

Report of the First Sub-Group constituted
by the Working Group on Building and
Construction Industry.

The second meeting of the Tripartite Working Group on Building and Construction Industry was held on 27/9/85. In the meeting the Working Group had constituted three Sub-Groups.

2. The terms of reference of the First Sub-Group is as follows:-

"What is the alternative to existing social security laws and what should be the form of the alternative Social Security Scheme. The Group may also consider the establishment of a Welfare Fund for the building and Construction Workers."

3. Shri P.B. Mahishi, Deputy Secretary, Ministry of Labour was to be the convenor of the group but since he was on leave for some time, Shri A.K. Srivastava, Director General(Labour Welfare) became the convenor.

4. The composition of the Sub-Group is mentioned in Annexure-I. Apart from the members, some other persons also gave the benefit of their advice and experience. Their names are also listed in Annexure-I.

5. The terms of reference given to the Sub-Group comprise of two different and distinct parts. The first part is: what is the alternative to existing social security laws and what should be the form of the alternative social security scheme. The second part is : Establishment of a Welfare Fund for the Building and Construction Workers.

6. The important social security laws are (a) Employees' Provident Fund and Miscellaneous Provisions Act, 1952; (b) Employees State Insurance Act, 1948 and

(c) Payment of Gratuity Act, 1972. The difficulties in extending the benefits of these Acts to the workers in the building and construction sector are well known. Another Sub-Group has examined as to how the existing social security laws can be made more effective.

7. The first task assigned to the first sub-group is to work out an alternative social security scheme. By way of background it may be mentioned that the Tripartite Group set up by the Government to look into the problems of the brick-kiln industry had suggested a special law for the brick-kiln workers. In the proposed law it had also suggested an alternative social security scheme for brick-kiln workers. The Committee had recommended that each employer of a brick-kiln shall contribute an amount equal to 20% of the wages earned by each workman for the first and second years and 25% of the wages earned for each subsequent year, after coming into force of the Act, towards the provision of social security and other benefits for each workman in lieu of Employees' Provident Fund, Employees' State Insurance, Gratuity, Bonus and the leave benefits contained in the Factories Act. Of this 8% in the first two seasons and 10% in the following seasons will be paid by the employers to the workers in cash when they leave after the season. The balance amount shall be deposited in a bank account opened in the name of each workman in a nationalised bank to be designated for the purpose as follows:-

- (i) Amount due for the months of October, November and December shall be deposited in the month of January following;

- (ii) amounts due for the months of January, February and March shall be deposited in the month of April; and
- (iii) amount due for the month-s of April, May and June shall be deposited in the months of May, June and July respectively.

The bank shall invest the amount so deposited according to the pattern that may be prescribed by the Government. Withdrawal from the bank account shall be regulated according to rules that may be framed in consultation with the banks so that the amounts deposited may be available to the workers in their old age or for meeting social obligations such as marriage etc.

8. When this report was processed, some objections were raised mainly on two grounds. The first ground was that the proposed legislation for the brick-kiln workers will be hit by Article 14 of the Constitution because there are other industries where also the employment is of short term and shifting nature and therefore why should the brick-kiln industry only be picked out for a special legislation which atleast on paper confers less benefits on the workers than the laws which it seeks to replace. The second objection was that if some restraint has to be put on the rights of the workers to withdraw the money deposited in their account in the banks, then either a law will have to be passed in this regard or the account has to be held jointly in the name of the workers and some government functionary. It was argued that even if a special law is passed, it will be difficult for the illiterate workers to have their accounts transferred from place to place and operate the

account. If, on the other hand, joint accounts have to be opened, there has to be a government machinery which will operate these accounts jointly with the workers. In that case, we will be only substituting the present Employees Provident Fund Organisation by another organisation.

