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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) BILL, 2019.

GUJARAT BILL NO. 3 OF 2019.

A BILL

*to provide for regulation of conditions of employment and other conditions
of service of workers employed in shops and other establishments
and for matters connected therewith or incidental thereto.*

It is hereby enacted in the Seventieth Year of the Republic of India
as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gujarat Shops and Establishments
(Regulation of Employment and Conditions of Service) Act, 2019.

Short title,
extent,
application and
commencement.

(2) It extends to the whole of the State of Gujarat.

(3) The provisions of this Act, except section 7, shall apply to the shops and establishments employing ten or more workers; and the provisions of section 7 shall apply to the shops and establishments employing less than ten workers.

(4) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions. 2. In this Act, unless the context otherwise requires,—

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

(b) "employer" means a person owning or having control over the affairs of an establishment, and includes,—

(i) in the case of a firm or association of individuals, a partner or member of the firm or association;

(ii) in the case of a company, a director of the company;

(iii) in the case of an establishment owned or controlled by the Central Government or a State Government or any local authority, the person or persons appointed to manage the affairs of such establishment by the Central Government or the State Government or the local authority, as the case may be;

(c) "establishment" means an establishment which carries on, any business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or exchange or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture; and includes, -

(i) establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others), architect, engineer, accountant, tax consultant or any other technical or professional consultant;

XXI of 1860. (ii) a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto;

(iii) shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 do not apply ;

LXIII of 1948. (iv) such other establishment as the State Government may, by notification in the *Official Gazette*, declare to be an establishment for the purposes of this Act;

(d) “factory” means any premises and the precincts thereof which is a factory within the meaning of clause (m) of section 2 and section 85 of the Factories Act, 1948;

LXIII of 1948.

(e) “holiday” means a day on which a worker shall be given a weekly off under the provisions of this Act;

(f) “Inspector” means an Inspector appointed under section 24;

(g) “leave” means a leave mentioned in Chapter IV of this Act;

(h) “local authority” means,-

Bom. LIX of 1949.

(i) a Municipal Corporation constituted under the Gujarat Provincial Municipal Corporations Act, 1949;

Guj. 34 of 1964.

(ii) a Municipality constituted under the Gujarat Municipalities Act, 1963;

Guj. 18 of 1993.

(iii) a Panchayat constituted under the Gujarat Panchayats Act, 1993;

(i) “member of the family of an employer” means the wife, husband, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer;

- (j) “opened” means opened for the service of any customer, or for any business of the establishment, or for work, by or with the help of any worker of or connected with the establishment;
- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “register of establishments” means a register maintained for the registration of shops and establishments under this Act, either manually or in electronic format;
- (m) “registration certificate” means a certificate of the registration of a shop or establishment;
- (n) “shift” means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a group or relay and each of such period is called a shift;
- (o) “shop” means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business, but does not include a factory;
- (p) “spread-over” means the period between the commencement and the termination of the work of a worker on any day;
- (q) “wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-
 - (i) any remuneration payable under any award or settlement between the parties or under any order of a court or tribunal;

- (ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (iii) any additional remuneration payable under the terms of employment;
- (iv) any sum which, by reason of the termination of employment of the person employed, is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions;
- (v) any sum to which the person employed is entitled under any scheme framed under any law, for the time being in force; and
- (vi) house rent allowance payable in cash,

but does not include-

- (a) any bonus, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or under any order of a court;
- (b) the value of any accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (d) any travelling allowance or the value of any travelling concession;

- (e) any sum paid to the employed person to defray special expenses entailed to him by the nature of his employment; or
- (f) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv);
- (r) "week" means the period of seven days beginning at midnight of Saturday;
- (s) "worker" means any person including a person engaged through an outsourcing agency (except an apprentice under the Apprentices Act, 1961) employed to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied. 52 of 1961.

Act not to apply to certain persons and premises.

3. (1) The provisions of this Act shall not apply to,—

- (a) establishments of the Central or the State Government;
- (b) establishments of local authorities;
- (c) offices of Reserve Bank of India;
- (d) a worker whose work is inherently intermittent;
- (e) a member of the family of an employer.

(2) A list of the workers referred to in clauses (d) and (e) shall be displayed at a conspicuous place in the shop or establishment and a copy of thereof shall be sent to the Inspector.

Application of the Act to other establishments and workers.

