than three hours without an interval of at least half an hour for meals or rest.

(3) Government may prescribe further conditions in respect of the employment of young persons employed about the business of establishments or any class of them, including, if it thinks fit, conditions with respect to the daily period of employment of these persons and no such person shall be employed otherwise than in accordance with those conditions.

(4) In the case of any contravention of, or failure to comply with the provisions of this section, the employer shall be liable, on conviction, to a fine which shall not be less than fifty rupees but which may extend to two hundred rupees.

(5) Where, in proceedings for an offence under this section, the person in respect of whom the offence committed was a young person and he appears to the court to have been at the date of the commission of the offence a young person, he shall, for the purpose of this Act, be presumed at that date to have been a young person unless the contrary is proved.

7. Hours of employment - (1) Subject to the provisions of this Act, no person shall be employed about the business of an establishment for more than forty-eight hours in any week and nine hours in any one day.

(2) On occasions of seasonal or exceptional pressure of work a person employed in an establishment may be employed about the business of the establishment in excess of the working hours specified in sub-section (1):

Provided that -

(a) the total number of overtime hours worked by an employee does

not exceed fifty within a period of ¹[any one quarter]; and

(b) the person employed overtime shall be paid remuneration at twice the rate of his normal wages calculated by the hours.

Explanation - 'Normal Wages' for the purpose of proviso (b) means basic wages plus such allowances including the cash equivalent of the advantages accruing through the concessional sale of foodgrains and other articles as the worker is for the time being entitled to, but does not include bonus.

(3) No employer shall, on any day or in any week, employ about the business of the establishment any person who has been previously employed on that day or in that week in another establishment or a factory for a longer period than shall together with the time during which he has been previously employed on that day or that week in such another establishment or factory exceed the number of hours permitted by this Act.

(4) In any proceedings against the employer of the establishment for a contravention of the provisions of sub-section (3) it shall be a defence to prove that the employer did not know and could not with reasonable diligence ascertain that the person was previously employed by the employer of the other establishment or factory.

(5) No person shall work about the business of an establishment or two or more establishments or an establishment and a factory in excess of the period during which he may be lawfully employed under this Act.

Hours of Employment-Overtime meaning of:

Section 7 (2) of the Act only limits the maximum hours of work in a shop. But it does not impose any restriction upon the employer to fix a lesser number than provided in the said section. When the normal hours of work is admittedly 36 hours in week so any hours of work done beyond that normal hours i.e. 36 hours in a week must be regarded as "Overtime". [*Carew and Co. Ltd. V/s. Sailaja Kanti Chatterji and others 1973 Lab IC 515 (Cal.)*]. Likewise, the Hon'ble Supreme Court of India in a case *Philips India Ltd. Vs. Labour Court Madras* has also interpreted the meaning of over-time. Their lordship has decided that even though the expression "Overtime" is not defined in the Act, its connotation is unambiguous. In no uncertain terms it means in the content of working hours, period in excess of the prescribed working hours. The proviso to Section 14 (1) makes it abundantly clear that any work taken in excess of the working hours prescribed in the main part of sub-section (1) of Section 14 (Section 7 (2))

1. Substituted by Pb. Act 1 of 1964.

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in the Punjab Act) would constitute overtime work eight hours a day and 48 hours in a week would constitute normal working hours. Anything in excess of eight hours a day but not exceeding 10 hours a day and 48 hours a week and not exceeding 54 hours a week will constitute overtime work. This becomes clear from the language used in the proviso when it says that the bar imposed by sub-section (1) of Section 14 may be breached to the extent provided in the proviso. The expression used is that "No such person" meaning there by that person, who would be required to work eight hours a day or 48 hours a week, may be allowed to work in excess of that limit subject to payment of overtime wages. **[M/s Philips India Ltd. Vs. Labour Court Madras and others and State Bank of India V/s. Central Govt. Labour Court 1985 Lab IC 854(S.C.)].**

Overtime Wages meaning thereof :

When normal working hours are prescribed ordinary rates and then permitting overtime work upto the ceiling, simultaneously making it obligatory to pay over time wages at the rate prescribed in the very statute. But where the employer prescribed working hours per day or total number of hours of work per week less than the maximum permissible under the statute, any work taken in excess of the prescribed hours of work would be overtime work and the employer would be liable to pay some compensation but not necessarily the statutory compensation which would be attracted only when the employer takes work in excess of the maximum hours of work prescribed by the statute. **[M/s Philips India Ltd. V/s. Labour Court Madras and others and State Bank of India Vs. Central Govt. Labour Court 1985 Lab IC 854(S.C.)].**

8. Intervals for rest and meals - Subject to the provisions of section 6, no employee except a chowkidar, watchman or guard, shall be allowed to work in an establishment for more than five hours before he had an interval for rest of at least half an hour:

Provided that Government may by notification fix such interval for rest in respect of any class of establishment for the whole of the State or any part thereof as may consider necessary.