9. In the light of these difficulties, there was detailed discussion in the sub-group on the feasibility of working out an alternative social security scheme for the workers engaged in the building and construction industry. Some members, notably Shri Bhardwaj, felt that the existing social security laws should be given a fair trial. On the other hand the employers' representatives were in favour of trying to find an alternative social security scheme. It was pointed out that the Employees' Provident Fund and Misc. Provisions Act provides for three benefits i.e. (i) family pension, (ii) deposit linked insurance scheme; and (iii) provident fund. It was argued that any new scheme should provide for at least as many benefits as the present scheme do. In this context, it was also recalled that while processing the report of the Tripartite Committee on the Brick-Kiln Industry, the point was raised that the benefits under the new law should preferably be more and, in any case, not less than the benefits which will be taken away by the non-applicability of a number of existing laws to the Brick-kiln workers. In this context, the Ministry was asked to quantify the benefits which will be taken

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away from the brick kiln workers by the proposed law and also to quantify the benefits which are to be given to them in lieu, by the proposed new law.

10. Shri B.M. Sethi, speaking on behalf of the All India Organisation of Employers said that if it is found that a particular law could not be enforced because of the peculiar characteristics of an industry, a special law should be framed which would give such benefits and protection to workers as could be properly administered. Shri T.S. Shankaran stated, and the group generally agreed with him, that there is need for looking at the problems of the construction industry in an integrated manner, keeping in view the peculiar and transitory employer-employees relationship obtaining in it. Shri Shankaran stated that the solution to the problem lies only in arrangement on the lines of the Dock Labour Boards and that any other arrangement would at best be a poor second. The sub-group took notice of the fact that another sub-group has been entrusted with the task of examining the desirability and feasibility of Construction Labour Board. After prolonged discussion it was decided that Prof. K.N. Vaid will prepare a working paper on an alternative social security scheme for the building and construction workers keeping in view the various social security Acts/Schemes and the working conditions etc.

11. Prof. Vaid has held discussions with the banks and with the employers' and employees' representatives based

in Bombay. Thereafter, he has expressed an opinion that the Employees' State Insurance Scheme, or anything of that nature, may not be extended to cover the construction labour as it may not be administratively feasible. However, he has prepared an alternative model of a provident fund scheme for construction labour. This is enclosed as Annexure-II. It will be seen from a perusal of the draft outline of the scheme that a pre-condition for its operation is the existence of a Construction Labour Board. As has been mentioned earlier, another Sub-Group is examining the desirability and feasibility of Construction Labour Board. However, the sub-group generally endorsed the alternative model prepared by Prof. K.N. Vaid subject to the stipulation that the benefits under the new scheme should not be less than those under the existing Acts/Schemes.

12. The second part of the terms of reference is regarding the constitution of a welfare Fund for the building and construction workers. The sub-group feels that a Welfare Fund is feasible and there should be a Central Law for the constitution and administration of a Welfare Fund. The Sub-Group feels that if Construction Labour Boards were to be constituted, the responsibility of administering the Funds should be undertaken by these Boards. In the absence of these Boards, this responsibility should be undertaken by the State Governments.

13. Shri R.C. Sharma was requested to prepare a draft outline Bill. It is at Annexure-III. The sub-group generally endorses the draft outline subject to the following

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stipulations:-

- (a) The proposed legislation should be a Central Act to be administered by the States.
- (b) Buildings below a certain carpet area should be exempted from this Act to facilitate persons building small houses for their own dwelling.
- (c) The various uses for which Welfare Funds are to be put should be clearly spelt out.
- (d) There should be a ceiling on the cost of administration.
- (e) Workers as well as their families should be included among the beneficiaries.
- (f) Advisory Committees should have representatives of contractors.
- (g) Annual reports and the accounts of the Fund should be published for scrutiny once in a year and compound interest should be levied on the arrears due towards the Fund. The rates of interest should be sufficiently deterrent.
- (h) The Welfare Fund should not discharge the statutory obligations of contractors.
- (i) Norms for identification of beneficiaries should be carefully laid down. There is no need to indicate any higher wage limit, but care should be taken to see that workers who have worked only for a short time should not get the benefits of the Welfare Fund. The eligibility criteria may also vary according to the nature of the scheme. For instance, longer service may be required in the case of housing schemes.

14. To sum up, (1) the Sub-Group generally endorses the draft outline of an alternative model of a provident fund scheme prepared by Prof. K.N. Vaid. However, this depends upon the existence of a Construction Labour Board which is being considered by another sub-group, and (2) the Sub-Group also generally endorses the draft outline of the Welfare Fund Scheme prepared by Shri R.C. Sharma subject to the stipulations mentioned in paragraph 13 above.