4. (1) Notwithstanding anything contained in this Act, the State Government may, by notification in the *Official Gazette*, declare any establishment or class of establishments to which, or any worker or person or class of workers or persons to whom, this Act or any of the provisions thereof does not for the time being apply, to be an establishment or class of establishments or a worker or a person or class of workers or persons to which or whom this Act or any provisions thereof with such modifications or adaptations as may in

the opinion of the State Government be necessary shall apply from such date as may be specified in the notification.

(2) On such declaration under sub-section (1), any such establishment or class of establishments or such worker or person or class of workers or persons shall be deemed to be an establishment or class of establishments to which, or to be a worker or a person or class of workers or persons to whom, this Act applies and all or any of the provisions of this Act with such modification or adaptation as may be specified in such declaration, shall apply to such establishment or class of establishments or to such worker or persons or class of workers or persons.

5. The State Government may, by notification in the *Official Gazette*, suspend the operation of all or any of the provisions of this Act for such period and subject to such conditions as it may deem fit on account of any festive or other occasions.

**Suspension
of the
operation of
provisions
of the Act.**

CHAPTER II

REGISTRATION OF SHOPS AND ESTABLISHMENTS

6. (1) Within a period of sixty days from the date of commencement of this Act or the date on which any shop or establishment commences its business, the employer of every shop and establishment shall submit an application in a prescribed form for registration to the concerned Inspector, together with such fees and such self-declaration and self-certified documents as may be prescribed:

**Registration of
shops or
establishments.**

Provided that, nothing contained hereinabove shall apply to the shops and establishments already having valid registration under the Gujarat Shops and Establishments Act, 1948 until the expiry of their registration.

(2) On receipt of the application along with the documents and the fees, the Inspector shall, register the shop or establishment in the register of establishments in such manner as may be prescribed and shall issue, in a prescribed form, a registration certificate to the employer within the prescribed time limit. The registration certificate shall be produced whenever it is demanded by the Inspector.

(3) A registration certificate issued under sub-section (2) shall remain in force from the date of issue till the change in ownership or nature of business takes place. In case of change in ownership or nature of business, the employer of every establishment shall have to obtain the fresh registration certificate.

**Intimation by
establishment
having less
than ten
workers.**

7. (1) Within a period of sixty days from the date of the commencement of this Act or the date on which establishment commences its business, the employer of every establishment employing less than ten workers shall give an intimation of having commenced the business to the Inspector in whose jurisdiction the establishment is located, by submitting online application in the prescribed form together with such self-declaration and self-certified documents, as may be prescribed, containing details such as name of the employer and manager, name of the establishment, nature of business, number of workers and such other details as may be prescribed. The Inspector shall issue to the employer of such establishment, a receipt of intimation in such form and manner as may be prescribed. The details of the intimation receipt shall be recorded online in a register maintained in such form as may be prescribed:

Provided that if at any point of time the number of workers engaged in the establishment become ten or more, then all provisions of this Act shall apply to such establishment and the employer of such establishment shall have to obtain registration as per the provisions of section 6.

Provided that, nothing contained hereinabove shall apply to the shops and establishments already having valid registration under the Gujarat Shops and Establishments Act, 1948 until the expiry of their registration.

(2) The employer of such establishment employing less than ten workers shall inform, in such form and manner as may be prescribed, the Inspector within thirty days from the date of the closing of the business that such establishment has been closed for business. The Inspector on receiving the information shall remove the entry of such establishment from the register of establishments.

8. At any time, if it is found or brought to the notice of the Inspector that the registration of any shop or establishment has been obtained by misrepresentation or suppression of material facts or by submitting false or forged documents or false declaration or by fraud, the Inspector shall, after giving an opportunity of being heard to the employer of the shop or establishment, cancel the registration and remove such shop or establishment from the register of establishments in the manner as may be prescribed.

**Cancellation
of registration
of shop or
establishment.**

9. It shall be the duty of every employer to inform to the Inspector, in the prescribed form, any change in any of the particulars contained in the application submitted under section 6 within such period, after the change has taken place, as the State Government may prescribe. The Inspector shall, on receiving such notice and the prescribed fees along with the self-declaration of the applicant and self-certified documents as may be prescribed, make the change in the register of establishments in accordance with such notice and shall issue a fresh registration certificate.

**Notice of
change in
particulars.**

10. The employer shall inform, in such form and in such manner, as may be prescribed, to the Inspector within thirty days from the date of closing of the business that the shop or establishment has been closed for business. The Inspector on receiving the information and on being satisfied about its correctness shall remove the entry of such shop or establishment from the register of establishments and cancel the registration certificate:

**Notice for
closure of
business.**

Provided that, if the Inspector does not receive the information but he is otherwise satisfied that any shop or establishment has been closed, he may remove the entry of such shop or establishment from the register of establishments and cancel such certificate.

