

Labour Act, 2048 (1992)

Date of Authentication

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Amendment Acts

1. Labour (first Amendment) Act, 2054 15 Magh 2054 (Jan. 28, 1989)
2. Child Labor (Prohibition and Regulation) Act, 2056* 7 Ashadha 2057 (June 21, 2000 A.D.)

Act No. 9 of the year 2049 B.S.

An Act to provide for Labour

Preamble: Whereas it is expedient to make timely provisions relating to labour by making provisions for the rights, interests, facilities and safety of workers and employees working in enterprises of various sectors.

Now, therefore, the Parliament has made this Act on the twenty first year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter 1.

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the "Labour Act, 2048 (1992)".
(2) It shall come into force immediately.
2. **Definitions.** In this Act, unless the subject or context otherwise requires :-:
 - (a) "Production process" means any of the following processes:
 - (i) works relating to making, altering, repairing, ornamenting, engraving, finishing, packing, oiling, washing, cleaning, breaking-up, dismantling or other kinds of activities given to any article or substance with a view of bringing it to its use, sale, distribution, transportation, or disposal.
 - (ii) pumping of oil, water, or sewage;
 - (iii) generating, transforming, and transmitting energy; or

* It came into force on 2054.7.18 (Nov. 3, 2000) by a notification published in the Nepal Gazette

- (iv) printing, lithography, photography, book-binding and other similar work.
- (b) "Enterprise" means any factory, [∞]company, organisation, association, firm, or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged and this expression also includes:
- (1) Tea estates, established under the law for commercial purpose;
 - (2) Enterprise operating within the industrial districts established by Government of Nepal where less than ten workers or employees are engaged.
- (c) "Employee" means persons engaged in the administrative functions of the enterprise.
- (d) "Worker" means a person employed on the basis of remuneration [×].....to work in any building, premises, machinery or any part thereof used for any productions process or providing service, or any act relating to such work or for any unscheduled works and this expression also includes any worker working at piece-rate, contract or agreement.
- (e) "Manager" means a person appointed for performing the functions in the Enterprise.
- (f) "Proprietor" means the person having final authority on the activities of the Enterprise and this expression also includes any person appointed as the Chief of any ^{*}branch or unit of the Enterprise with powers to exercise final responsibility or authority in respect thereof.
- (g) "Factory Inspector" means a factory inspector appointed by Government of Nepal and this expression also includes the Senior Factory Inspector.

[∞] Inserted by the First Amendment.

[×] deleted by the first Amendment .

^{*} Amended by First Amendment .

- (h) .[∞].....
- (i) "Minor" means a person who has attained the TM age of sixteen years but has not completed the age of eighteen years.
- (j) "Adult" means a person who has completed the age of eighteen years.
- (k) "Energy" means electrical or mechanical energy.

Provided that, this word shall not include any energy generated from human or animal sources.

- (l) "Seasonal Enterprise" means an Enterprise which cannot be operated or which is not feasible to operate in any season other than the specific season and this expression also includes a Seasonal enterprise which cannot operate more than one hundred and eighty days in one year.
- (m) "Day" means period of twenty-four hours starting from any midnight and ending at another midnight.
- (n) "Week" means a period of seven days starting from midnight on Saturday or from midnight of such other day as prescribed by the Department of Labour.
- (o) "Welfare Officer" means the welfare officer appointed under this Act.
- (p) "Labour Officer:" means the Labour Office appointed under this Act and this expression also includes the Senior Labour Officer.
- (q) "Labour Court" means the Labour Court under this Act.
- (r) " Remuneration" means the remuneration or wage to be received in cash or kind from the Enterprise by the worker or employee for the works performed in the Enterprise and this expression also includes any amount to be received in cash or kind for the works done under piece-rate or contract.

Provided that, this expression does not include any kind of allowance or facility.

[∞] Deleted by Child Labor (Prohibition and Regulation) Act, 2056.

TM Amended by the Child Labor (Prohibition and Regulation) Act, 2056

- (s) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

CHAPTER - 2

Employment and Security of Service

3. **Classification of Job:** (1) The Proprietor shall classify the job of the workers and employees of the Enterprise according to the nature of production process, service or functions of the Enterprise and shall provide the information thereof to the concerned Labour Office.

(2) If the classification done pursuant to Sub-section (1) requires any amendment, the Labour Officer may, stating the reasons thereof, issue a directive to the Proprietor and it shall be the duty of the Proprietor to abide by such directive.

4. **Appointment of Worker and Employee:** * (1) In cases where it is required to appoint a worker or employee in any post classified pursuant to Section 3, the Manager Shall have to advertise in order to select such a worker or employee and the worker or employee so selected shall have to be provided with appointment letter and be engaged at work..

(2) The worker and employee appointed under Sub-section (1), *shall be kept on probation period unless he/she completes the continuous service period of one year and, based on, his/her efficiency, sincerity discipline, diligence towards works, punctuality, etc in this period he/she shall be appointed permanently. An appointment letter shall be provided with the name of the post of the worker or employee and his/her remuneration and conditions of service while making such appointment. Information thereof shall also be provided to the Labour Office.

∞ **Clarification:** For the purpose of this Sub-section, the words " the continuous service period of one year" means the period of two hundred forty days engaged at

* Amended by First Amendment .

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∞ Inserted by the First Amendment.

work during a period of twelve months in an Enterprise, or the period served continuously in a Seasonal Enterprise during the period of such a running season, by a worker or employee and, while calculating the said two hundred forty days, public and weekly holidays shall also be counted.

(3) The worker or employee engaged on piece-rate or contract in the works of permanent nature of an Enterprise shall also be appointed permanently under Sub-section (2).

(4) The workers or employee engaged under Sub-section (3) shall be entitled to facilities provided in this Act according to the scale of his/her post.

(5) [×].....

[⊃]4A. **Prohibition of Engaging Non-Nepalese Citizens at Work:** (1) Non-Nepalese citizens shall not be permitted to be engaged at work in any of the posts classified pursuant to Section 3.

(2) Notwithstanding anything contained in Sub-section (1), if a Nepalese citizen could not be available for any skilled technical post even after publishing an advertisement in national level public newspapers and journals, the Manager may submit an application to the Department of Labour along with the evidence of such fact for the approval to appoint a non-Nepalese citizen.

(3) If it is found, in conduction of an inquiry upon the submission of any application pursuant to Sub-section (2), that a Nepalese citizen would not be available for the skilled technical post mentioned in the application, the Department of Labour may, on the recommendation of the Labour Office, grant approval to engage a non-Nepalese citizen at work years for a maximum period of upto five years not exceeding two years at a time and, in the specialized kind of skilled technical post, for a period upto seven years.

(4) The Manager, who engages non-Nepalese citizens at work pursuant to Sub-section (3), shall have to make arrangements for making the Nepalese citizens

[×] deleted by the first Amendment .

[⊃] Inserted by the First Amendment.

skilled and for replacing the non-Nepalese citizens gradually by them. "

5. **Engagement in Work:** (1) [∞]

(2) Minors and females may be engaged in the works normally from six o'clock in the morning till six o'clock in the evening, except in the prescribed conditions.

(3) By making an appropriate arrangement with mutual consent between the proprietor and the worker or employee, the females may also be engaged in the works similar to the males.

[∞] (4) The Manager may transfer a worker or employee to any branch or unit of the Enterprise without causing any difference in the nature or standard of work. .

(6) **Computation of period of Works:** For the purpose of computing the period of works performed in the Enterprise by any worker or employee, the following period shall also be counted.

(a) the period remained in reserve under Section 11; and

(b) the period stayed ^{*}with remuneration leave.

^{*}7. **Appointment in Contract Service:** If an Enterprise needs to increase in production or service immediately, any person may be appointed in contract, by fixing a time period and setting forth the remuneration to be received by him/her and the terms of service, for any specified work other than the works of the Enterprise which are permanent in nature.