Composition of the Sub-Group

Members

1. Shri Bhardwaj.
2. Shri M.M. Deshkar.
3. Shri B.M. Setai.
4. Prof. K.N. Vaid.
5. Shri R.M. Chokshi.
6. An alternative member from Builders Association of India (Shri N D Patel).

Convenor

7. Shri A.A. Srivastava,
Director-General (Labour Welfare),
Ministry of Labour.
8. Shri R.C. Sharma, Welfare Commissioner (HQ),
Ministry of Labour.
9. Shri G.R. Nayar.
10. Shri S.Z.H. Razvi.
11. Smt. Geetha Subramaniam.
12. Shri Narendra Patel
13. Shri N.A. Samant.
14. Shri S.P. Mehrotra.
15. Shri G.K. Udeshi.
16. Shri P.L. Beri.
17. Shri V. Parkash.
18. Shri T.S. Sankaran, National Labour Institute.
19. Shri P.B. Mahishi, Deputy Secretary,
Ministry of Labour.

ANNEXURE-II
BUILDING AND CONSTRUCTION LABOUR PROVIDENT FUND
SCHEME
AN ALTERNATIVE MODEL

(Draft outlined by Prof. K.N. Vaid)

PREAMBLE

- 1.1. The Employees Provident Fund & Family Pension Scheme was made applicable to "every establishment in the building and construction industry and in each of which 20 or more persons are employed" w.e.f. 30.10.1980 vide GSR 1069 dated 23.9.1980 published in the Gazette of India dated 11.10.1980 part-II, S.3(1) page 220.
- 1.2. It is generally held that in so far as the building and construction industry is concerned, the coverage is inadequate and the benefits are unlikely to reach the workers concerned. There is no problem in regard to the corporate sector. But this sector employs only a fraction of the total construction labour. Small and medium size contractors employ most of the workers. These contractors are willing to meet their financial obligations under the Act but they are not equipped to take up the administrative and procedural burden of the scheme. They also face tough labour resistance to the deduction of contributions from wages and feel insecure.
- 1.3. Building and Construction Industry constitutes the informal sector with several features that are peculiar to it. Therefore, it warrants a special scheme. However, there are several other informal sectors

with their own peculiarities. There could not be a plethora of schemes. As it is undesirable to have a plethora of provident fund scheme, the need is to devise a scheme which may fit within the overall national framework of the existing Employees' Provident Fund and Pension Scheme and at the same time provide benefits to a maximum number of workers, benefits that are not less than what the workers are eligible to enjoy under the existing scheme.

- 1.4 The basic features of a workable scheme may be the following. It should:
- a. free the contractors from the administration of the scheme
 - b. ensure that benefits reach workers.
 - c. neutralize, to the extent possible, the adverse effects of labour migration, rapid job changes, tenure based on contracts, and casual nature of contractors.
 - d. be easy to administer and also easy for labour to understand
 - e. be more credible to a worker made possible by a document in his possession testifying to what belongs to him.

2. Various Models:

2.1 Various models of the scheme were considered. The model of the present scheme has not been a success. Second model was to make it incumbent on the principal employer that contractors' bill of works be paid only after obtaining satisfactory evidence of contributions have been made. This could, at best, assure that contributions are made; it does not ensure, any more than present, that benefits will reach workers. Third model was to open E.P.F. accounts of workers in the local/nearby banks by contractors who deposit monthly contributions in the appointed banks to the credit of

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concerned workers. Bankers are not unwilling to take up this task for a small fee. But it does not seem workable. There will be lakhs of accounts and thousands of transfer accounts every month due to labour migration. How will a contractor know where to deposit the money if a worker does not produce his passbook? Even when he does produce it, and the pass book refers to a bank account a few hundred miles away, contractors will have a major task in sending money orders. There will be multiple accounts for the same person. And how will the Provident Fund Authority know what is happening to thousand of accounts in hundreds of bank branches. In any even, there will be no check to ensure that all employers are covered and that contributions have been made, timely or untimely. There is really no alternative to a central collection point and a central monitoring system.