(2) The period of work of an employee in an establishment shall be so fixed that, inclusive of his interval for rest, the spread over shall not be more than the hours in a day.

9. Opening and closing hours - Government shall by notification fix the opening and closing hours of all classes of establishment and different opening and closing hours may be fixed for different classes of establishment and for different areas;

Provided that Government may allow an establishment attached to a factory to observe such opening and closing hours as the Government may direct.

Right to carry on one's trade or business restriction placed on such right by the said Act are reasonable:

The Punjab Shops and Commercial Establishment Act, 1958 comes in conflict with the fundamental right of a citizen to carry on his trade business or profession un- hampered. However, this right is subject to reasonable restriction that may be placed and the Act in question is certainly a piece of legislation which puts reasonable restriction on the individual's right to carry on trade, business or profession unhampered.

[Ram Chander Baru Ram Vs. State of Punjab 1963 AIR (Pb.) 148 (F.B.)].

The Hon'ble Supreme Court of India in case of Ram Dhan Dass Vs. State of Punjab has observed that the preamble of the Act show that the statute was enacted to provide for the regulation of the conditions of work and employment in shops and commercial establishments. It was held that providing 48 hours of work in a week or a provision for opening and closing hours is not unreasonable and the restriction not unreasonable and the restriction imposed were necessary to relieve physical overstrain on the workers and afford better conditions or work ensuring a reasonable amount of leisure to workers. **[Ram Dhan Dass Vs. State of Punjab 1961 FLR 836 (S.C.)].**

More over these provisions would be valid even if the employer himself carries on the business without engaging any body. **[Manohar Lal Vs. State of Punjab 1961 PLR 660 (Pb.)].**

Note :

1. The establishment of Gold Smiths are exempted from section 9 of the Punjab Shops and Establishment Act, 1958 in which owner of the establishment has not employed any person as an employee, vide Haryana Govt. Notification No. 14(427)78-12, dated 15.6.89, published in Haryana Govt. Gazette at page 1363 on 15th June, 1989)
2. A Notification issued by Haryana Govt. under section (9) of Punjab Shops and Commercial Establishment Act, 1958 vide Notification No. 5343-3-lab-75/16651, Dated 28-5-75, says that all Shops and Commercial establishment in Haryana shall not open earlier than 9.00 AM and close later than 7.45pm; but this notification shall not have affect in the Shops and Commercial Establishments of which separate things have been fixed from time to time under this Act.
3. In the case of dealers of television sets in Haryana, the following opening and closing hours have been fixed by Haryana Govt. vide Notification No. 10464-2- Lab-75/31505, dated 16-10-75.

Opening Hours	Closing Hours 9.00am	1.00pm
5.00pm	9.30pm	

10. Close day - (1) Save as otherwise provided by this Act every establishment shall remain closed on every Sunday.

Provided that, in the case of an establishment attached to factory the employer may substitute the close day of such establishment so as to correspond to the substituted close day of the factory in the same manner and subject to the same conditions as are laid down in this behalf in the Factories Act, 1948.

Provided further that Government may by notification fix any other day to be close day in respect of any class of establishments for the whole of the State or any part thereof;

(2) (i) The employer of an establishment shall in the prescribed form intimate to the prescribed authority the working hours, the day in a week referred to in clause (b) of section 11, and the period of interval of the employed person, within fifteen days of the date of registration of the establishment.

(ii) The employer of an establishment may change the working hours and the period of interval once in a quarter of the year by giving intimation in the prescribed form to the prescribed authority at least fifteen days before the change is take place.

(3) Notwithstanding anything contained in Sub-section (1) the employer of an establishment may open his establishment on the close-day if:-

- (a) such day happens to coincide with a festival, and
- (b) employees required to work on that day are paid remuneration at double the rate of their normal wages calculated by the hour.