8. **Change of Ownership shall not Adversely Affect:** Any change in the ownership of the Enterprise shall not be deemed to have affected on the terms and conditions of service of the workers and employees of the Enterprise.

[∞] Deleted by Child Labor (Prohibition and Regulation) Act, 2056.

[∞] Inserted by the First Amendment.

^{*} Amended by First Amendment .

^{*} Amended by First Amendment .

9. **Separate Registers of the Workers and Employee to be Kept:** (1) In each Enterprise, the Proprietor shall maintain separate registers of the workers and employees mentioning the following particulars –
- (a) Name of the worker or employee,
 - (b) Nature of job,
 - (c) Remuneration and method of its payment,
 - (d) Other prescribed particulars.
- (2) The register maintained under Sub-section (1) shall have to be submitted when demanded by the Labour Officer, Factory Inspector or any other person designated by the Labour Office.
10. **Security of Service:** The service of any permanent worker or employee may not be terminated without following the procedures prescribed by this Act or the Rules or Bylaws made under this Act.
11. **Keeping on Reserve:** (1) In case where the curtailment of production or service in any Enterprise for some period is necessary or where operation of the Enterprise cannot be continued for some special circumstance, the Proprietor, under Sub-section (2), may curtail its production or service or may close the Enterprise or a part of thereof.
- (2) Permission from the Labour Office in case of a period up to fifteen days and from the Department of Labour in case of a period for more than that shall have to be taken while curtailing the production or service or closing the Enterprise or any part thereof as mentioned in Sub-section (1). The Labour Office shall, inform the Department of Labour of such permission in case it has given permission.
- (3) While doing curtailment in the production or service pursuant to Sub-section (1), any worker working on shifts or on wages or ***permanent worker or employee of the Enterprise except the employee** shall be kept reserve on the condition of receiving half of his/her remuneration.

* Amended by First Amendment .

Provided that, such worker or employee shall continue to receive the appropriate facilities which he/she is receiving.

(4) If any worker or employee kept in reserve pursuant to Sub-section (3) refuse to work on another assignment or similar nature equal *on remuneration offered by the proprietor in the same Enterprise or another Enterprise under his/her control or if he/her does not come in the Enterprise once a day during office hours or on other situations as prescribed, the Proprietor may withheld the remuneration and facility of such worker and employee.

12. **Retrenchment and reinstatement:** (1) If, for any special circumstances, the production or service of the Enterprise had to be curtailed or the Enterprise has to be closed partly or wholly for more than three months, the Proprietor may, with the approval of Government of Nepal through the Department of Labour, retrench in the number of the workers and employees, partly or wholly, of the Enterprise.

⊗ (1A) If the Manager makes a demand to Government of Nepal for approval in respect of the retrenchment of workers or employees pursuant to Sub-section (1), Government of Nepal shall have to make decision within two months on whether such retrenchment of employees to be made or not.

(2) While retrenching the workers or employees under Sub-section (1), engaged in similar type of works, those *permanent workers or employees who \were appointed in the last shall be retrenched first.

Provided that, if it is required to retrench some of the workers or employees appointed earlier, not following the prescribed order of retrenchment such retrenchment may be made by specifying the reasons thereof.

(3) While doing retrenchment as per Sub-section (2), it shall be done as follows –

* Amended by First Amendment .

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- (a) By providing a notice with the reasons or retrenchment either one month in advance or paying the remuneration of one month in case of worker or employee who is permanent [✕]..... and
- (b) By paying a lump sum compensation to each worker or employee of the amount of remuneration calculated by multiplying the number of each year of service performed at the Enterprise by the amount of his/her present remuneration for 30 days.

Explanation: For the purposes of this Clause, the work performed for at least six months in any year shall be counted as one year of service.

(4) The provisions of Sub-section (3) shall not applicable to any worker or employee appointed under contract service.

(5) If anybody has to be engaged in the job of worker or employee retrenched earlier, priority shall be given to the retrenched workers or employees.

Explanation: For the purposes of Section 11 and 12 the "Special Circumstance" shall mean damage, break down or failure of machines or the Enterprise and thereby causing stoppage in the production or failure in the supply of fuel, electricity, coal or similar energy or due to any kind of force majeure or insufficient supply of raw materials or stock piling of the produced goods due to loss of sale or other similar situations.

13. **Seasonal Enterprise:** (1) The workers or employees of a seasonal Enterprise shall not be deemed to be on reserve during off-season period.

(2) The beginning and closure of operation of seasonal Enterprise shall be informed to the Labour Office.

(3) The permanent worker of employee shall have to be paid with at least twenty five percent of his/her remuneration as retaining allowance for the period of closure of a seasonal Enterprise during off-season..

(4) The decision of the Department of Labour shall be final in relation to

[✕] deleted by the first Amendment .

any dispute as to whether any Enterprise is a seasonal or not.

Explanation: While computing the period of two hundred and forty days, the public Holidays and weekly holidays shall also be counted.

14. [×].....

15. **Compulsory Retirement:** The Proprietor may compulsorily retire any worker or employee who has crossed the age of fifty five years.

Provided that he/she may extend the period of service of any worker or employee by five years, in case the worker or employee is indispensable for the operation of the functions Enterprise.

CHAPTER – 3

WORKING HOURS

16. **Working Hours:** No worker or employee shall be deployed in work for more than eight hours per day or forty eight hours per week and they shall be provided one day as weekly holiday for every week.

17. **Computation of Commencement of Working Hour:** The time for starting of work by worker or employee shall be as prescribed by the Proprietor.

18. **Intervals for Refreshment and Rest:** In any Enterprise where work may be interrupt, no worker or employee shall be deployed in work for more than five hours continuously without providing an interval of half an hour for tiffin. In any Enterprise where works have to be carried out continuously without interruption, such intervals shall be provided on rotation basis. Such interval of half an hour shall be deemed to have been included within the daily working hours.

19. **Extra Wages for overtime to be Provided:** (1) Where any worker or employee is engaged to work for more than eight hours in a day or forty eight hours in a week, he/she shall be paid overtime wages at the rate of one and one-half time of his/her ordinary rate of wages.

Provided that, no worker or employee shall be compelled to work overtime.

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(2) While deploying any worker or employee to work overtime, generally the duration shall not exceed four hours per day and twenty hours per week.

20. **Attendance Register to be Kept:** Each Enterprise shall keep attendance register of its workers and employees.

CHAPTER – 4

Remuneration

- *21. **Minimum Remuneration Fixation Committee:** (1) Government of Nepal may fix the minimum remuneration, dearness allowances and facilities of workers or employees or Enterprises on the recommendation of the Minimum Remuneration Fixation Committee and the notification on rates so fixed shall be published in the Nepal Gazette.

(2) Government of Nepal shall, in order to fix the minimum remuneration, dearness allowances and facilities, constitute a Minimum Remuneration Fixation Committee consisting of the equal number of representatives of workers or employees, Managers and Government of Nepal.

(3) While making recommendation in regard to dearness allowances and facilities of workers or employees, the Minimum Remuneration Fixation Committee constituted under Sub-section (2) may do so on the basis of geographical areas.

(4) The rates of minimum remuneration, dearness allowances and facilities fixed pursuant to Sub-section (1) shall be effective only from the date of publication of a notification to that effect in the Nepal Gazette.

(5) In cases where the Minimum Remuneration Fixation Committee could not be constituted or even if it is constituted, it could not make recommendation, nothing contained in the foregoing Sub-sections shall be deemed to have barred

* Amended by First Amendment .

fixing the minimum remuneration, dearness allowances and facilities of workers and employees of Enterprises by Government of Nepal.

(6) No agreement may be entered into between the manager and workers or employees in a way to make the minimum remuneration, dearness allowances and facilities lesser than those fixed pursuant to Sub-section (1).

