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PART IV B

Bills introduced in the Bengal Legislative Council; Reports of Select Committees presented or to be presented to that Council; and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 1283L.—5th December 1939.—The Governor having been pleased to order, under rule 48 of the Bengal Legislative Council Procedure Rules, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information.

THE BENGAL SHOPS AND ESTABLISHMENTS BILL, 1939.

A

BILL

to regulate the holidays allowed to, the hours of work of, and the payment of wages to, persons employed in shops, commercial establishments and establishments for public entertainment or amusement.

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

It is hereby enacted as follows :—

Short title,
extent and
commencement.

1. (1) This Act may be called the Bengal Shops and Establishments Act, 1939.

(2) It extends to the whole of Bengal.

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

(4) It shall apply in the first instance to the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, to the suburbs of Calcutta as specified by notification under section 1 of the Calcutta Suburban Police Act, 1866, and to all municipal areas in the districts of the 24 Parganas, Howrah and Hooghly ; and thereafter it shall apply to such other areas, or to such shops or establishments or classes of shops or establishments in such other areas, as the Provincial Government may specify by notification.

Definitions.

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

(1) "commercial establishment" means an establishment in which there is conducted the business of advertising, commission, forwarding or commercial agency, a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office, or exchange, or such other establishment or class thereof as the Provincial Government may, by notification, declare to be a commercial establishment for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement ;

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

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

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

The Bengal Shops and Establishments Bill, 1939.

(Clause 3.)

- (5) "notification" means a notification published in the *Official Gazette* ;
- (6) "person employed" means—
- (i) in the case of a shop, a person wholly or principally employed in the shop in connection with the business of the shop,
 - (ii) in the case of a commercial establishment, a person wholly or principally employed in connection with the business of the establishment or in the case of a factory, a member of the clerical staff employed in such factory,
 - (iii) in the case of an establishment for public entertainment or amusement, a person wholly or principally employed in the preparation or serving of food or drink, or in attendance upon customers, or in cleaning any part of the establishment or the utensils used therein, or as attendant, cashier, clerk, doorkeeper, operator, or usher, or in some other similar capacity,
- but does not include a shop-keeper or employer or any member of the family of a shop-keeper or employer ;
- (7) "prescribed" means prescribed by rules made under this Act ;
- (8) "rules" means rules made under this Act ;
- (9) "shop" means any premises used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or on credit, and such other premises as the Provincial Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment or an establishment for public entertainment or amusement ;
- (10) "shop-keeper" means a person owning or having charge of the business of a shop, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of a shop ; and
- (11) "week" means a period of seven days beginning at midnight on Saturday.

Powers of the
Provincial
Government.

3. (1) The Provincial Government may, for the purposes of all or any of the provisions of this Act, and with such modification of any of those provisions as it thinks fit, by notification declare—

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

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

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(Clause 4.)

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

Act not applicable to certain establishments, shops and persons.

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

- (a) offices of or under the Central or Provincial Government, the Reserve Bank of India, any State Railway or any local authority ;
- (b) such public utility companies or associations, or such classes thereof, as the Provincial Government may, by notification, exempt from the operation of this Act ;
- (c) clubs, residential hotels and boarding-houses ;
- (d) stalls and refreshment rooms at railway stations, docks, wharves and airports ;
- (e) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit ;
- (f) such shops or classes of shops, dealing mainly in vegetables, meat, fish, milk, flowers and other similar perishable commodities, as the Provincial Government may, by notification, exempt from the operation of this Act ;
- (g) shops dealing solely in medicines, surgical appliances, bandages or other medical requisites ;
- (h) shops dealing in articles required for funerals, burials, cremations and other death ceremonies, so far as the sale of such articles is concerned ;
- (i) shops dealing in tobacco, cigars, cheroots, cigarettes, *biris*, *pan*, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of such articles is concerned ;
- (j) shops dealing in supplies, stores or other articles necessary for ships, so far as the sale of such articles is concerned ;
- (k) shops or stalls in any public exhibition or show, so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show ;
- (l) shops or stalls in any public fair or bazar held for charitable purposes, so far as such shops or stalls deal in retail trade from which no profit is derived ;
- (m) barbers' and hairdressers' shops ;
- (n) any person employed in a managerial or confidential capacity, or as a traveller, canvasser, messenger, watchman or caretaker, or exclusively in connection with the collection, despatch, delivery, and conveyance or customs formalities of goods ;
- (o) such other establishments, shops or persons or classes of establishments, shops or persons, as the Provincial Government may, by notification, except from the operation of this Act.