CHAPTER III DUTIES OF EMPLOYER

Health and safety of worker.

11. (1) Every employer shall take such measures relating to the health and safety of the worker including cleanliness, lighting, ventilation and prevention of fire as may be prescribed.

(2) Every employer shall be responsible for providing constant adequate supervision of the worker employed in the shop or establishment and to ensure the compliance with the rules relating to health and safety made under sub-section (1) and for taking steps necessary to prevent accidents.

Fixing of hours of work.

12. Subject to the other provisions of this Act, no worker shall be required or allowed to work in any shop or establishment for more than nine hours in any day and forty-eight hours in a week. No worker shall be compelled to work continuously for more than five hours unless he has been given a break of not less than half an hour:

Provided that, the working hours or weekly holiday may be relaxed in case of work of urgent nature with the previous permission of the Inspector.

Prohibition of discrimination of women.

13. (1) No woman worker shall be discriminated in the matter of recruitment, training, transfer or promotion or wages.

(2) No woman worker shall be required or allowed to work in any establishment except between the hours of 6 a.m. and 9 p.m.:

Provided that, where the Inspector or any person, authorized by it in this behalf, is satisfied that the provisions of shelter, rest room, night *crèche*, ladies toilet, adequate protection of dignity, honour and safety,

protection from sexual harassment, and their transportation from the shop or establishment to the door step of their residence exists in such shop or establishment, it may, by order, after obtaining the consent of the woman worker, allow her to work between 9 p.m. to 6 a.m. subject to such conditions as may be specified in the order.

14. The spread-over of a worker in any shop or establishment shall not exceed ten and half hours in any day, and in case a worker entrusted with intermittent nature of work or urgent work, the spread-over shall not exceed twelve hours.

**Spread-over
of hours of
work.**

15. Where a worker is required to work in a shop or establishment beyond nine hours a day or forty-eight hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages. The total number of overtime hours shall not exceed one hundred and twenty-five hours in a period of three months.

**Payment of
wages for
overtime.**

16. (1) A department or any section of a department of the shop or establishment may work in more than one shifts at the discretion of the employer and if more than one shifts are worked, the worker may be required to work in any shift at the discretion of the employer.

**Shift
working and
rest.**

(2) A shop or establishment may work on all days in a week subject to the condition that every worker shall be allowed weekly holiday of at least twenty-four consecutive hours of rest.

(3) If a worker is denied weekly holiday, the compensatory leave in lieu thereof shall be given within two months of such weekly holiday.

(4) The period and hours of work in a week for all classes of workers in such shift shall be informed to all workers in writing and shall be sent to the Inspector electronically or otherwise.

(5) Where a worker is required to work on a day of his rest, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

**Furnishing
identity card to
worker.**

17. The employer of a shop or an establishment shall furnish to every worker an identity card which shall be produced by the worker on demand by Inspector. Such card shall contain particulars as may be prescribed.

CHAPTER IV

LEAVE WITH PAY AND PAYMENT OF WAGES

**Annual leave,
casual and sick
leave and other
holidays.**

18. (1) Every worker shall be allowed a weekly holiday with wages:

Provided that the State Government may, by notification in the *Official Gazette*, fix different days as weekly holiday for different classes of shops and establishments or areas.

(2) Every worker shall be entitled to seven days casual leave with wages in every calendar year which shall be credited into the account of the worker in the beginning of the calendar year, but it shall lapse if the casual leave remains un-availed at the end of the year.

(3) Every worker shall be entitled to seven days leave on medical grounds with wages in every calendar year which shall be credited into the account of the worker in the beginning of the calendar year, but shall lapse if un-availed at the end of the year.

(4) Every worker who has worked for a period of two hundred and forty days or more in a shop or establishment during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of one day for every twenty days of work performed by him during the previous calendar year.

(5) Every worker shall be permitted to accumulate earned leave up to a maximum of sixty-three days.

(6) Where the employer refuses to sanction the leave which is due under sub-section (4) when applied fifteen days in advance, then the worker shall have a right to encash leave in excess of sixty-three days:

Provided that, if a worker is entitled to leave other than casual and festival leave under this section, is discharged by his employer before he has

been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment on account of retirement, resignation, death or permanent disability, the employer shall pay him full wages for the period of leave due to him.