(7) The other functions, duties and powers of the Minimum Remuneration fixation Committee shall be as prescribed.

21A. **Annual Increment in Remuneration:** (1) The worker and employee appointed permanently pursuant to Sub-section (2) of Section 4 shall receive an increment in remuneration each year.

(2) The amount of increment in remuneration to be received pursuant to Sub-section (1) shall be equal to the half day's remuneration of the concerned worker or employee.

(3) Notwithstanding anything contained in Sub-section (1) above, such increment in remuneration shall not be provided in cases where the remuneration is withheld pursuant to subsection (2) of Section 52.

*22. **Payment of Remuneration, Allowances and Facilities:** It shall be the responsibility of the concerned Manager to provide the remuneration, allowances and facilities to be received by a worker or employee of the Enterprise.

23. **Period of Remuneration:** The Proprietor may fix the period of payment of remuneration to the workers or employees on weekly, fortnightly or monthly basis in way not exceeding the period of one month.

Provided that, this provision shall not apply in respect of the persons who are working on daily wages, piece-rate or contract basis.

24. **Prohibition on Deduction of Remuneration:** (1) The remuneration of workers or employees shall not be deducted except under the following circumstances –

21A. Inserted by the First Amendment.

* Amended by First Amendment .

- (a) In case it is required to realize any fine.
- (b) In case it is required to deduct against absence;
- (c) In case it is required to deduct against loss or damage of cash or kind of the Enterprise caused intentionally or negligently;
- (d) In case it is required deduct in respect of providing prescribed facilities;
- (e) In case it is required to deduct in respect of advance or over payment of remuneration;
- (f) In case it is required to deduct in respect of the period of suspension;
- (g) In case it is required to deduct under the order of government office or court'
- (h) In case it is required to deduct as per the notification of Government of Nepal published in the Nepal Gazette; or
- (i) In case it is required to deduct in respect of income tax or any other tax levied under prevailing laws.

(2) The limit of amount to be deducted pursuant to Sub-section (1) the method of deduction, the period of deduction and other related matters shall be as prescribed.

***25. Petition to be Filed in cases a Deduction in Remuneration Made or Delay Caused in Payment or other Facilities not provided or Delay Caused in providing such Facilities in an Undue Manner:** (1) Except in cases of happening of a mistake or failure to fix the remuneration amount or inability to pay the remuneration due to the occurrence of an unforeseen incident or of special circumstance or failure on part of the concerned worker or employee to come to receive his/her remuneration or his/her refusal to receive the same; if, in an undue manner, a deduction in remuneration is made or a delay is caused in payment or in case of release from suspension or annulment of expulsion by a judgment of a court,

* Amended by First Amendment .

the remuneration for the period of such expulsion or suspension is not paid or a delay is caused in such payment or the allowance, gratuity or the amount of provident fund or compensation to be received by a worker or employee is not paid or delay is caused in such payment, the concerned worker or employee him/herself or through his/her attorney may file a petition in the Labour Office.

(2) The petition as referred to in Sub-section (1) shall have to be filed within six months from the date of deduction in remuneration or causing delay in payment or non payment of allowance, gratuity, amount of provident fund or compensation or causing delay in such payment.

(3) While conducting necessary inquiry and examination on the petition filed pursuant to Sub-section (1), if it is proven that the remuneration has been deducted in an undue manner or a delay has been caused in payment or the amount of allowance, gratuity, provident fund or compensation has not been paid or a delay has been caused in such payment, the Labour Office may give order requiring to make payment of such remuneration, allowance, gratuity, amount of provident fund or compensation to the concerned worker or employee and to pay the concerned worker or employee amount upto three times of such amount in default for atonement thereof.

(4) If it is proven that the petition under Sub-section (1) has been filed with a malicious motive or with an intention of causing unnecessary trouble or distress to the Manager, the Labour Office may give order requiring the petitioner to pay not exceeding one thousand rupees for compensation to the Manager.

(5) The Labour Office shall make available to the concerned party the amount to be paid or handed over in accordance with the order issued under Sub-section (3) or (4) by getting recovered and realized the same by taking all or any of the following action:-

- (a) By keeping withheld the movable and immovable properties of the concerned Enterprise, worker or employee in accordance with the prevailing law,

- (b) By keeping withheld the deposit amount of the concerned Enterprise, worker or employee being kept in any Government Office or in any Corporate body with the ownership of Government of Nepal or the amount to be paid or handed over the concerned Enterprise, worker or employee by such Office or corporate body,
 - (c) By keeping withheld the import or export of the concerned Enterprise, worker or employee.
 - (d) By keeping withheld the discount, facilities or concessions of the concerned Enterprise, worker or employee to be obtained under the prevailing law.
26. **Appeal:** The party dissatisfied with the Order issued pursuant to Sub-section (3) or (4) may file an appeal to the Labour Court within thirty five days of the receipt of information of such order and the decision of the Labour Court shall be final.

CHAPTER – 5

Health and Safety

27. **Provisions Relating to Health and Safety:** The Proprietor shall make the arrangements in the Enterprise as mentioned below –
- (a) To Keep each Enterprise clean and tidy by cleaning daily including with germicidal medicines, necessary arrangements of proper drainage and coloring from time to time and preventing from odor;
 - (b) To make arrangements for adequate supply of fresh air and light as well as proper temperature in the working rooms;
 - (c) To make arrangements of removal and disposal of solid waste during production process,
 - (d) To make arrangements of prevention of accumulation of dust, fume, vapour and other impure materials in working rooms which would adversely affect the health;
 - (e) To make arrangements of necessary preventive personal devices for protection of health from adverse any other source, and make

provisions this would produce less noise during the work process;

- (f) To avoid any congestion in the work-room or work place leading to injurious to the health of workers or employees and to avail working space to each worker or employee, according to the nature of the job, or normally fifteen cubic meters and, the height above four meters from the floor surface shall not be counted for such purposes.
- (g) To make provisions for sufficient supply of pure potable water during the working hours, and to make arrangement for sufficient water in the Enterprise where chemical substances, are used or produced which may be injurious to the health, for the purpose of extinguishing fire or washing and cleansing during emergency situations;
- (h) To make provisions for separate modern type toilets for male and female workers or employees at convenient place;
- (i) To declare as non-smoking zone in all or some parts of the Enterprise, according to the nature of its works; and
- (j) Too cause to conduct compulsory health check-ups of the workers or employees once every year in the Enterprises where the nature of works is likely to affect the health adversely.

28. **Protection of Eyes:** (1) Necessary protective means shall have to be arranged for the protection of eyes of the workers and employees from injuries likely to be caused by dust or pieces while working in the Enterprise using glass, mercury, magnet, pallets, iron, concrete, cement, lime, stone and explosive substances.

(2) Necessary protective devices shall have to be arranged to protect the eyes from harmful rays coming from during the process of welding or gas-cutting, or other similar works.

29. **Protection from Chemical Substance:** The Proprietor shall have to make provisions for necessary personal protective devices for the protection of workers or employees handling chemical substances.

30. **Provision for Safety Against Fire:** (1) The Proprietor shall have to make arrangements of necessary modern equipment for safety against fire in each Enterprise.
- (2) Provision shall have to be made for easy exit from the Enterprise during emergency.
- (3) Other provisions to be made by the Enterprise in relation to safety from fire including fire-fighting devices shall be as prescribed.
31. **Hazardous Machines to be fenced:** (1) Strong fences shall have to be placed around every part of hazardous machines, instruments and equipment operated by energy.
- (2) In case it is required to do inspecting, lubrication or adjusting any part of hazardous machines during its running condition only experienced and well-trained adult worker or employee shall have to be engaged to perform such works.
32. **In relation to Lifting of Heavy Weight:** (1) No worker or employee shall be engaged in the works of lifting, loading or transporting any load likely to cause physical injury or harm to the health.
- (2) The maximum load to be lifted, loaded or transported by an adult, minor, male or female workers or employees shall be as prescribed.
- [®]32A. **Minor not to be engaged in Works without Adequate Guidelines or of Vocational Training:** (1) No minor shall be engaged in works without adequate directives about the concerned working areas or vocational training.
- (2) Provisions with regard to adequate directives about the concerned working areas or vocational training to be given to minors pursuant to Sub-section (1) shall be as prescribed.