11. 'Employees' off day in a week - No employee shall be allowed or required to work:-

- (a) on a close day, in any establishment which is required to observe a close-day;
- (b) on one day in a week, in any other establishment; and
- (c) before the opening hour of the establishment and after the closing hour of the establishment;

Provided that a watchman may be allowed or required to work on an off day under this section, if he allowed another off day in the week.

12. Holidays - Every employee in an establishment shall be allowed:-

- (a) a holiday with wages on the Independence Day, Republic Day, and Mahatma Gandhi's birthday; and
- (b) five other holidays with wages in a year in connection with such festivals as Government may declare from time to time by notification.

Provided that an employee required to work on any such holiday shall be paid remuneration at double the rate of his normal wages calculated by the hour.

13. Registration of establishments - (1) Within the period specified in sub-section (3), the employer of every establishment shall send to the prescribed authority concerned a statement in the prescribed form ¹[accompanied by such fee as may be prescribed and] containing :-

- (a) the name of the employer and the manager, if any;
- (b) postal address of the establishment;
- (c) the name, if any, of the establishment;
- (d) number of persons ²[employed in the establishment; and]
- (e) such other particulars as may be prescribed.

(2) (i) ³[On receipt of the Statement and the prescribed fee] or the prescribed authority shall, on being satisfied about the correctness of the statement, register the establishment in the register of establishment in such a manner as may be prescribed and shall issue in a prescribed form a registration certificate to the employer. The registration certificate shall on demand by the Inspector, be shown to him by the employer.

⁴[(ii) The registration certificate shall be renewable by the 31st March after every three years. Thirty days grace time shall, however, be allowed for the renewal of the certificate after payment of prescribed fee]

(3) Within thirty days from the date mentioned in column 2 below in respect of the establishment in column 1 the statement ⁵[together with the prescribed fee] shall be sent to the prescribed authority under sub-section (1).

1. Inserted vide Haryana Act, No. 1 of 1997.

2. Substituted vide Haryana Act, No. 1 of 1997.

3. Substituted vide Haryana Act, No. 1 of 1997.

4. Added vide Haryana Act, No. 1 of 1997.

5. Inserted vide Haryana Act, No. 1 of 1997.

Establishment	Date from which the period of 30 days is to commence (1)
	(2)

- | | |
|---|---|
| <p>(i) Establishment existing in to which this Act applies or comes into force or the date where this Act is extended</p> | <p>The date on which this Act areas on which the Act is extended, as the case may be.</p> |
| <p>(ii) New establishment in such area. The date on which the</p> | <p>establishment commences its work.</p> |
-

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

(5) The employer shall, within ten days of his closing the establishment, notify to the prescribed authority in writing accordingly. The authority shall, on receiving the information and being satisfied about the correctness, remove the name of such establishment from the register of establishments and cancel the registration certificate.

¹[(6) In case of any contravention of, or failure to comply with the provisions of this section, the employer shall be liable, on conviction, to a fine, which shall not be less than one thousand rupees but which may extend to three thousand rupees along with the prescribed registration or renewal fee, as the case may be.]

14. Leave - (a) Every employee who has been in employment for not less than twenty days in a year shall be entitled to one day's earned leave for every such twenty days.

Provided that a young person shall be entitled to one days earned leave for every fifteen days of employment during the year.

- (b) If an employee is discharged or dismissed from or leaves service during the course of the year, he shall be entitled to leave with

1. Added vide Haryana Act, No. 1 of 1997.

wages or wages in lieu of un-availed leave at the rates laid down in clause (a).

- (c) In calculating leave under this section fraction of half a day or more shall be treated as one day's leave fraction of less than half a day shall be ignored.
- (d) If an employee does not in any one year take the whole of the leave allowed to him under clause (a), any leave, not taken by him shall be added to the leave to be allowed to him in the succeeding year;

Provided that -

- (i) Subject to any specific agreement between the employer and the employee, the total number of days of leave, that may be carried forward to a succeeding year shall not exceed forty in the case of a young person or thirty in any other case;
- (ii) the provisions of this section shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award agreement or contract of service;
- (iii) where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than those provided under this section, the employee shall be entitled to such longer leave or weekly holidays as the case may be.