(7) A worker shall be entitled to eight paid festival holidays in a calendar year, namely, the 26th January, 15th August and 2nd October and five such other festival holidays as may be agreed to between the employer and the workers before the commencement of the year. On these days, he shall be paid wages at the rate equivalent to his ordinary rate of wages excluding overtime:

Provided that, the employer may require any worker to work in the shop or establishment on all or any of these days, subject to the conditions that for such work the worker shall be paid double the amount of the ordinary rate of wages and also leave on any other day in *lieu* of the compulsory holiday.

(8) For the purpose of sub-section (4),—

- (a) any days of lay-off, by agreement or contract or as permissible under the model standing orders or standing orders certified under provisions of the Industrial Employment (Standing Orders) Act, 1946;
- (b) in the case of a woman worker, maternity leave under the provisions of the Maternity Benefits Act, 1961;
- (c) the leave earned in the year prior to that in which the leave is availed;
or
- (d) the absence of the worker due to temporary disablement caused by an accident arising out of and in the course of his employment,

20 of 1946.

53 of 1961.

shall be deemed to be days on which the worker has worked in the shop or establishment for the purpose of computation of the period of two hundred and forty days or more, but shall not earn leave for these days.

(9) The leave admissible under sub-section (4) shall be exclusive of all holidays whether occurring during or either at the end of the period of leave.

(10) Every worker shall be paid wages for the period of his leave earned under sub-sections (4) and (5) at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime.

CHAPTER V WELFARE PROVISIONS

Drinking water.

19. Every employer shall make effective arrangements to provide and maintain at suitable points conveniently situated for all workers employed in the shop or establishment, a sufficient supply of wholesome drinking water.

Latrines and urinals.

20. Every employer shall provide sufficient latrine and urinal for men and women as may be prescribed and these shall be so conveniently situated as may be accessible for the workers employed in the shop or establishment:

Provided that, several employers may provide common facilities of latrines and urinals, in case it is not possible to provide such facility individually, in a shop or establishment due to constraint of space or otherwise.

Crèche facility.

21. In every shop or establishment wherein thirty or more women workers are employed, there shall be provided and maintained a suitable room or rooms as *crèche* for the use of children of such workers:

Provided that, if a group of shops or establishments decide to provide a common *crèche* within a radius of one kilometer, then, the same shall be permitted by the Inspector by an order, subject to such conditions as may be specified in the order:

First-aid.

22. Every employer shall provide at the place of work first-aid facilities as may be prescribed.

23. The employer shall provide and maintain in the shop or establishment, wherein not less than one hundred workers are employed or ordinarily employed to maintain a canteen for the use of its workers:

Canteen.

Provided that, if a group of shops or establishments decide to provide a common canteen, then the same shall be permitted by the Inspector by an order, subject to such conditions as may be specified in the order.

CHAPTER VI

ENFORCEMENT AND INSPECTION

24. (1) Save as otherwise provided in this Act, it shall be the duty of every local authority to enforce, within the area subject to its jurisdiction, the provisions of this Act, subject to the supervision of the State Government.

**Provisions for
handing over
enforcement of
Act to
authorities.**

(2) For the areas not having jurisdiction of local authority, the State Government shall, by notification in the *Official Gazette*, without the necessity of giving any further notice or reasons, specify the authorities for performing the duties of enforcing the provisions of this Act from a date specified in that notification. From such date, it shall be the duty of such authorities to enforce the provisions of the Act, subject to the supervision of the State Government.

(3) For an area within the jurisdiction of a local authority, the local authority and for other areas, the State Government shall, subject to the provisions of sub-section (4), appoint as many Inspectors for the purpose of carrying out the provisions of this Act.

(4) A local authority or, as the case may be, the State Government may direct that the powers conferred on it by this section shall in such circumstances, and subject to such conditions, if any, as may be specified in the direction, be exercised by authorities referred to in sub-sections (1) and (2).

**Powers and
duties of
Inspectors.**

25. (1) The State Government may make a scheme for inspection of shops and establishments which may provide for generation of a web based inspection schedule.