[®] Inserted by the Child Labor (Prohibition and Regulation) Act, 2056

(3) The entrepreneur engaging a minor in work against Sub-section (1) shall be liable to a punishment of imprisonment up to three months in maximum or a fine of ten thousand rupees in maximum or the both.

®32B. **Disputes Relating to Age:** (1) In case a dispute arises with regard to age of a minor engaged in an enterprise, the age mentioned in the date of birth certificate of the minor shall be deemed to be his/her actual age.

(2) In case a minor does not have birth registration certificate after having carried out medical tests the age determined by a medical practitioner prescribed by the Department of Labor shall be deemed to be his/her actual age.

33. **Pressure Plants:** (1) In case a machine has to be operated at a pressure more than the atmospheric pressure in course of the production process of any Enterprise, necessary effective measures shall have to be adopted in a way that such machine will not be operated at a pressure heavier than safe working pressure.

(2) Provisions in relation to testing, certifying and licensing for operation of the machines mentioned in Sub-section (1) shall be as prescribed.

34. **Orders to Provide for Safety :** (1) In the situation where provision of safety has not been made which was required to be done pursuant to this Act, in any Enterprise, the Labour Office may issue a written order to the Enterprise giving a reasonable time limit in order to provide and make necessary arrangements thereon within such period.

(2) If the order issued as per Sub-section (1) has not been followed, the Labour Office may, order the closure of such unsafe portion, plant or machinery or the Enterprise and it shall be the duty of the Enterprise to abide by such order.

35. **Notice to be Provided:** (1) Each Enterprise shall have to inform the Labour Office within three days if any worker or employee dies or is injured making him/her disabled to work for more than forty eight hours, from an accident occurred in the

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Enterprise or for any other reason, and within seven days if such worker or employee has been caught by any disease resulting from the profession.

(2) The authority empowered to investigate the accident or disease mentioned in the information given pursuant sub-section (1), his/her powers, functions, duties, and the procedures relating thereto shall be as prescribed.

36. **Powers to Determine the Standards:** (1) Government of Nepal may prescribe the standards of safety required under this Chapter as per necessity by publishing a notice in Nepal Gazette.

(2) Except those mentioned in Sub-section (1), other provisions relating to health and safety to be adopted while using machinery, instruments or equipment in the Enterprise shall be as prescribed.

CHAPER – 6

Welfare Provision

37. **Welfare Fund:** The Enterprise shall have to establish a Welfare Fund, as prescribed for the welfare and benefit of the workers or employees.

38. **Compensation:** In case any worker or employee of the Enterprise is physically wounded or seriously hurt or dies in course of his/her work, the compensation shall be paid to him/her or to his/her family, as prescribed.

39. **Gratuity, Provident Fund and Medical Expenses:** The gratuity, provident fund and facilities relating to medical expenses to be provided to the workers and employees shall be as prescribed.

40. **Leave:** The public holidays, sick leave, annual leave, maternity leave, obsequies leave, special leave, with remuneration or without *remuneration leave, etc. to be enjoyed by the workers and employees of each Enterprise shall be as prescribed.

41. **Provision of Quarters:** (1) The proprietor shall each year allocate not less than five percent of the gross profit of the Enterprise to provide healthy quarters for the

* Amended by First Amendment .

workers and employees and shall gradually build such quarters.

(2) A separate fund shall have to be maintained for depositing such amount allocated pursuant to Sub-section (1).

(3) The operation of the fund as mentioned in Sub-section (2) shall be as prescribed.

42. **Provisions Relating to Children:** (1) Where fifty or more female workers and employees are engaged in the work, the Proprietor of the Enterprise shall have to make provisions of a healthy room for the use of children of such female workers and employees.

(2) A trained nurse, including some necessary toys, shall also be arranged for the children as mentioned in Sub-section (1).

(3) The female workers and employees shall be provided time, as necessitated, to feed their suckling babies.

43. **Relaxing Room:** Where fifty or more workers and employees are engaged at work, the Proprietor of the Enterprise shall have to make provisions for relaxing room with minimum amenities.

44. **Canteen:** Where fifty or more workers and employees are engaged in work at one time, the Proprietor of the Enterprise shall have to make provisions for a canteen.

CHAPTER – 7

Special Provisions to be Applicable to Special Type of Enterprise.

45. **Tea-Estate:** (1) The Special provision mentioned as below shall be applicable in respect of the tea estates –

(a) **Formation of Committee:** Government of Nepal may constitute, as prescribed, a Committee to provide necessary advice on promotion, policy formulation and other related matters in respect of the tea estates.

(b) **Provision of Quarter:** The Proprietor shall have to make arrangements for appropriate quarters within the tea-estate for the

workers who do not have their residence nearby.

- (c) **Provisions of Primary Health Care:** The Proprietor shall have establish a primary Health Care Center under the responsibility of a trained employee in order to provide free primary treatment of minor injuries to the workers and employees engaged within the tea-estate and to the members of their family.
 - (d) **Safety Devices:** The Proprietor shall have to provide safety devices and equipment required for personal protection of the workers of the tea-estate.
 - (e) **Provisions of Primary School:** The Proprietor of a Tea-estate shall run a primary school if there are fifty or more children of the age between five and fourteen years, receiving primary education, of the workers residing in the quarters provided by the tea-estate and in case there is no school within a distance of one kilometer from the tea-state.
 - (f) **Daily Consumer Goods:** The Proprietor shall have to arrange to make the daily consumer goods easily available to the workers and employees, if there is no market near the tea-estate.
 - (g) **Provision for Entertainment:** The Proprietor shall have to make necessary arrangements for appropriate sports facilities within the tea-estate for physical and mental development of the workers of the tea-estate.
 - (h) **To get the works done on contract:** This Section shall not be deemed to prevent from entering into agreement between the Proprietor and the workers of the tea-estate in respect of doing certain specified works of the tea-estate under contract.
- (2) For the purpose of this Section –
- (a) "Tea-estate" means tea-estate registered under prevailing laws with commercial objective and this expression also includes the factory

established therein.

- (b) "Worker of tea-estate" means any person engaged in the tea-estate for digging, ploughing, levelling, picking, spraying, sowing, cutting, reaping, plucking, derooting and doing other similar works and this expression also include any person engaged for cleaning any house, land or machinery or its parts inside the tea-estate or any person doing any other works related to the tea- estate.

46. **Construction Business** : The following special provisions shall apply in respect of the construction business –

- (a) **Provisions for Construction Tools**: The Proprietor shall have to avail from its own side all necessary tools and material in sufficient quantity for the workers engaged in the construction works at construction site.

Explanation: For the purpose of this Section, "construction work" means the construction work of building, road, bridge, canal, tunnel, internal or interstate waterways or railways, or installing of telecommunication equipment or machine including those of electricity, telephone or telegraph or other works relating to construction.

- (b) **Special Arrangements at Temporary Construction Sites**: At the temporary construction work sites, where fifty or more workers are engaged, the Proprietor shall have to make arrangements for quarters, food stuffs, drinking water, etc. for the workers who do not have residence nearby.
- (c) **Accident Insurance**: The Proprietor shall have to insure all workers engaged in the construction site against accident in the way as prescribed.
- (d) **Safety Arrangements**:
 - (1) The Proprietor shall have to make necessary and adequate

arrangements of safety at the sites of construction works.