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

The Bengal Shops and Establishments Bill, 1939.

(Clauses 5—7.)

Holidays in shops.

5. (1) Every shop shall be entirely closed on at least one and a half days in each week, and every person employed for not less than six days in a shop shall be allowed as holidays at least one and a half days in each week :

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

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

(3) The day and the half day on which a shop shall be entirely closed in each week shall be such day and half day as may be specified by the shop-keeper in a notice, which shall be displayed in the shop :

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

Hours of work in shops.

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

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

(2) No person employed in a shop shall be required or permitted to work in such shop for more than ten hours in any one day and for more than fifty-six hours in any one week.

(3) No person employed in a shop shall be required or permitted to work in such shop—

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

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

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

Provided that, if on any day a shop is entirely closed for a continuous period of not less than three hours prior to the hour specified in sub-section (1), such periods of work and intervals for rest may together extend over not more than fourteen hours in that day.

Holidays in commercial establishments.

7. (1) Every person employed for not less than six days in a commercial establishment shall be allowed as holidays at least one and a half days in each week :

Provided that, when there are conducted in a commercial establishment two or more trades or business, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not

*The Bengal Shops and Establishments Bill, 1939.**(Clauses 8—10.)*

apply to that commercial establishment, such commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

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

Hours of work
in commercial
establishment.

8. (1) No person employed in a commercial establishment shall be required or permitted to work in such commercial establishment for more than two hundred and eight hours in any one month :

Provided that in any month in which there occurs stock-taking, making-up accounts, settlement or such other business operation as may be prescribed, and during such other months as may be prescribed, a person employed in a commercial establishment may be required or permitted to work in such commercial establishment for more than two hundred and eight hours in such month, but so that the total number of hours so worked in excess by such person does not exceed one hundred and twenty in any one year.

(2) No person employed in a commercial establishment shall be required or permitted to work in such commercial establishment—

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

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

(3) The periods of work and intervals for rest of each person employed in a commercial establishment shall be arranged by the employer of such person so that together they do not extend over more than twelve hours in any one day :

Provided that on such days, not exceeding six in any one year, as may be prescribed on account of stock-taking, making-up accounts, settlement or such other commercial business as may be prescribed, such periods of work and intervals for rest may together extend over more than twelve hours.

Holidays in
establishments
for public
entertainment
or amusement.

9. (1) Every person employed for not less than six days in an establishment for public entertainment or amusement shall be allowed as holidays at least one and a half days in each week :

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

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

Hours of work
in establishments
for public
entertainment
or amusement.

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

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(Clauses 11—16.)

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

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

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

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

Establishments for public entertainment or amusement not to sell certain articles after the closing hour of shops.

11. After the hour specified in sub-section (1) of section 6, no article of a kind similar to that which is kept in any shop for sale, shall be sold in any establishment for public entertainment or amusement except for consumption in such establishment.

Payment of wages.

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

Sick leave.

13. A person employed in a shop, commercial establishment or establishment for public entertainment or amusement, who has been engaged to serve, or has been in continuous service, in such shop or establishment for a period of not less than six months shall, on the production of a certificate signed by a medical practitioner who is registered under the Bengal Medical Act, 1914, be entitled to sick leave, on pay calculated at the rate of half his existing pay, for a total period not exceeding one month in any one year.