(2) Subject to such conditions as may be prescribed, the Inspector may, within the local limits for which he is appointed—

(i) advise the employers and workers and provide them such information as may be considered necessary for complying with the provisions of this Act effectively;

(ii) inspect the shops or establishments in accordance with the scheme for inspection referred to in sub-section (3), and may—

- (a) enter, at all reasonable time and with such assistants, if any, being persons in the service of the Government or of any local authority as he thinks fit, any place which is or which he has reason to believe is a shop or establishment;
- (b) make such examination of the premises and of any prescribed registers, records and notices, and take on the spot or otherwise evidence of any persons as he may deem necessary for carrying out the purposes of this Act;
- (c) examine any person who is found in any premises of the shop or establishment and whom, the Inspector has reasonable cause to believe, is a worker of the shop or establishment;
- (d) require any person to give any information, which is in his possession with respect to the names and addresses of the persons;
- (e) search, seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act and which he has reason to believe has been committed by the employer;

(f) bring to the notice of the State Government defects found during inspection; and

(g) exercise such other powers, as may be prescribed:

Provided that, no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

45 of 1860. (3) Any person required to produce any document or to give any information required by Inspector shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

2 of 1974. (4) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-clause (e) of clause (ii) of sub-section (2) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

45 of 1860. (5) Every Inspector appointed under section 24 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

CHAPTER VII RECORDS AND RETURNS

26. (1) Every employer shall maintain the registers and records, in such form and in such manner as may be prescribed.

Maintenance
of registers
and records.

(2) The records may be maintained electronically or manually:

Provided that, at the time of inspection by an Inspector, a hard copy of such records, if demanded, shall be submitted duly signed by the employer or his representative.

(3) Every employer and in his absence the manager shall, on demand, produce for inspection of Inspector all registers, records and notices required to be kept under and for the purposes of this Act.

(4) All such registers and records shall be kept in the premises of the shop or establishment to which they relate.

Annual returns.

27. The employer of a shop or establishment shall furnish an annual returns, in such a form and in such manner (including in electronic form), to such authority as may be prescribed.

CHAPTER VIII

OFFENCES AND PENALTIES

Penalty for non-registration of shop or establishment.

28. Whoever, found running any establishment without registration in contravention of the provisions of section 6 or rules made thereunder, shall be punishable with penalty of ten thousand rupees which shall include registration fees:

Provided that, on recovery of penalty along with registration fees, the establishment shall be deemed to be registered and the registration certificate shall be issued by the Inspector.

Penalty for contravention of the provisions of the Act.

29. Whoever contravenes the provisions of this Act or the rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to fifty thousand rupees:

Provided that, the total amount of fine shall not exceed two thousand rupees per worker employed.

Penalty for contravention of the provisions of the Act resulting in accident.

30. Save as otherwise provided in this Act, where an employer on being held found guilty of contravention of any of the provisions of this Act or any rules made thereunder which has resulted in an accident causing serious bodily injury or death of a worker, he shall, on conviction, be punished with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees and which may be extended to fifty thousand rupees, or with both.

31. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

(2) Notwithstanding anything contained in sub section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purpose of this section, -

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.

32. (1) Whoever, willfully obstructs an Inspector in exercise of any powers conferred on him by or under this Act or refuses or willfully neglects to afford an Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishments, shall, on conviction, be punished with fine which may extend to fifty thousand rupees.

Penalty for obstructions or refusal to provide register, etc.

(2) Whoever, willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act or the rules made thereunder or prevents or attempts to prevent or does anything which he has reason to believe to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Act,

shall, on conviction, be punished with fine which may extend to fifty thousand rupees:

Provided that, total amount of fine shall not exceed two thousand rupees per worker employed.

**Cognizance
of offences.**

33. (1) No Court shall take cognizance of any offence punishable under this Act and the rules made thereunder unless a complaint in respect thereof is made by the Inspector within three months from the date on which the alleged commission of the offence comes to the knowledge of the Inspector:

Provided that, where the offence consists of disobeying a written order made by the Inspector, complaint thereof may be made within six months from the date on which the offence is alleged to have been committed.

(2) The court of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act or the rules made thereunder.

(3) Notwithstanding anything contained in Code of Criminal Procedure, 1973, a Metropolitan Magistrate or a Judicial Magistrate of the First Class may impose fine and penalties prescribed under this Act. 2 of 1974.

**Compounding
of offences.**

34. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by such Officer, as the State Government may, by notification in the *Official Gazette*, specify, with fine provided for such offence, in the manner as may be prescribed. 2 of 1974.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—

(a) of commission of a similar offence which was earlier compounded;

(b) of commission of a similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the State Government.

(4) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

(8) No offence punishable under the provisions of this Act shall be compounded except under and in accordance with the provisions of this section.