- (2) The Proprietor shall have to arrange of personal protective equipment necessary for the workers engaged in construction works.

47. **Transportation Business:** (1) The following special provisions shall apply in Respect of the Transportation Business _

(a) **Working Hours:**

- (1) The worker and employee of the transport vehicle may be deployed in work till reaching the destination.

Provided that, in a passenger transport vehicle operating *in long route, at least two drivers shall be engaged to drive it alternately.

*"Explanation : for the purpose of this Section, "long route" means the long route as referred to in Clause (aa) of Section 2 of the Motor Vehicle Transport Management Act, 2049 (1992)."

- (2) The driver of a vehicle transporting animals or goods and operating in the long distance route shall be allowed to take rest at several places before reaching the destination.

- (b) **Trip Allowance:** In case worker or employee of the transportation service is engaged for more than eight hours, he/she shall be paid overtime at the rate of one and one-half times of his/her present amount of remuneration.

Provided that, if the worker or employee engaged in a operating vehicle is paid with any trip allowance, fooding allowance or any such other allowance, he *shall receive such allowance or one and

* Amended by First Amendment .

* Amended by First Amendment.

* Amended by First Amendment.

half of the amount of remuneration to be received by him/her, which one is greater.

- (c) Fifty percent Allowance to be received during Breakage or Waiting Period: In case any worker or employee engaged in operating vehicle has been stayed idle due to breakage of the vehicle before reaching destination or while the vehicle had been in waiting for its return, such person shall receive fifty percent of the allowance payable during the operating time of the vehicle .
- (d) Accident Insurance : The proprietor shall insure all workers and employee engaged in the vehicle operating against accident in the manner as prescribed .
- (e) First Aid Materials : The operator of transportation business shall keep sufficient medicines and materials of first-aid treatment in each vehicle.
- (f) Prohibition of Consumption of Alcoholic Drinks:
- (1) No worker or employee in any vehicle used for transportation of passengers, animals or goods shall consume alcoholic drinks before driving of the vehicle till reaching to the destination.
 - (2) In case a vehicle is operated by any worker or employee after consuming alcoholic drink, the Proprietor may, on charge of misconduct, dismiss him/her from the service.
Provided that, the concerned worker or employee shall be provided with an opportunity to defend him/herself before dismissing him/her from service.
 - (3) Any person aggrieved by the order issued under Sub- clause (ii) may appeal in the Labour Court within thirty five days from the receipt of notice of dismissal from service.
- (g) Commission Agent: The facilities under this Act shall not be

provided to Commission Agent engaged in bookings or carriage of goods who is not registered in the Register of the transportation Enterprise.

- (h) Change in Ownership: In case the transport vehicle is sold or there is change in ownership and if it is deemed necessary to terminate the services of any permanent worker or employee who has completed one year continuous service, the transportation businessperson, may terminate the service on payment of compensation and facilities payable under this Act, including such additional compensation as may be available pursuant to mutual agreement entered into or understanding reach between the Proprietor and the worker or employee.

(2) For the purposes of this Section, "Transportation business" means a transport service engaged in carriage of passengers, animals or goods from one place to another taking rents in a vehicle operated by means of mechanical device.

✎ (3) The Provision set forth in this Section and the provisions of Section 4,10,72,73 and Chapters 4 and 8 shall be applicable in respect of the Enterprise related with transportation business where less than ten workers or employee are engaged at work.

48. **Business of Hotel, Travel, Trekking, Adventure, Rafting, Jungle Safari etc:**

The following special provisions shall apply in respect of the business of hotel, travel, trekking, adventure, rafting, jungle safari, etc:-

- (a) Females may be engaged in work: Females may be deployed in works in a hotel or travel agency at any time by making special arrangements of safety according to the nature of works.
- (b) Safety of Workers or Employees engaged in Trekking or Rafting:
- (I) The Proprietor shall compulsorily have to make arrangement,

✎ Inserted by the First Amendment.

as per necessity, for personal protective equipment and necessary clothing, shoes and other articles for protection of health of the workers or employees engaged in trekking rafting or other adventures sports.

(II) It shall be the responsibility of the concerned Proprietor to rescue or cause to rescue operation as may be required.

(c) Accident Insurance: The Proprietor shall insure all workers and employees engaged in trekking, rafting jungle safari or other adventure sport against accident in the way as prescribed.

(d) Payment of Field allowance etc: The Proprietor shall have to provide field allowance, fooding allowance or other similar allowance while sending workers or employees engaged in trekking, rafting or other similar adventure sport to the working place and in case such allowance have been provided no additional overtime shall be paid as provided in this Act.

(e) Provisions for First Aid: The Proprietor shall have to avail adequate supply of medicines and materials of first-aid while sending the workers or employees engaged in trekking rafting or other adventures sport to the work-sites.

49. Applicability of other Provisions: The provisions of this Act and the Rules made hereunder shall also be applicable in respect of the Enterprises mentioned in Sections 45, 46, 47 and 48, in addition to the provisions specified in this chapter.

CHAPTER – 8

Conduct and Punishments

50. Type of Punishment: The Proprietor may punish any worker or employee performing misconduct with any of the following punishments.

- (a) To reprimand,
- (b) To withheld annual grade increments,
- (c) To suspend, or

(d) To dismiss from service.

51. **Misconduct:** For the purpose of Section 50, the following conduct of the worker or employee shall be deemed as misconduct:

- (a) In case of any bodily harm or injury or fetters or detains to the Proprietor, Manager or Employee of the Enterprise with or without use of arms or injury or causes any violence or destruction or assault within the Enterprise in connection with the labour dispute or on any other matter;
- (b) In case creates or causes to create any stir within the Enterprise with an intention or affecting the production process or service works of the Enterprise, or prevents the supply of food and water, or connection of telephone and electricity, or obstructs the entry into or movement within the Enterprise;
- * (c) In case steals the property of enterprise;
- ∞ (C1) If commits embezzlement in the transactions of the Enterprise,
- ∞ (C2) If absents in the Enterprise more than a consecutive period of thirty days without notices.
- (d) In case accepts or offers bribes;
- (e) In case imprisoned on being convicted on a criminal offence Involving moral turpitude.
- (f) In case participates or compels any other person to participate in any authorized strike or in a strike which is declared illegal;
- (g) In case strikes without fulfilling the legal requirements or intentionally slow down the work against interests of the Enterprise;
- (h) In case intentionally destroys any property of the Enterprise, or causes damage thereon or takes and uses it outside the Enterprise or

* Amended by First Amendment.

∞ Inserted by the First Amendment.

∞ Inserted by the First Amendment.

gives its use to unauthorized person without permission of the competent person;

- (i) In case intentionally violates intentionally the orders or directives issued under this Act or the Rules made hereunder frequently, Or the Bylaws made by the Enterprise, or misbehaves with the customers of the Enterprise;
- (j) In case remains absent from the work frequently without obtaining permission or comes late after the regular time;
- * (k) If it is certified by a doctor that one has come to the duty after consuming or has consumed alcoholic substances during the working time.
- (l) In case performs any activity with a motive of causing damage to secrecy relating to special technology of the Enterprise, [∞]Production Formula or;
- (m) In case abuses any items which has been kept for the interest, Health and safety of the workers or employees or causes damage to them intentionally;

52. **Punishment:** (1) Any worker or employee, who commits any misconduct as mentioned in *Clauses (i), (j) or (m) of Section 51 may be reprimanded.

(2) Any one who commits any misconduct as mentioned in * Clause (C1), (f), (g) or (n) of Section 51, may be punished withholding the annual grade of remuneration.

(3) Anyone who commits any misconduct mentioned in * Clause (b), (d) or (k) of Section 51 may be suspended for up to three months.