Wages for over-time work.

14. When any person employed in any shop, commercial establishment or establishment for public entertainment or amusement is required or permitted to work over-time in such shop or establishment in excess of the maximum limit of hours of work specified respectively in sub-section (2) of section 6, sub-section (1) of section 8 and sub-section (1) of section 10, the wages payable to such person in respect of such over-time work shall be calculated at the rate of one and one quarter times the ordinary rate of wages payable to him, and such ordinary rate of wages shall be calculated in the manner prescribed.

Maintenance of records, registers and notices.

15. Every shop-keeper and employer shall for the purposes of this Act maintain such records and registers, and display such notices, as may be prescribed.

Inspection.

16. (1) The Provincial Government may, by notification, appoint such persons or such class of persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) All Inspectors appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

The Bengal Shops and Establishments Bill, 1939.

(Clauses 17—22.)

Powers of Inspectors.

17. Subject to the rules, an Inspector appointed under section 16 may, within the local limits for which he is appointed—

- (a) enter and remain in any shop, commercial establishment or establishment for public entertainment or amusement, with such assistants, if any, being servants of the Crown or of any local authority, as he thinks fit ;
- (b) make such examination of such shop or establishment and of any prescribed record, register or notice maintained therein, and take on the spot or otherwise such evidence of any person, as he may deem necessary for carrying out the purposes of this Act ;
- (c) require any person having custody of any prescribed record, register or notice to produce it ; and
- (d) exercise such other powers as may be necessary for carrying out the purposes of this Act :

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

Penalties.

18. (1) Whoever contravenes any of the provisions of sections 5, 6, 7, 8, 9 or 10 shall, on conviction, be punishable with rigorous imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever contravenes any of the provisions of sections 11, 12, 13, 14 or 15 and whoever, having custody of any prescribed record, register or notice, refuses or, without sufficient cause, fails to produce it on being so required by an Inspector under the provisions of section 17, shall, on conviction, be punishable with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Procedure.

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

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

Indemnity.

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

Saving of certain rights and privileges.

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

Power to make rules.

22. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

The Bengal Shops and Establishments Bill, 1939.

(Clause 22.)

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

- (a) the holidays and other occasions in respect of which a notification may be issued under sub-section (3) of section 3 ;
- (b) the business operations in connection with which, and the months during which, persons employed in commercial establishments may work in excess of the limit provided in sub-section (1) of section 8 ;
- (c) the days on which periods of work and intervals for rest may together extend over more than the number of hours provided in sub-section (3) of section 8 ;
- (d) the manner of calculating ordinary rates of wages for the purposes of section 14 ;
- (e) the records and registers to be maintained, and the notices to be displayed, by a shop-keeper and an employer under section 15 ,
- (f) the manner of appointment and qualifications of Inspectors appointed under section 16 ;
- (g) the manner in which Inspectors appointed under section 16 shall exercise the powers conferred by section 17.

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

STATEMENT OF OBJECTS AND REASONS.

Owing to unrestricted competition amongst shop-keepers, particularly in the municipalities, the shops are kept open until unreasonable hours and shop assistants are called upon to attend in these shops for unlimited hours to the great detriment of their health. Government feel that a measure forbidding the transactions of business in shops after a certain hour will be welcome by shop-keepers and sellers, and will afford very necessary relief to the shop assistants. Provision, therefore, has been made in this Bill for closing the shops at 8 p.m. at night and for limiting the hours of work per week for a shop assistant. Further, every shop is required to close for a day and a half every week. Special provision has been made for commercial establishments and for restaurants and places of amusement.

Provision has also been made for sick leave and for payment of wages and payment of overtime.

H. S. SUHRAWARDY,
Member-in-charge.

CALCUTTA ;

The 5th December, 1939.

By order of the Governor,

E. B. H. BAKER,
Secy. to the Govt. of Bengal.