- 2.2. A workable model lies in that the Construction Labour Boards (CLB) should be required to administer Provident Fund Schemes in respect of the 'covered' workers working in their respective jurisdictions. CLB will bill the registered contractors for employers' contributions, add to it the employees contribution by deducting it from the wages and credit the total amount to a separate fund. CLB will issue Identity-cum-Service Book to the 'Registered' workers and record employment periods as well as amounts credited therein. The emerging situation

is likely to be as below :

- (a) in areas covered by the CLB, the implementation of Provident Fund Scheme will stabilize, improve gradually and become satisfactory eventually.
- (b) in areas not covered by the CLB, the present scheme in its present form may continue. The situation may be no worse than what it is today.
- (c) the growing disparity in the "covered" and "Uncovered" areas by CLB will generate demand to institute CLBs in the uncovered areas. The process will be hastened by the institution of Building & Construction Labour Welfare Fund in the "covered" area.

3. THE SCHEME (in outline only)

- i) this may be called the Building and Construction Labour Provident Fund & Family Pension Scheme.
- ii) the scheme may be administered by the Construction labour board/s.(CLB).
- iii) the appropriate government(s) may exempt CLB(s) U/S 17 of the EPF Act and Section 27 a of the EPF Scheme, as necessary.
- iv) The CLB may cover under this scheme:
 - (a) Establishments of all contractors in building and construction industry licensed for works within its territorial jurisdiction, who are otherwise eligible to be covered by the main Act.
 - (b) Employees of the establishments of the contractors who constitute the "covered" employees under the main Act.
- v) The CLB may :
 - (a) collect employer's contribution as specified main Act by raising bills along with the wage bills on the contractors.
 - (b) deduct an equal amount from workers' wages before making payments to them.
 - (c) credit the amounts so collected to a separate "Fund" maintained by it.

- (vi) The CLB may :
- (a) issue Identity-cum-Service Passbooks to the workers and in respect of the workers "covered" under this scheme,
 - (b) make entries at stated frequencies, in the passbook testifying the employment period as well as the P.F. amount standing to the credit of the service book holders,
 - (c) allow the service books to remain in the custody of the employees concerned,
 - (d) set up suitable accounting system for the purpose,
- (vii) All amount standing to the credit of an employee, along with the interests and other accrual thereon may become payable to him at full rate at the end of ten years from the 'A' date.
- (viii) Any break in service, irrespective of any time, may not debar the employees from receipt of monies standing to his credit, as shown in the service book nor reduce the quantum, provided that the employees shall deposit at least Rs. 300/- per financial year in order to keep his account alive.
- (ix) Employees who were members of the scheme under the main Act who relocate jobs into the areas covered by CLBs shall be entitled to ask the CLB to get their P.F. accounts transferred to CLB.
- (x) When a CLB is established in a few areas, it may be the successor of the Central P.F. Board, along with all assets and liabilities.
- (xi) For tendering benefits to the employees i.e. loans for various purposes etc. the CLB may frame rules that are at par with those of the scheme under the main Act.

4. MAIN FEATURES :

1. No separate or new enactment is necessary. CLB replaces the Central Board U/S 5A of the Act.
2. Contractors are not loaded with any procedural or administrative responsibilities. Nor do they deal with labour for deductions of contributions.

3. Contractors' and workers' representatives retain a say in the administration of the scheme through the tripartite nature of the CLB and any advisory Committees that might be set up.
4. The scheme will be simpler to administer, employees will have Service Books and benefits will flow easily as CLBs will be compact and small units.
5. The scheme will exercise a strong pull toward the stabilisation of the workforce.

ANNEXURE-IIIBUILDING & CONSTRUCTION LABOUR WELFARE FUND BILL

1. (1) This Act may be called the Building and Construction Labour Welfare Fund Act.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

2. DEFINITIONS:

In this Act, unless the context otherwise requires:

- (a) "ACT" means the Building and Construction Labour Welfare Fund Act.
- (b) "FUND" means the Building and Construction Labour Welfare Fund.
- (c) "PRESCRIBED" means prescribed by Rules made under this Act.
- (d) "PROJECT" means construction of civil works related to Building, Roads, Dams, bridges, tunnels, canals, water supply and sewage systems, component of agriculture, power plants and Industry and Railways or such other construction works or class of works specified by the appropriate Government, from time to time, by notification in the Official Gazette, for the purpose of this Act.
- (e) "PRINCIPAL EMPLOYER" means the person, organisation or body who bears the cost of project. In case of the Central/State Govts. or Union Territories, Local bodies - authority, board, commissioner & undertaking, the department whosoever is assigned to get the projects executed by that Government.
- (f) "BUILDING AND CONSTRUCTION INDUSTRY" means the industry under which various type of projects are executed.
- (g) "CONTRACTOR" or "AGENT" means the person or firm or company or organisation or body whosoever has been entrusted with the work of execution of project, or a part of it, by the principal employer.