* Amended by First Amendment.

∞ Inserted by the First Amendment.

* Amended by First Amendment.

* Amended by First Amendment.

* Amended by First Amendment.

(4) Anyone who commits any misconduct mentioned in *Clauses (a), (c), (c2) (e) or (1) of Section 51 may be dismissed from service.

(5) Any workers or employee, who has been punished twice for any offence of misconduct according to Sub-section (1), (2) or (3) commits again the same offence, may be dismissed from service.

⊃ Provided that the punishment received under Sub-section (1) shall not be counted after the expiry of three years.

⊃(6) Nothing contained in this Section shall be deemed to have barred the Manager from imposing a punishment lesser than those prescribed under this Section.

53. **Procedures:** *(1) Before imposing punishments under Section 52 upon a permanent worker or employee, a notice of at least seven days with setting forth in a obvious manner the fact of the misconduct and the punishment as may be imposed if such fact is proven, shall have to be given to such a worker or employee to submit his/her clarification thereof.

Provided that, after the expiry of two months from the date of such misbehavior, no action may be taken in this respect.

* (2) If the worker or employee does not submit his/her clarification within the time limit as referred to in Sub-section (1) or the clarification so submitted is not satisfactory, he/she may be punished under Section 52 for the misconduct .

Provided that, in making decision in respect of imposing such punishment, it shall have to be made within two months from the date of seeking clarification.

(3) If the notice send to the concerned worker or employee is not accepted by him/her or, in case of his/her absence, if the notice is sent by post under registered post at his/her address and a copy of such notice is kept in the public notice board of

* Amended by First Amendment.

⊃ Inserted by the First Amendment.

⊃ Inserted by the First Amendment.

* Amended by First Amendment.

the Enterprise, and the service document is prepared on the witness of at least three person and if a copy of such notice is also provided to the concerned Labour Office, the concerned worker or employee shall be deemed to have been duly provided of such notice.

54. **Department of Labour may dismiss from service:** (1) The Department of Labour ^{*}may impose any punishment pursuant to Section 52 to any worker or employee who causes violence illegally in any Enterprise, other than his/her Enterprises or in any government office, or if he/she directly or indirectly encourages others to do so.

(2) In case any worker or employee has ^{*}to punish, the procedures as laid down in Section 52 shall have to be followed.

55. **Misconduct of Proprietor or Manager:** (1) If the Proprietor or Manager commits any of the following acts, it shall be deemed as misconduct:

- (a) In case contravenes or disobeys this Act or the Rules made hereunder or any order or directive issued thereunder.
- (b) In case the Enterprise is closed or the workers or employees are retrenched in contravention of this Act;
- (c) In case a lock-out declared illegal is continued;
- (d) In case any worker or employee is assaulted or manhandled; or
- (e) In case performs any activity to incite or provoke the workers or employees in order to create dissension or enmity among the workers or employees.

^{*}(2) The concerned Labour Office may fine the Manager or proprietor, who conducts any misbehavior under Sub-section (1) above, upto ten thousand rupees, may make available proper compensation if any damage or loss is caused to any worker or employee and may give an order to reinstate the worker or employee retrenched pursuant to Clause (b) of Sub-section (1) above.

* Amended by First Amendment.

* Amended by First Amendment.

* Amended by First Amendment.

* Amended by First Amendment.

(3) [ⓧ].....

56. **Punishment for Obstruction to Government Employee** : In case any person obstructs to any government employee engaged in any function under this Act, or refuses to submit any Register Book or any document required to be submitted to him/her, or fails to produce or presents to the examination of any worker or employee ordered to be produced or examined by him/her, the Labour Office may punish such person with a fine ^{*}upto Five Thousand Rupees.
57. **Other Penalties**: Except those punishments as provided in other Sections of this Act, any person contravening any other matter mentioned in this Act or the Rules made hereunder or the written order or directives issued thereunder, the Department of Labour may punish, for each offence and according to the gravity of such offence, a fine from ^{*}upto Ten Thousand Rupees, and if such offence is committed (continued) again after it is proven, he/she may be punished with an additional One Hundred Rupees for each day, except those punishment as mentioned in other sections of this Act.
58. **Quashing of Illegal Acts** : Except as provided to the contrary in this Act or in the Rules made hereunder, if any activity contrary to this Act or the Rules made hereunder has been performed such activity shall be quashed by the order of the Department of Labour.
59. **Instituting of case and Limitation** : (1) Any case relating to the offence punishable under this Act may be instituted only on the complaint lodged by the Labour Office or a person authorized by such office [Ⓢ]or by the aggrieved or the concerned person or the concerned Trade Union.
- (2) Any case relating to the offenses punishable under this Act shall have to be instituted within three months thereof.

[ⓧ] deleted by the first Amendment .

^{*} Amended by First Amendment.

^{*} Amended by First Amendment.

[Ⓢ] Inserted by the First Amendment.

✕

(3) In case any particular authority of punishment has been specified under various Section of this Act in respect of trail of any offence committed under this Act, the case relating to such offence shall be lodged before such authority and, excepting thereto, all other cases relating to other offence lodged before Labour Court.

60. **Appeal:** Any party not satisfied with any punishment awarded under this Chapter may file an appeal within thirty five days from the date of such punishment or receipt of order in the following manner -

- (a) At the Court of Appeal against the orders of Government of Nepal or Department of Labour;
- (b) At the Court of Appeal in respect of the case tried and decided in original jurisdiction by the Labour Court;
- (c) At the concerned Labour Court in respect of the punishment or order given by the Proprietor or other office or Authority.

61. **Realizations of Fines:** Fines, Punishments awarded under this Act shall be realized in the manner as governmental dues under prevailing laws.

CHAPTER – 9

Committee, Officers and Other Provisions

62. **Central Labour Advisory Board:** (1) Government of Nepal may constitute a Central Labour Advisory Board consisting of representatives from workers or employees, Proprietors and Government of Nepal to receive necessary opinion and advice in relation to formulating policies and drafting of laws with regards to labour.

(2) The method of composition of Board pursuant to Sub-section (1) its powers, functions and duties shall be as prescribed.

[✕] deleted by the first Amendment .

(3) The Board may regulate the procedures of the meeting itself

63. **Labour Relation Committee:** (1) The Proprietor shall have to constitute a Labour Relation Committee in each Enterprise in order to create amicable atmosphere between the workers or employees and the management and to develop healthy labour or industrial relation on the basis of mutual participation and co-ordination.

(2) The method of composition of the Committee pursuant to Sub-section (1), its powers, functions and duties shall be as prescribed.

(3) The committee constituted as per Sub-section (1) may regulate its own procedures.

64. **Appointment of Labour Officer:** Government of Nepal by publishing a notice in the Nepal Gazette may appoint one or more Labour Officers, as per necessity or designate any other officer to perform the functions of a Labour Officer for one region/sector.