CHAPTER IX MISCELLANEOUS

35. (1) Notwithstanding anything contained in this Act, any shop or establishment if situated,-

- (a) (i) in Municipal Corporation Area, or
- (ii) on National Highway, or
- (iii) on Railway Platform, or
- (iv) at State Roadways bus station premises, or
- (v) in Hospital premises, or

**Opening
and closing
hours.**

(vi) on petrol pumps,

may remain open 24 hours on any day of the week:

Provided that, the worker shall be allowed to work in accordance with the provisions of sections 12, 14, 16 and 18 of this Act;

(b) in Municipality area or on State Highway may be opened except from 2.00 A.M to 6.00 A.M.:

Provided that, the worker shall be allowed to work in accordance with the provisions of sections 12, 14, 16 and 18 of this Act;

(c) in the areas other than the areas mentioned in clauses (a) and (b) above in district or on minor road may be opened except from 11.00 P. M. to 6.00 A.M.:

Provided that, the worker shall be allowed to work in accordance with the provisions of sections 12,14,16 and 18 of this Act;

(2) Notwithstanding anything contained in sub-section (1), considering the circumstances relating to traffic, public health, public safety, public nuisance or such other reason which may affect law and order situation, the hours for opening and closing of different classes of shops or establishments and for different premises, shopping complex or mall or for different area or areas and for different period may be curtailed by such authority as the State Government may, by notification in the *Official Gazette*, specify.

**Protection
of rights of
workers
under any
other law,
etc.**

36. Nothing in this Act shall affect any right or privileges which a worker in any shop or establishment is entitled to at the date of commencement of this Act under any other law, contract, custom or usage applicable to such shop or establishment or any award, settlement or agreement binding on the employer and the worker in such shop or establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

37. (1) No suit, prosecution or legal proceedings shall lie against any public servant or any other person, acting under the direction of any such public servant, for anything which is in good faith done or intended to be done under this Act or any rule or order made there under.

**Protection
of action
taken in
good faith.**

(2) No suit, prosecution or legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules or order made there under.

38. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

**Act not in
derogation of
any other
law.**

39. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act.

**Power to
make rules.**

(2) All rules made under this Act shall be subject to the condition of previous publication.

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or session immediately following. Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

40. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty:

**Power to
remove
difficulties.**

Provided that, no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before the State Legislature.

**Repeal and
saving.**

41. On and from the date of commencement of this Act, the Gujarat Shops and Establishments Act, 1948 shall stand repealed:

**LXXIX of
1948.**

Provided that,

- (a) every appointment, order, rule, bye-law, regulation, notification, registration 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 appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under this Act;
- (b) any proceeding relating to the trial of any offence punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed but had continued in operation and any penalty imposed on such proceedings shall be recovered under the Act so repealed.

STATEMENT OF OBJECTS AND REASONS

After implementation of the Gujarat Shops and Establishments Act, 1948 in the State, amendments have been made from time to time for the regulation of conditions of employment and other conditions of service of workers employed in shops and other establishments and for matters connected therewith or incidental there to.

The Government of India has introduced the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 and sent to States who will modify their individual Acts, if they so desire either by adopting the said Bill as it is or after modifying its provisions as per the requirement of that particular State/UTs so as to maintain uniformity in all the States/UTs. Hence, the Government of Gujarat also seeks to introduce the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2019 in order to comply with the model draft circulated by the Government of India.

The proposed Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2019 is aimed at (i) improving the working conditions of workers (ii) creating many more job opportunities for women and (iii) providing favourable environment for doing business. It includes freedom to operate 365 days in a year and opening/closing time of establishment, women to be permitted to work during night shifts with adequate safety and security provisions, online registration through a simplified procedure, powers of Government to make rules regarding adequate measures to be taken by the employer for the safety and health of workers etc. It is expected that it will lead to growth in jobs especially in the retail, IT, hospitality and services sector.

It is therefore, expedient to provide for the regulation of employment and other conditions of service of workers employed in shops and other establishments and for matters connected therewith or incidental thereto.

This Bill seeks to repeal the Act of 1948 and to re-enact the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019 to achieve the aforesaid objects.

The following notes on *clauses* explain, in brief, the important provisions of the Bill:-

Clause 1.- This clause provides for short title, extent, application and commencement of the Act.

Clause 2.- This clause defines certain terms used in the Bill.

Clause 3.- This clause provides for certain persons and premises to whom the Act not to apply.

Clause 4.- This clause provides that the State Government may declare any establishment or class of workers or persons to be an establishment or class of workers or persons to which or whom this Act or any provisions thereof with such modifications or adaptations as may in the opinion of the State Government be necessary shall apply from such date.