- (h) "LOCAL BODY" means the Municipal board, Municipal Corporation, Panchayat, Urban development authority or such other body whose approval on the plan is obligatory before taking up the construction of any project.
- (i) "SMALL PROJECT" means the project or class of projects of the projects involving cost to a specified limit as prescribed by Rules made under this Act.
- (j) "WORKER" means a person employed in connection with the execution of the work of project, at the work-site or otherwise by the principal employer or contractor or agent or sub-contractor or sub-agent.

It includes the person employed for maintenance or repair or the equipment & Machinery used in the project or to work in office or in canteen meant for the project with or without the knowledge of the Principal employer.

- (k) "SUB-CONTRACTOR" or "SUB-AGENT" means the person or firm or company or body to whom the work of execution of project or a part of it has been entrusted by the contractor or agent.

3. LEVY AND COLLECTION OF CESS:

With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied and collected as a Cess for the purpose of this Act on the project construction works carried out:-

- (i) through any contractor or agent.
- (ii) without involving any agency or contractor,

a cess, at such rate not exceeding one percent of the cost of project, as the Central Government may from time to time, fix by notification in the Official Gazette.

Provided that small projects proscribed as such may be exempted from the levy of cess by the Central Government.

EXPLANATION:

1. In cases of project partly got executed through contractors/Agents and partly otherwise the payment of cess shall be made in terms of clause (a) of sub-section(i) for the portion of project executed through Contractor/Agent and the remaining payment of cess shall be paid in terms of Clause(b) of sub-section (i) of Section 4.
2. The Contractor or agent as the case may be shall remain responsible for the purpose of this Act, in cases where the work of project is got executed by said contractor/Agent through sub-contractor or agent.

4. PAYMENT OF CESS:

- (1) Every cess levied under section 3 of this Act shall be payable.
- (2) (a) to the principal employer by the contractor/agent, for the project carried out in terms of section 3(i).
 - (b) to the local body by the principal employer, for the project works carried out in terms of section 3(ii) within such period as may be prescribed.
- (3) All amounts referred to:-
 - (i) in clause (a) of sub-section (i) shall be collected by the principal employer.
 - (ii) in clause (b) of sub-section (i) shall be collected by the local body on approval of plans for execution of projects, in such manner, and paid by him or by them, as the case may be to the Central Government within such period as may be prescribed.

5. APPLICATION OF PROCEEDS OF CESS:

- (1) An amount equivalent to the proceeds of the cess levied under this Act, reduced by the cost of collection as determined by the Central Govt., together with any income from investment of the said amount and any other moneys received by the Central Government for the purposes of this Act, shall after due appropriation made by Parliament by Law, be paid to the credit of a fund to be called the Building and construction Labour Welfare Fund(hereinafter referred to as the Fund).

- (2) The Fund shall be applied by the Central Govt/- State Governments to meet the expenditure incurred in connection with measures which, in the opinion of that Government are necessary or expedient to promote the welfare of persons employed in the Building and construction Industry and in particular
- (a) to defray the cost of measures for the of persons employed in the Building and construction industry directed towards -
 - (i) the improvement of public health and the prevention of disease and the provision for improvement of medical facilities;
 - (ii) improvement of water supplies;
 - (iii) the provision and improvement of education and vocation facilities; and
 - (iv) the improvement of quality of life including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities.
 - (b) to grant loan or subsidy to a State Government, a local authority or the principal employer of the Building and Construction Industry in aid of any scheme approved by the Central Govt. for any purpose connected with the Welfare of persons employed in Building and Construction Industry;
 - (c) to pay annually grant-in-aid to such of the principal employer of the Building and Construction Industry who provide to the satisfaction of the appropriate Government Welfare facilities of the prescribed standard for benefit of person employed in their industry. So, however, that the amount payable as grants-in-aid to any such employer shall not exceed-
 - (i) amount spent by him in the provision of welfare facilities as determined by the Central/State Government or any person specified by it in this behalf; or
 - (ii) such amount as may be prescribed, whichever is less:-