65. **Powers of Labour Officer :** (1) The Labour Officer shall have the following powers –

- (a) To enter into the premises of the Enterprise as per necessity;
- (b) To examine the documents and registers of the Enterprise relating to workers and employees;
- (c) To function or advise as per necessity for improving labour relations;
- (d) To attempt for solving disputes arising between workers or employees and the Proprietor;
- (e) To implement welfare provisions, if it does not exist and where if exist, to supervise whether or not it is operated properly;
- (f) To supervise the implementation of minimum remuneration prescribed by Government of Nepal;
- (g) To record statement, of anybody to fulfil the objectives of this Act, as per necessity;
- (h) To Perform tasks of the Factory Inspector in his/her absence, except technical tasks; and

- (i) To perform other tasks as per the directives of Government of Nepal and Department of Labour.
 - (2) Other powers, functions, and duties of the Labour Officer shall be as prescribed.
- 66. **Appointment of Factory Inspector:** Government of Nepal may, by a publishing a notice in Nepal Gazette, appoint one or more Factory Inspector, as per necessity for one region or may appoint one Chief Factory Inspector for whole of Nepal.
- 67. **Powers of the Factory Inspector:** (1) The Factory Inspector shall have the following powers –
 - (a) To enter into the premises of the factory as per necessity;
 - (b) To examine building, land, plant, machine, health and safety features of the factory, to collect the samples of finished or semi-finished materials used in the factory and to examine them or caused to be examined, to inspect the registers and document relating to the factory and, if necessary, to record statements of any person, as per necessity;
 - (c) To examine the boilers and pressure vessels and to permit the operations thereof;
 - (d) To provide necessary advice and assistance to the Proprietor on making arrangements of training of workers or employees;
 - (e) To exercise the powers, functions and duties to the Labour Officer during this absence; and
 - (f) To perform other tasks as per the directives of Government of Nepal and Department of Labour.
 - (2) Other powers, functions and duties of the Factory Inspector shall be as prescribed.
- 68. **Welfare Officer:** (1) One welfare Officer shall have to be appointed in Enterprise where two hundred fifty or more workers or employees are engaged and one additional Assistant Welfare Officer shall have to be appointed where there are more than one thousand workers or employee.

(2) In the enterprise where there are less than two hundred fifty workers or employees, the Proprietor may designate or appoint any officer of the Enterprise as the Welfare Officer.

(3) Where the Welfare Officer and Assistant Welfare Officer are appointed pursuant to Sub-section (1) the Department of Labour shall be informed of such appointment.

(4) The powers, functions and duties of the Welfare Officer and Assistant Welfare Officer appointed or designated, pursuant to Sub-section (1) of (2) shall be as prescribed.

69. **Notice to be provided of establishment of Enterprise:** (1) If any Enterprise is to be established or constructed or expanded in any building or land, the Proprietor shall submit the particulars to that effect as prescribed, to the Labour Office.

(2) The concerned Labour Office may after examination of the particulars received pursuant to Sub-section (1), if deemed necessary to make certain changes on the particulars in view of health, safety and environment, direct the enterprise to do so and it shall be the duty of the concerned Proprietor to follow such directive.

70. **Information to be provided by Proprietor:** (1) The Proprietor shall inform in writing the concerned Labour Office including with the prescribed particulars, fifteen days in advance where any new house or land has to be possessed or used by an Enterprise.

(2) The Proprietor Manager shall inform the Labour office within seven days, from the date of assuming his/her office for the first time.

71. **Notices and Posters:** The Labour Officer or Factory Inspector may issue directives to the Proprietor or Manager of the Enterprise to display the notices and posters relating to health, safety and welfare provisions of the workers as provided in this Act or Rules made hereunder at places in an easily readable and understandable manner.

CHAPTER – 10

Settlement of Labour Dispute

72. **Establishment of Labour Court:** (1) Government of Nepal shall, establish Labour Court by publishing a notice in Nepal Gazette. The Jurisdiction and the location of such court shall be as prescribed in such notice.

(2) The Procedure of the Labour Court constituted under Sub-section (1) shall be as prescribed.

(3) Notwithstanding anything contained in Sub-section (1) and (2) until the constitution of the Labour Court, all functions to be performed by the Court of Appeal.

72a **Proceedings May Be Initiated in Contempt:** The Labour Court may initiate proceedings against its contempt and, if it holds that contempt has been committed, may punish the accused with a fine of upto Five Thousand Rupees or imprisonment of upto two months or both punishments.

Provided that, if the accused submits an apology to the satisfaction of the Court, the Court may either pardon him/her or, if a sentence is already imposed, remit or commute the sentence or hold the execution of the sentence on condition fixed by the Court and may issue order not to execute the sentence if such condition is fulfilled.

73. **Procedures Relating to Personal Claims or Complaints:** (1) If any one or more workers or employees have any personal claim or complaint against Proprietor relating to the service, the concerned worker or employee may file it in writing with the concerned Proprietor.

(2) Upon receipt of the claim or complaint as per Sub-section (1), the Proprietor shall have to discuss on it *with the concerned worker or employee within a fifteen days and settle the problem.

(3) If the Problem, could not be solved through the discussion held as per

[∞] Inserted by the First Amendment.

Sub-section (2), the worker or employee may file a petition at the concerned Labour Office specifying clearly their claims.

(4) The Labour Office shall held a discussion between the Proprietor and the worker or employees and solve the dispute, within fifteen days of the receipt of a claim pursuant to Sub-section (3).

(5) The Chief of concerned Labour Office shall have to dedide on the dispute within seven days in case the problem could not be solved as pre Sub-section (4).

(6) Any of the parties may, appeal to the Labour Court within thirty five days from the date of receipt of notice of the decision in case not being satisfied with the decision made pursuant to Sub-section (5).

74. **Procedures Relating to Submission of Claims of Collective Dispute:** (1) The claim relating to collective right, interest or privilege shall have to be presented in writing to the concerned Proprietors signed by at least fifty one percent of the concerned workers or employees and in the claims their representatives shall have to be nominated and the claim shall be presented through such representatives.

(2) Upon receipt of the claim relating to the dispute as per Sub-section (1), the Proprietor shall hold bilateral discussion with the representatives as mentioned in the same Sub-section and solve the dispute within twenty-one days and shall enter into an agreement.

(3) If the dispute could not be solved as per Sub-section (2), the dispute shall be solved within fifteen days by holding bilateral discussion in the presence of Labour Office.

(4) If the dispute could not be solved through the bilateral discussion held as per Sub-section (3), the dispute may be referred to a mediator appointed, with mutual consent of proprietor and the workers and employees, or if no such mediator could be appointed, with mutual consent of proprietor and the workers and employees, or if no such mediator could be appointed, to a tripartite committee constituted, with consent of both parties, by Government of Nepal having equal

* Amended by First Amendment.

representation from the workers or employees, the Proprietor and the government.

(5) The mediator or the committee appointed as per Sub-section (4) shall decide the dispute within fifteen days.

(6) Any parties if not satisfied with the decision made pursuant to Subsection (5), may appeal to Government of Nepal within thirty five days from the date of receipt of notice of the decision.

⌘ (7) If the mediator or the Committee does not make a decision within the time-limit as referred to in Sub-section (5) or, in case where an appeal is filed before Government of Nepal pursuant to Sub-section (6), a decision thereon is not made by Government of Nepal within sixty days from the date of filing such appeal, the workers or employees may strike by following the procedures set forth in Section 76.

75. **Prohibition to Claim:** Notwithstanding anything mentioned here above, the following demand or claim shall not be allowed to submit –

- (a) Which is contrary to the Constitution of Nepal;
- (b) Which would affect other's interest due to being based on untestified or baseless allegation;
- (c) Matter which is prejudicial to the personal conduct of any worker or employee;
- (d) Matters unrelated to the Enterprise; and
- (e) Where a period of two years has not elapsed since the date of last collective agreement.

76. **Notice of Strike to be Provided:** In case the demands are not solved through the process mentioned in Sub-section (3) of Section 73 the ^{*}workers and employees wish to strike in the Enterprise, a notice in writing stating the claims and their rationale, including with a resolution passed by at least sixty percent of the total workers and employees through secret ballot, shall have to be provided to the

[⌘] Inserted by the First Amendment.

concerned Proprietor thirty days in advance and an information thereof shall also be given to the Department of Labour, concerned Labour Office and the local administration and a strike may be started thereafter only.

77. **Lock Out:** (1) If a strike has been started or continued without giving prior notice as mentioned in Section 75 or if the collective dispute is not solved through the process mentioned in Sub-section (3) of Section 73, the Proprietor may declare a lock-out of the Enterprise after submitting the justifications with its rationale and obtaining the approval of Government of Nepal.