(2) Leave provided in clause (a) sub-section (1) shall when applied for, shall not when applied for, be refused except for a valid reason to be communicated in writing by the employer to the employee within fifteen days of the application.

Provided that the leave so refused shall, if applied for again, be allowed during the year.

(3) (a) For the purpose of computing the period during which an employee has been in employment within the meaning of clause (a) sub-section (1) the period during which he was on leave under this section and the off-days in a week referred to in section 11, shall be included.

(b) The un-availed leave of an employee shall be taken in to consideration in computing the period of any notice required to be given before discharge removal or dismissal.

(4) Notwithstanding anything contained in the foregoing sub- sections, every employee in an establishment shall be allowed with wages seven days casual leave and seven days sick leave in a year.

15. Wages for close days and during leave period (1) Any person employed in or about an establishment for a period of fifteen days or more than shall receive, for every off day in a week referred to in section 11, wages at the rate of not less than the average daily wages earned by him for the days on which he worked during the week immediately preceding every such off day.

(2) For the leave allowed to him under section 14, an employee shall be paid at the rate equal of the daily average of his total fulltime earnings for the days, on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus, but inclusive of dearness allowance and the cash equivalent of the advantage occurring through the concessional sale to the employee of food grains and other articles.

(3) An employee who has been allowed leave for not less than five days in the case of a young person and four days in any other case shall, on demand, before his leave begins, be paid the wages due for the period of leave allowed.

16. Wages period - (1) Every person responsible for the payment of wages to an employee shall fix a period in respect of which wages shall be payable.

(2) No wage period shall exceed one month.

(3) The wages of every person employed shall be paid before the expiry of the seventh day from the date on which the wages became due.

(4) Where the employment of any person is terminated, by or on behalf of the employer the wages earned by him and there remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment, on or before the next day;

Provided that no claim under this section shall be entertained unless it is preferred within six months from the date of it's occurring except under, special circumstances at the discretion of the Chief Inspector of Shops and Commercial Establishment.

17. Deduction from wages - The wages of an employee shall be paid to him without deductions of any kind except those authorised by or under the Payment of Wages Act, 1936, in so far as such deductions are applicable to the employee and in such manner to such extent and subject to such conditions as are specified in the Act.

18. Realisation of compensation - (1) In case of contravention of the provisions of section 16 if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld.

(2) The amount of wages withheld and compensation payable under this section shall for the purpose of its recovery be deemed to be a fine imposed under section 26 and shall be realised as such.

COMMENTARY

Compensation awarded under Section 18 is not a penalty within the meaning of Section 26 of the Act:

A sum awarded under this Section by way of compensation for the loss and inconvenience caused by the employer for not making payment to the employee on the due date. This amount is not by way of penalty within the meaning of Section 26 of the Act. Such a penalty can be imposed for contravention of Section 16 (4) of the Act, in addition to the award of compensation. [State of Punjab Vs. Y.K. Nanda 1965 PLR 210 (Pb.)].

19. Enforcement of inspection - (1) Government may, by notification, appoint such persons or such class of persons as it thinks fit to be inspecting officers for the purpose of this Act within such local limits as it may assign to them respectively.

(2) Subject to any rules made by Government in this behalf, an inspecting officer may, within the local limits for which he is appointed:

(a) enter to all reasonable times and with such assistants if any, being persons in the service of Government or any local authority as he thinks fit, any place which is or which he has reasons to believe to be an establishment;

(b) make such examination of premises and of 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 purpose of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purpose of this Act.

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

(3) Every inspecting officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

20. Records - (1) The employer of every establishment shall, in the prescribed form and manner keep exhibited in the establishment a notice setting forth the close day, the working hours and the period of interval of employed persons, if any such other particulars as may be prescribed.

(2) The employer of every establishment, about the business of which persons are employed, shall in the prescribed form and manner keep a record of the working hours, rest intervals and the amount of leave taken by every person employed about the business of an establishment and particulars of all overtime employments shall be separately entered in the records.

(2-A) The employer of every establishment, about the business of which persons are employed, shall mark the attendance of every employee in the register maintained for the purpose with in one hour of the start of duty and in the case of overtime, every entry regarding the commencement or closure of overtime shall respectively be made before or after such commencement or closure.