Clause 5.- This clause provides for the suspension of the operation of provisions of the Act by the State Government for such period and subject to such conditions as it may deem fit on account of any festival or other occasions.

Clause 6.- This clause provides for the registration of shops or establishments employing more than ten workers.

Clause 7.- This clause provides for the intimation of establishment employing less than ten workers.

Clause 8.- This clause provides for cancellation of registration of shops or establishment.

Clause 9.- This clause provides for the notice of change in particulars by the employer.

Clause 10.- This clause provides for the notice for closure of business by the employer.

Clause 11.- This clause provides for measures relating to the health and safety of worker.

Clause 12.- This clause provides for the fixing of hours of work of the worker.

Clause 13.- This clause provides for the prohibition of discrimination of women in the matter of recruitment, training, transfer or promotion or wages.

Clause 14.- This clause provides for the spread-over of hours of work in any shop or establishment.

Clause 15.- This clause provides for the payment of wages for overtime to a worker.

Clause 16.- This clause provides for the shift working and rest in a department or any section of a department of the shop or establishment at the discretion of the employer.

Clauses 17 and 18.- These clauses provide for furnishing identity card to worker and Annual leave, casual and sick leave and other holidays of worker.

Clause 19.- This clause provides for making effective arrangements to provide, a sufficient supply of wholesome drinking water to all persons employed in the shop or establishment.

Clause 20.- This clause provides for providing sufficient latrine and urinal for men and women employed in the shop or establishment.

Clauses 21 and 22.- These clauses provide for maintaining a suitable room or rooms as *creche* for the use of children of workers of shop or establishment and the employer shall allow the woman four visits a day to the *crèche* and also provide for first-aid facilities at the place of work.

Clause 23.- This clause provides for maintaining a common canteen by the employer, wherein not less than one hundred workers are employed or ordinarily employed.

Clause 24.- This clause provides for the provisions for handing over enforcement of Act to authorities.

Clause 25.- This clause provides for the powers and duties of Inspectors for inspection of shops and establishments.

Clause 26.- This clause provides for maintenance of registers and records by the employer.

Clause 27.- This clause provides for furnishing annual return by the employer.

Clauses 28 and 29.- These clauses provide for penalty for non-registration of shop or establishment and contravention of the provisions of the Act.

Clause 30.- This clause provides for penalty for contravention of the provisions of the Act resulting in accident.

Clause 31.- This clause provides for offences by companies under this Act.

Clause 32.- This clause provides for penalty for obstructions or refusal to provide register, etc. to Inspector in exercise of any powers conferred on him by or under this Act.

Clause 33.- This clause provides for cognizance of any offence punishable under this Act.

Clause 34.- This clause provides for compounding of any offence punishable under this Act.

Clause 35.- This clause provides for opening and closing hours of shops or establishments.

Clause 36.- This clause provides for protection of rights of worker under any other law, etc.

Clause 37.- This clause provides for protection for action taken in good faith.

Clause 38.- This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 39.- This clause provides for the powers of State Government to make rules under this Act.

Clause 40.- This clause empowers the State Government to remove difficulties arising within a period of two years in giving effect to the provisions of the Act.

Clause 41.- This clause provides for the repeal of the Gujarat Shops and Establishments Act, 1948 and savings of certain actions.

DILIPKUMAR THAKOR,

FINANCIAL MEMORANDUM

The existing staff of the Labour and Employment Department shall perform the function to carry out the object of the Act. Hence, there would not be any financial liability on State Exchequer on this count. Therefore, the Bill, if enacted and brought into force, would not involve any additional expenditure from the Consolidated Fund of the State.

DILIPKUMAR THAKOR,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects:-

Clause 1.- Sub-clause (4) of this clause empowers the State Government to appoint by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 2. – Para (iv) of sub-clause (c) of this clause empowers the State Government to declare by notification in the *Official Gazette* other establishment to be an establishment for the purpose of the Act.

Clause 4. – Sub-clause (1) of this clause empowers the State Government to declare by notification in the *Official Gazette*, any establishment or class of establishments to be an establishment or class of establishments or a worker or a person or class of workers or persons to which or whom this Act or any provisions thereof with such modification or adaptations as per the opinion of the State Government.

Clause 5. – This clause empowers the State Government to suspend the operation of all or any of the provisions of this Act by notification in the *Official Gazette* for such period and subject to such conditions as the State Government may deem fit on account of any festival or other occasions.