(2) Before declaring a lock-out as per Sub-section (1), the Proprietor shall issue a notice for the information *of workers and employees seven days in advance specifying the date of effecting the lock-out and announcing that the Enterprise shall be locked-out if the strike is not called off.

(3) If there is a situation with possibility of damage to the Enterprise through riot, violence, destruction, etc *from the workers and employees during the strike the Proprietor may cause lock-out even without following the process of Sub-section (1) and (2). If a lockout is made in the Enterprise in such situation, the Labour office and the Department of Labour shall be informed about the lock-out with reasons within three days.

(4) Government of Nepal may at any time declare the lock-out of an enterprise as void, in case it appears irrational or it is likely to cause a breach in law and order conditions of the country or it is contrary to the economic interests of country.

78. **Prohibition to Strike:** (1) Notwithstanding anything mentioned hereinabove in this Act, if any existing law has prohibited the strike to be done by workers or employees the workers or employees of such Enterprise shall not be entitled to go on strike.

(2) Any employee appointed or deputed on the duty of control, security and

* Amended by First Amendment.

* Amended by First Amendment.

* Amended by First Amendment.

guard of any Enterprise shall also not be entitled to go in a strike.

(3) The employees prohibited to strike as per Sub-section (1) and (2) may submit their genuine demands to the Proprietor. If such demands are not fulfilled and a dispute has been created Government of Nepal shall constitute a tribunal for solving it. The decision of the Tribunal shall be final and binding upon both of the parties.

(4) No strike or lock-out may be done during the proceeding under Section 73.

79. **Legal Validity of Collective Agreement:** (1) Any agreement entered into between the workers or employees and the Proprietor in respect solving the dispute shall be deemed to be of status equal to law upon the concerned parties and such agreement shall have to be registered in the Labour Office.

(2) An agreement registered as per Sub-section (1) shall come to force from the date of mentioned in the agreement, if such date is mentioned therein, and if no such date is mentioned in the Agreement, it shall come into force from the date in which it is registered in Labour Office. No demand in relation to the provisions mentioned in such agreement shall be permitted to put again for two years from the date of its commencement.

79A. **Implementation of Collective Agreement:** (1) In case the collective agreement entered into pursuant to this Act is not implemented, the concerned party may lodge a complaint in the Labour Office.

(2) If any complaint is lodged under Sub-section (1) above, the Labour Office may implement the collective agreement by following, as required the procedures set-forth in Sub-section (5) of Section 25 as well.

80. **Order may be issued to End the Strike:** If any strike announced to be commenced or already commenced as per this Act or the Rules made hereunder has created an extraordinary situation, which is likely to cause a breach in the law and order

⁸ Inserted by the First Amendment.

situation of the country or would be contrary to the economic interest of the country, Government of Nepal may issue an order at any time to end such strike or any strike commenced in the essential services prescribed by the prevailing law.

81. **Termination of Lock-out Period:** Where any Enterprise has been locked-out, if the workers or employees are present for work or here the Proprietor has declared the ending of lock-out or where Government of Nepal has declared such lock-out as illegal as per Section 76 or has order to end the strike under Section 79, such lock-out shall be deemed to have been ended from the date of the declaration making it illegal or from the date so ordered.
82. **Remuneration for the Period of Lock-out:** The remuneration for the period of lock-out declared illegal shall have to be paid to the workers or employees.
83. **Special Provisions for Settlement of Dispute:** (1) If Government of Nepal deems that a dispute between workers or employers and the Proprietor has arisen or there is possibility of arising, Government of Nepal may constitute a committee of one or more persons, or tripartite committee consisting of representatives of the Proprietor, the workers or employees and Government of Nepal in order to resolve the dispute. Such committee may regulate its own procedures.
 - (2) The decision of Government of Nepal made on the report of the committee constituted pursuant to Sub-section (1) shall be final and binding to both of the parties.
 - (3) The committee constituted pursuant to Sub-section (1) shall have the powers of examining the evidence and witnesses, of requiring the presence of witnesses and requiring the production of documents as per prevailing laws similar to a court, in relation to the dispute.

CHAPTER – 11

Miscellaneous

84. **Special Powers of Government of Nepal:** * (1) Notwithstanding anything contained elsewhere in this Act, Government of Nepal may, in consultations with the Central Labour Advisory Board and by publishing a notification to that effect in the Nepal gazette, grant exemption from application of any matter provided for in this Act in respect of any Enterprise.

(2) Government of Nepal may, by publication of a notice in the Nepal Gazette, fix the minimum remuneration and certain facilities prescribed in this Act in relation to the Enterprises where less than ten workers or employees are working.

84A. **Special provisions respect of the Workers and Employees Engaged Outside the Enterprises:** (1) The person or institution, who engages the workers and employees of outside the Enterprises at work, must pay the remuneration for the day engaged at work in accordance with the agreement if such agreement in writing has been concluded between the two parties and within seven days if there is no such agreement.

(2) If any person or institution does not make payment of remuneration to any worker or employee or a delay is caused in such payment, the worker or employee who is aggrieved by such act may file a complaint before the Labour Office, in the districts where Labour Offices are located, and before the Chief District Officer, in the districts where Labour Offices are not located, in order to get the remuneration to be received by him/her.

(3) If any complaint is filed under Sub-section (2) above, the concerned Labour Office or Chief District Officer shall have to require such person or institution who has not paid the remuneration to be present at Office within fifteen days except the time period required for journey and shall have to recover and make

* Amended by First Amendment.

available the remuneration to be received by such worker or employee by following the procedures as set-forth in Sub-section (5) of Section 25

85. **Powers to Remove Obstacles:** In case any difficulty arises while executing this Act Government of Nepal by publishing an order in Nepal Gazette may remove such difficulties.
86. **Powers to Frame Rules:** (1) Government of Nepal may frame Rules to implement the objectives of this act.
- (2) Without prejudice to the generality of the powers conferred by Subsection (1), such rules particularly, may provide for any of the following matters –
- (a) Matters relating to the safety of the workers;
 - (b) Conducting of operation of employment service;
 - (c) Condition relating to overtime works;
 - (d) Conducting of operation of training in order to enhance the efficiency of workers and employees;
 - (e) Procedures relating to Labour Court;
 - (f) Compensation to be paid to workers and employees;
 - (g) Compilation of statistics of workers and employees;
 - (h) Compilation of information to labour market.
87. **Bylaws to be availed:** Each Enterprise shall have to send to the concerned Labour Office a copy of Bylaws framed by its in respect of conditions of service of its workers and employees.
88. **Provisions Relating to Enterprise owned by Government of Nepal:** With respect to the terms and conditions of service of the employees of the Enterprises owned wholly or partly by Government of Nepal, the provisions of the Rules or Bylaws relating to the terms and conditions of services of the concerned Enterprises shall apply and in respect of the workers thereof, the provisions of this Act shall apply.

⁸ Inserted by the First Amendment.

89. **Directive of Government of Nepal:** (1) Government of Nepal may issue necessary directives to the Proprietor for implementing the objectives of this Act.

* (2) Government of Nepal may impose a fine of upto twenty thousand rupees in each time on the Manager who does not comply with the directions issued under Sub-section (1) above.

90. **Delegation of Authority:** Government of Nepal may delegate the powers conferred to it by this Act to any Officer by publishing a notice in the Nepal Gazette.

91. **Prevalence of this Act:** This Act shall apply on matters mentioned herein and in other the prevailing laws shall apply.

92. **Repeal and Saving:** (1)The Factory and Factory Workers Act, 2016 (1959) is, hereby, repealed.

(2) All acts and proceedings performed or executed under The Factory and Factory Workers Act, 2016 shall be deemed to have been performed or executed under this Act.

Note:

The following word has been changed by first Amendment-

"Remuneration" instead of "salary"

* Amended by First Amendment.