(3) The employer of every establishment, shall keep a photograph of each employee who has completed three months continuous service in the establishment:

Provided that where such employee fails to supply such photograph to the employer within fifteen days of the completion of such service, his failure so do shall be recorded by the employer under the signature of the employee.

(4) The employer of every establishment shall for the purpose of this Act maintain such other records and registers and display such other notice as may be prescribed.

(5) In case of any contravention of the foregoing provisions of this Section, the employer of establishment shall be liable on conviction, to a

fine not exceeding five rupees for every day on which the contravention occurs or continues.

(6) If any person with intent to deceive makes, or causes or allows to be made, in any such record, register or notice as aforesaid an entry which is to his knowledge false in any material particulars, or willfully omits or causes or allows to be omitted from any such records, register or notice an entry required to be made therein, he shall be liable, on conviction, to imprisonment for a term not exceeding three months or to a fine which shall not be less than twenty five rupees and may extend to two hundred rupees or both.

21. Inspection of registers and calling for information - (1) It shall be the duty of every employer of an establishment to make available for inspection of such officers, as may be prescribed, all accounts or other records required to be kept for the purpose of this Act, and to give such officers any other information in connection therewith as may be required.

(2) Whoever contravenes the provisions of sub-section (1) or willfully obstructs the inspecting authority in the exercise of the powers under this Act or conceals or prevents any employees in an establishment from appearing before or being examined by the authority, shall be liable, on conviction to a fine which shall not be less than twenty five rupees and may extend to two hundred rupees.

COMMENTARY

Irregularities found in maintaining registers, the Directors of the Company are liable for persecution. [1976 (1) Lab IC-1512 (Patna)].

22. Notice of removal (1) No employee shall be removed from service unless and until one month's previous notice or pay in lieu thereof has been given to him:

Provided that -

(a) no employee shall be entitled to the notice or pay in lieu thereof if he is removed on account of misconduct established on record.

(b) no employee shall be entitled to one month's notice or notice pay unless and until he has been in the service of the employer continuously for a period of three months

(2) In any case instituted for a contravention of the provisions of

sub-section (1), if a Magistrate is satisfied that an employee has been removed without reasonable cause, the Magistrate shall, for reason to be recorded in writing award compensation to the employee equivalent to two month's salary.

Provided that no such claim such be entertained unless it is preferred by the employee with six months from the date of his removal.

(3) The amount payable as compensation under this section shall be in addition to, and recovered as, fine payable under section 26.

(4) No person who has been awarded compensation under Section shall be entitled to bring a civil suit in respect of the same claim.

COMMENTARY

Discretion of Employer regarding suitability of employee:

The opinion of the employer about the suitability of his employee for the job assigned to him, is no doubt, final provided it is Bonafide although it is erroneous. Such should be not be melafide or arbitrary. It must have been based on an objective satisfaction which can be tested by the appellate tribunals as well as the courts of law [1972- Lab. IC 668 (S.C.)].

Dispute regarding termination of service & its remedy:

The Shops & Establishment Act do not render Section 2A of the Industrial Disputes Act inoperative in so far as it relates to the State in respect of the matters covered by these Sections of the Shops Act and to a disputes arising out of the termination of the services of a shop employee, the provisions of that section could be invoked even when his cause is not espoused by a union or a number of workmen, in the absence of union. Where, therefore, the State Govt. made reference under section 10 (1) (c) of the Industrial Disputes Act, of the disputes arising out of the termination of certain employees by the employer (Management of certain establishment and/or shops govern by Shops Act) and the Labour Court passed awards granting reliefs to the said employees. The option is left with the shop employee who is aggrieved by the termination of his service. He may, at his choice and convenience, either pursue the remedy involving section 2A of the Industrial Disputes Act or approach the appellate authority. The apprehension that the availability of two forms for the employee to seek redressal of his grievance would lead to conflict of decisions is quite unwarranted. It is needless to say that the principles of constructive resjudicata would operate in the field also. Face on the culmination of the proceedings of one of the channels of the decision becomes final under either of the enactment that depends on both the parties and the issue could not be allowed to be reagitated in the proceeding of the other channel. [Andhra Pradesh Steel Wool Industries Co-operative Society Vs. Labour Court Hyderabad and another 1987 Lab IC 642 (AP) (F.B.)]. Section 10 (1) of Industrial Disputes Act, cannot taken as having been impliedly repealed and reference under Section 10 (1) of the Industrial Disputes Act is valid. [Bata India Ltd. Vs. State of Kerala 1985-Lab IC 687 (Kerala)]