Provided that no grant-in-aid shall be payable in respect of any welfare facilities

provided by the principal employer of the building and Construction Industry where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf;

(d) to meet the allowances, if any, of the members of the Advisory Committees and the Central Advisory Committee constituted under section 6 and 7 respectively and the salaries and allowance, if any, of persons appointed under section 8;

(e) any other expenditure which the Central Government may direct to be defrayed from the Fund.

6. ADVISORY COMMITTEES:

(1) The Central Government may constitute as many Advisory Committees as it thinks fit, but not exceeding one for each of the States, to advise the Central Govt. on such matters arising out of the administration of this Act, as may be referred to it by that Government including matters relating to the application of the fund.

(2) Each Advisory Committee shall consist of such number of persons as may be appointed to it by the State Government and the members shall be chosen in such manner as may be prescribed;

Provided that each Advisory Committee shall include an equal number of members representing the Govt., the principal employer of the Building and Construction Industry and that at least one member of each such Committee shall be a woman.

(3) The Chairman of each Advisory Committee shall be appointed by the Central Government.

(4) The State Government shall publish in the Official Gazette the names of all members of every Advisory Committee.

7. CENTRAL ADVISORY COMMITTEE:

(1) The Central Government may constitute a Central Advisory Committee to co-ordinate the work of the Advisory Committee constituted under section 6 and to advise the Central Government on any matter arising out of Administration of this Act.

∟ as (2) The Central Advisory Committee shall consist of such number of persons/may be appointed to it by the Central Government and the members shall be chosen in such manner as may be prescribed;

Provided that the Central Advisory Committee shall include an equal number of members representing the Government, the principal employers of the Building and Construction Industry and the persons employed in the Building and Construction Industry.

(3) The Chairman of the Central Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the official Gazette of India the names of all members of the Central Advisory Committee.

"7A(1) An Advisory Committee or the Central Advisory Committee may, at any time and for such period as it thinks fit, co-opt any person or persons to the Committee.

(2) A person co-opted under sub-section (1) to a Committee shall exercise and discharge all the power and functions of a member thereof, but shall not be entitled to vote.

8. APPOINTMENT OF INSPECTORS ETC. AND THEIR POWERS.

(1) The Central Government/State may appoint as many Welfare Commissioners, Welfare Administrators, or Inspectors and such other Officers and Staff as it thinks necessary for the purpose of this Act.

(2) Every person so appointed shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(3) Any Welfare Commissioner, Welfare Administrator or Inspector may-

(a) with such assistance, if any, as he may think fit, enter at any reasonable time, any place which he considers it necessary to enter for carrying out the purpose of this Act;

(b) do within such place anything necessary for the proper discharge of his duties; and

(c) exercise such other powers as may be prescribed.

9. POWER OF CENTRAL GOVERNMENT TO EXEMPT:

Notwithstanding anything contained in this Act, if the Central Government is satisfied that there is in force, in any State or part thereof, a law making adequate provision for the financing of activities to promote the Welfare of persons employed in the Building and Construction Industry, it may, by notification in the Official Gazette, direct that all or any of the provision of this Act shall not apply or shall apply to such State or part thereof subject to such exceptions and modifications as may be specified in the notification.

10. ANNUAL REPORT ON ACTIVITIES FINANCED UNDER THIS ACT.

The Central Government shall as soon as may be after the end of each financial year cause to be published in the Official Gazette a report giving an account of its activities financed under this Act during the previous financial year, together with a Statement of accounts.

11. INTEREST

(1) If any principal employer or local body fails to pay any amount payable to the Central Government under section 4 within the period prescribed therefor under that section, such principal employer or local body, as the case may be shall be liable to pay simple interest at twelve percent per annum on the amount to be paid, from the date on which payment is due till such amount is actually paid.