Clause 6. – (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form of application for registration and also to prescribe the fees, the self-declaration and the documents which shall be self-certified, to be submitted with the application;

(ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules, the manner in which the Inspector shall register the shop or establishment in the register of establishments; it also empowers to prescribe the form in which and the time limit within which the registration certificate shall be issued to the employer.

Clause 7. – (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form in which the employer of every establishment employing less than ten workers shall give an online intimation of having commenced the business to the Inspector in whose jurisdiction the establishment is located; and it also empowers the State Government to prescribe by rules the self-declaration and the documents which shall be

self-certified and the details other than the name of the employer and manager, name of the establishment, nature of business, number of workers, to be submitted with the application; it also empowers the State Government to prescribe by rules the form and the manner in which the Inspector shall issue a receipt of intimation to the employer; it also empowers the State Government to prescribe by rules the form in which the register shall be maintained in which the details of the intimation receipt shall be recorded online;

(2) sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form and the manner in which the employer of the establishment employing less than ten workers shall inform the Inspector within thirty days from the date of the closing of the business that such establishment has been closed for business.

Clause 8. – This clause empowers the State Government to prescribe by rules, the manner in which the Inspector shall cancel the registration and remove the entry of such shop or establishment from the register of establishments if it is found that such registration has been obtained by misrepresentation or suppression of material facts or by submitting false or forged documents or false declaration or by fraud.

Clause 9. – This clause empowers the State Government to prescribe by rules, the manner in which and the period within which every employer shall inform the Inspector any change in any of the particulars contained in the application submitted under section 6 or section 7; and also to prescribe the fees, the self-declaration and the documents which shall be self-certified, to be submitted with the notice of information;

Clause 10. – This clause empowers the State Government to prescribe by rules, the form and the manner in which the employer shall inform to the Inspector within thirty days from the date of closing of the business that the shop or establishment has been closed for business.

Clause 11. – (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the measures relating to the health and safety of the workers including cleanliness, lighting, ventilation and prevention of fire, to be taken by the employer.

Clause 17. – This clause empowers the State Government to prescribe by rules, the particulars to be contained with the Identity card of the worker.

Clause 18. – Proviso to sub-clause (1) of this clause empowers the State Government to fix by notification in the *Official Gazette*, different days as weekly holidays for different classes of shops and establishments.

Clause 20. – This clause empowers the State Government to prescribe by rules, the provisions for sufficient latrine and urinal for men and women.

Clause 22. – This clause empowers the State Government to prescribe by rules, the provisions for the first-aid facilities to be provided by the employer at the place of work.

Clause 24. – Sub-clause (2) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the authorities for performing the duties of enforcing the provisions of this Act for the areas not having jurisdiction of local authority.

Clause 25. – (i) Sub-clause (2) of this clause empowers the State Government to prescribe by rules, the conditions subject to which the Inspector may within the limits for which he is appointed, exercise his powers and perform his duties as mentioned therein;

(ii) para (g) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the powers other than the powers as mentioned therein to be exercised by the Inspector.

Clause 26. – (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form and the manner in which the registers and records to be maintained by the employer.

Clause 27. – This clause empowers the State Government to prescribe by rules, the form and manner in which and the authority to which the employer of a shop or establishment shall furnish an annual return.

Clause 34. – (i) Sub-clause (1) of this clause empowers the State Government to specify the Officer by notification in the *Official Gazette* to compound the offences / for compounding the offences;

(ii) sub-clause (4) of this clause empowers the State Government to prescribe by rules, the form and the manner in which the application for the compounding of an offence shall be made.

Clause 35. – Sub-clause (2) of this clause empowers the State Government to curtail the hours for opening and closing of different classes of shops or establishments and for different premises, shopping complex or mall or for different area or area and for different period, considering such circumstances and by such authority specified by notification in the *Official Gazette*.

Clause 39. – Sub-clause (1) of this clause empowers the State Government to make, by notification in the *Official Gazette*, rules for carrying out the purposes of the Act.

Clause 40. – Sub-clause (1) of this clause empowers the State Government to make an order published in *Official Gazette*, to remove any difficulty if arisen in giving effect to the provisions of this Act within a period of two years.

The delegation of legislative powers, as aforesaid, is necessary and is of a normal character.

Dated the 11th February, 2019.

DILIPKUMAR THAKOR.

By order and in the name of the Governor of Gujarat,

K. M. LALA,

Secretary to the Government of Gujarat,

Legislative and Parliamentary Affairs Department.

Gandhinagar,

Dated the 11th February, 2019.