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If the employees are "workmen" and the management governed by the Shops and Establishment Act is an "Industry" as defined in the Industrial Disputes Act (Central Act) and the action taken by the management amounts to "Retrenchment" then the rights and liabilities of the parties are governed by the provisions of chapter V-A of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in the proceedings before the authorities under the Shops and Establishment Act. Sub-Section (1) of Section 25-J of the Industrial Disputes Act lays down that chapter V-A shall have effect notwithstanding anything inconsistent therewith contained in any other law. The proviso to that sub-section however saves any higher benefits available to the workmen under any law agreement or settlement or award. Sub-section (2) of Section 25 J, however, makes a distinction between any machinery provided by any State of Law. For settlement of industrial disputes and the substantive rights and liabilities arising under chapter V-A of Industrial Disputes Act where a lay off or retrenchment takes place. It provides that while Section 25-J would not affect the provisions in the State Law relating to settlement of industrial disputes, the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the chapter V-A of the Industrial Disputes Act and Shops and Establishment Act. Provision of Shops and Establishment Act prescribe alternative authority to settle a dispute arising out of a retrenchment. Those authorities may exercise jurisdiction under the State Act, but they have to decide such dispute in accordance with the provisions of chapter V-A of Central Act i.e. Industrial Disputes Act. The said rights can be enforced by a workman personally, by himself filing an appeal under the State Act. It is not necessary that a reference should be sought under the Central Act by collective action of the workers.

It is true that the State Act is a later Act and it has received the assent of the President of India, but since there is no repugnancy between the two laws the State Law cannot prevail so as to make the provisions of the Central Act relating to retrenchment ineffective in the State. The State Act does not contain an express provision making the provision relating to retrenchment in the Central Act ineffective. Chapter V-A of Central Act which is the earlier law deals with the cases arising out of lay off and retrenchment. Section 25J of the Central Act deals with the effect of provisions of chapter V-A on other law inconsistent with that chapter. Sub-Section 2 of Section 25J is quite emphatic about the supremacy of the provisions relating to rights and liabilities arising lay off and retrenchment. There are special provisions and they do not apply to all kind of termination of services. Provisions of State Act deals generally with the termination of service which may be result of misconduct, closure, transfer of establishment. If there is conflict between the special provisions contained in an earlier law dealing with retrenchment and the general provisions contained in a latter law generally dealing with the termination of service, the existence of repugnancy between the two laws cannot easily be presumed. There is therefore, not even any implied repugnancy between the Central Law and the State Law. **[Krishna Distt. Co-operative Marketing Society Ltd. Vijayawada Vs. N.V.P. Rao 1987 Lab IC 1651(S.C.)]**.

Termination sans notice and its affect:

Employer's orders terminating employee's service without giving him notice or wages in lieu thereof as specifically provided under the Shops and Establishment Act is not

only illegal but also null and void [(1975 Lab IC 727)].

23. Notice by employee -(1) No employee, who has been in the service of the employer continuously for a period of three months shall terminate his employment unless he has given to his employer ¹[thirty] days previous notice or pay in lieu thereof.

(2) Where an employee contravenes the provisions of sub-section (1) his employer may forfeit his unpaid wages for a period not exceeding ²[thirty] days.

24. (Omitted by Punjab Act I of 1964, Section 1).

25. Provisions as to trading elsewhere than in establishments - Save as otherwise provided by any law for the time being enforce, it shall not be lawful in any locality to carry on in any place not being an establishment retail trade or business of any class at any time if it is unlawful in that locality to keep an establishment open for the purpose of such retail trade or business, and if any person carries on any trade or business in contravention of this section, this Act shall apply as if he were the employer of the establishment which was being kept open in contravention of this Act.

COMMENTARY

Taking into consideration the provision contained in Section 25 the storing of goods and writing of accounts by an individual where nothing besides this done did not make such premise, a commercial establishment within the meaning of the definition in Section 2 (vi) of the Act. [Ram Chander Baru Ram Vs. State of Punjab 1963 AIR (Pb.) 148 (F.B.)].