(2) If any contractor or agent or sub-contractor or sub-agent fails to make the payment of cess payable to the principal employer fails to present the bill of payment to PFE to enable the later to deduct the amount of cess, within the period prescribed and in the manner prescribed therefor, such contractor or agent or sub-contractor or sub-agent, as the case may be, shall be liable to pay simple interest at twelve percent per annum on the amount to be paid, from the date on which such payment is due till such amount is totally paid.

Provided that the Central Government may prescribe limits, by notification in the Official Gazette to exempt the amount of interest in whole or a portion of that amount.

12. PENALTY FOR NON-PAYMENT OF CESS WITHIN THE PRESCRIBED PERIOD.

If any cess payable by the principal employer or

local body or contractor or agent as provided under section 4, is not paid to that Government within the period prescribed thereunder, it shall be deemed to be in arrears and the authority prescribed in this behalf may after such inquiry as it deems fit, impose on the principal employer, Local Body or Contractor or Agent, as the case may be, a penalty not exceeding the amount of cess in arrears.

Provided that before imposing any such penalty such principal employer or Local Body or Contractor or agent, Authority/Board/Commissioner and Undertaking etc., as the case may be shall be given a reasonable opportunity of being heard, and if after such hearing the said authority is satisfied that the default was for any good and sufficient reasons, no penalty shall be imposed under this Section.

13. RECOVERY OF AMOUNTS DUE UNDER THE ACT

Any amount due under this Act (including the interest or penalty, if any payable under section 11 or section 12 as the case may be from any Principal or Local Body or Contractor or Agent, Authority, Board, Commissioner or Undertaking as the case may be, may be recovered by the Central Government in the same manner as an arrear of land revenue.

14. PENALTY FOR EVASION OF CESS

(i) Whoever willfully or intentionally evade or attempts to evade the payment of cess payable by him under this Act, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both;

(ii) No court shall take cognizance of an offence punishable under this section, save on a Complaint made by or under authority of the Central Government.

15. OFFENCE BY COMPANIES

(i) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any 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 is attributable to any neglect on the part of, any director, manager, Secretary or other officer of the company, such director, manager, Secretary or other officer shall 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 any body corporate and includes a firm or other association of individuals; and
- (b) "Director" in relation to a firm, means a partner in the firm.

16. ACCOUNTING OF CESS:

The proceeds of cess levied under section shall be credited to the Consolidated Fund of India.

17. POWERS TO MAKE RULES:

(1) The Central Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the assessment and collection of the cess levied under this Act;

(b) the period within which the person or body executing the project works shall pay the cess to the principal project enterpriser.

(c) the manner in which the Principal Project Enterpriser and local body shall collect the cess.

(d) the period within which the principal project Enterpriser and the local body shall pay the cess to the Central Government collected by him.

(e) the period within which the person or body executing the project shall pay the cess to the local body;

(f) the determination of the cost of collection of the cess levied under this Act;

(g) the manner in which the Fund may be applied for the measures specified in section 5;

(h) the conditions governing the grant of loan or subsidy under clause (b) of sub section 2 of section 5;

(i) the standard of welfare facilities to be provided by the Principal Project Enterpriser, principal employers, contractors, agents, sub-contractors or sub agents for the purposes of clause (c) of sub section (2) of section 5.

(j) the determination of the amounts referred to in sub-clause (ii) of Clause (c) of sub-section (2) of section 5 and in the provision to that clause;

(k) the composition of the Advisory Committee and the Central Advisory Committee under section 6 & 7 respectively, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any payable to them and the manner in which the said Advisory Committee and the Central Advisory Committee shall conduct their business;

(l) the recruitment, conditions of service and the dues of all persons appointed under section 8;

(m) the powers that may be exercised by Welfare Commissioner or Inspector or a Welfare Administrator under section 8;

(n) the furnishing to the Central Government by the principal Project Enterpriser, local body, contractor, agent, principal employer of such statistical and other information as may be required to be furnished from time to time by the Government; and

(o) the authority which may impose any penalty under section 12.

3. In making any rule under clause (b) or clause (n) of sub-section (2), the Central Government may direct that a breach thereof shall be punishable with fine which may extend to Five thousand rupees.

4. Every rule made under this section shall be laid, / as soon as many be after it is made before each House / of Parliament, which it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session of the successive sessions aforesaid, both Houses agree in making any modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