It has been laid down by the Hon'ble Calcutta High Court that it has to be borne in mind that the Act is for "persons employed" in the Shops and Establishments. Hence persons who are working in the clerical department of the head office of the company and who had being shifted and attached to the different shops floors of the factory of the company could be treated as clerical deptt. of factory under the Act. They did not cease to constitute a department simply because their place of work has been shifted or has no identifiable location. [Guest Keen Williams Ltd. Vs. State of West Bengal and others 1977 Lab IC 1203 (Cal.)].

26. Penalties - Subject to the other provisions of this Act whoever contravenes any of the provisions of this Act or the rules made thereunder and no penalty has been provided for such contravention in this Act, shall be liable, on conviction, to a fine not exceeding one hundred rupees for the

1. Substituted for 'seven' by Haryana Act, 4 of 1976. 2. Substituted for 'seven' by Haryana Act, 4 of 1976.

first offence, and three hundred rupees for every subsequent offence.

Provided that the fine in respect of every subsequent offence within the same year shall not be less than one hundred rupees in any case.

27. Protection of officers and their agents from personal liability - No suit, prosecution or other legal proceeding shall lie against any public servant or any other person in the service of the Central or State Government, acting under direction of any such public servant, for anything in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

28. Power to grant exemptions - Government or any officer empowered by the Government in this behalf may, by notification in the official Gazette, exempt from the operation of all or any of the provisions of this Act for any period it considers desirable, any establishment or any class thereof or any employer or employee or class of employers or employees to whom this Act applies on such conditions it may think fit.

Note-I:

In a notification issued under section 28 of the Punjab Shops and Commercial Establishments Act, 1958 (Punjab Act 15 of 1958) the Governor of Haryana has exempted the establishment of the Banks specified below located in the State of Haryana from the operation of Sections 7, 8, 9, 10, and 22 of the said Act, under Haryana Govt. Notification No. 12(14) 81-1-Lab, dated the 31st March, 1986.

(i) Scheduled Banks within the meaning of clause (e) of Section 2 of the Reserve Bank of India Act, 1934 (Act 2 of 1934) and all other financial commercial Banks;

(ii) Subsidiary Banks within the meaning of clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act 38 of 1959; and

(iii) All Regional Rural Banks set up under the Regional Rural Banks Act, 1976 (Act 21 of 1976)

Note-II :

In a notification issued under section 28 of the Punjab Shops and Commercial Establishment Act, 1958, (Act No. 15 of 1958) the Governor of Haryana has exempted, all Shops and Commercial Establishment in the place mentioned under column 2 of the Schedule given below, from the provisions of sub-section (2) of Section 8 and section 9 and 10 of the said Act, for the number of days mentioned against such places under column 3 on account of the festivals. The persons required to work on such days in excess of their usual working hours on the working days shall be paid remuneration at double the rate of their normal wages calculated by the hour and in case of festival falls on Sunday or a festival holiday, the employer will be liable for payment of double the wages for all the working hours of the day. He will, however, have option to grant another weekly close

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day in lieu thereof.

The festivals mentioned under column 3 of the Schedule are also declared to be the holidays as required under sub-section (b) of Section 12 of the Act, vide Haryana Govt. Notification No. 9046-3 Lab-70, dated 23.11.1970: -

SCHEDULE

Sr. No.	Places	Festivals	Number of days
1.	Throughout the State	Diwali	3 Days (one day on which Diwali is celebrated and two days before.
2.	-do-	Dushera	2 days (one day on dushera & one day before)
3.	-do-	Karva Choth	One day
4.	-do-	Basant Panchmi	One day
5.	-do-	Baisakhi	One day
6.	-do-	Lohri	One day
7.	-do-	Ram Naumi	One day
8.	-do-	Guru Gobind Singh's Birthday	One day
9.	-do-	Mahavir Jayanti	One day
10.	-do-	Guru Ravi Dass	One day Birthday
11.	-do-	Rishi Balmiki	One day Birthday
12.	-do-	Christmas Day	One day
13.	-do-	Janam Asthmi	One day
14.	-do-	Guru Nanak	One day Birthday
15.	-do-	Id-Ul-Fitar	One day
16.	-do-	Holi	One day
17.	Yamuna Nagar &	Gopal Mochan Fair	2 days (one day on Gopal Jagadhari
		Mochan Dwadshi and one day	before)
18.	Ambala City, Ambala Yamuna Nagar, Kurukshetra & Thansesar	Bawan Dwadshi	2 days (one day on Bawan Cantt. Dwadshi and one day before)
19.	Kurukshetra & Thansesar	Solar Eclipse	3 days (one day on Eclipse day and one day before and one day after)
20.	Ferozepur Jhirka	Id-Ul-Zuha	One day
21.	Jagadhri	Bawan Dwadshi	2 days (one day on Bawan Dwadshi and day before).
22.	Throughout the State	Bhaiya Dooj	One day.

*Note : Stations shown at Sr. No. 21 & 22 have been exempted by the Haryana Govt. Vide its Notifications No. 1 (47) 83-1 Lab, dated 6th August, 1984.

29. Prohibition of employments of children - No child who has not completed the age of **fourteen years** shall employed in any establishment.

30. Conditions of employment of women - (1) No women shall be required or allowed to work whether as an employees or otherwise in establishment during night.

Provided that nothing in this sub-section shall apply to an establishment which is engaged in the treatment or care of the sick, the inform, the destitute or the mentally unfit.

(2) No employer of any establishment shall knowingly employ a woman and no woman shall be engaged in employment in any establishment during six weeks following the day of her confinement or miscarriage.

(3) Government may prescribe further conditions in respect of employment of women employed about the business of establishment or any class of them, including if it thinks fit, conditions with respect to the daily period or employment leave, and other matters and no woman shall be employed otherwise than in accordance with these conditions.

31. Maternity benefit - (1) Every women employed in an establishment or who has been continuously employed in that establishment or in establishments belonging to the employer of that establishment for a period of not less than six months preceding the date of her delivery shall be entitled to receive, and the employer shall be liable to make to her a payment of maternity benefit which shall be prescribed by the Government for every day during the six weeks immediately preceding and including the day of her delivery and for each day of six weeks following her delivery.

Provided that no such payment shall be made for any day on which she attends work and receives payment thereof during the six weeks preceding her delivery.

(2) The manner in which the maternity benefit shall be payable may be prescribed by the Government.

32. Bar of legal practitioners in certain proceedings - Notwithstanding anything contained in the law relating to legal practitioners for the time being in force, no legal practitioner shall be permitted to appear, plead or

act for the employer or the employee in any proceedings, before a court, between an employer and an employee, arising out of the contravention of any of the provisions of this Act.

33. Saving certain rights and privileges - Nothing in this Act shall affect any rights or privileges to which an employee in any establishment is entitled on the date this Act comes into force, under any 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 right or privileges are more favourable to him than those to which he would be entitled under this Act.

33A. Cognizance of offences - No Court shall take cognizance of any offence punishable under this Act or any rule made there under or of the abetment of, or attempt to commit, such offence, save on a complaint made by the employee concerned or by such officer as may be authorised in writing in this behalf by the Government.

34. Power of make rules - (1) The Government may make rules for the purposes of giving effect to the provisions of this Act.

(2) In particulars, and without prejudice to generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner and form in which the registers be kept;
- (b) the officer who may be empowered to inspect registers and call for information as required by this Act;
- (c) the agency by which and the manner in which the prosecution shall be instituted;
- (d) the form of submitting a statement, the particulars under sub-section (1) of section 13 the manner in which registration of establishment is to be made and the form of registration certificate under sub-section (2) and the form for notifying a change under sub-section (4) of section 13;
- (e) the authority to and the manner in which any notice required by this Act shall be given;
- (f) the conditions subject to which any exemption under this Act may be granted;

(g) the manner in which the employer of an establishment shall keep exhibited in the premises close-day, closing and opening hours and such other particulars as may be prescribed; and

(h) to safeguard health, safety and welfare of the employee while on duty

- (3) All rules made under this section shall, as soon as possible after they are made; be laid before both Houses of the State Legislature.

35. Repeal - The Punjab Trade Employees Act, 1940, is hereby repealed.

Provided that -

(a) every appointment, order, rule, bye-law regulation, notification or notice made issued or given under the provisions of the Act so repealed 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 other appointment, order, rule, bye-law regulation, notification or notice made, issued or given under this Act;

(b) any proceedings relating to the trial of any offence punishable under the provisions of this Act so repealed, shall be continued and completed as if the said Act has not been repealed but has continued in operation, and any penalty imposed in such proceedings shall be recovered under the Act.

* * * * *