

**2**

**STANDING COMMITTEE ON LABOUR  
(2009-10)**

**FIFTEENTH LOK SABHA**

**MINISTRY OF LABOUR AND EMPLOYMENT**

**THE EMPLOYEES' STATE INSURANCE (AMENDMENT) BILL, 2009**

**SECOND REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*December 2009/Agrahayana, 1931 (Saka)*



## CONTENTS

	<b>PAGE(s)</b>
COMPOSITION OF THE COMMITTEE	(ii)
INTRODUCTION	(iv)
REPORT	

## ANNEXURES

- (i) The Employees' State Insurance (Amendment) Bill, 2009
- (ii) Minutes of the sittings of the Standing Committee on Labour

**COMPOSITION OF THE STANDING COMMITTEE ON LABOUR  
(2009-2010)**

**SHRI HEMANAND BISWAL-CHAIRMAN**

MEMBERS  
LOK SABHA

2. Shri M. Anandan
3. Shri P. Balram (Mahabubabad)
4. Dr. Shafiqur Rahman Barq
5. Shri Sudarshan Bhagat
6. Shri Hassan Khan
7. Shri Kaushalendra Kumar
8. Shri P. Lingam
9. Shri Hari Manjhi
10. Shri P.R. Natarajan
11. Km. Mausam Noor
12. Shri S. Pakkirappa
13. Shri Ramkishun
14. Shri Mahendra Kumar Roy
15. Shri Chandu Lal Sahu
16. Shri Murari Lal Singh
- \*\*\*17. Shri Raj Babbar
18. Vacant
19. Vacant
20. Vacant
21. Vacant

RAJYA SABHA

22. Shri G. Sanjeeva Reddy
23. Shri Rudra Narayan Pany
- \*\*24. Shri Pyarelal Khandelwal
25. Shri Rajaram

26. Smt. Renubala Pradhan
27. Shri G.N. Ratanpuri
- \*28. Shri Mohammad Adeeb
29. Vacant
30. Vacant
31. Vacant

---

\* Changed the nomination from Committee on Labour to Committee on Commerce w.e.f. 17<sup>th</sup> September, 2009.  
\*\* Expired on 6<sup>th</sup> October, 2009.  
\*\*\* Nominated w.e.f. 3<sup>rd</sup> December, 2009.

## **SECRETARIAT**

- |                          |   |                     |
|--------------------------|---|---------------------|
| 1. Shri Devender Singh   | - | Joint Secretary     |
| 2. Shri B.S. Dahiya      | - | Director            |
| 3. Shri Ashok Sajwan     | - | Additional Director |
| 4. Smt. Bharti S. Tuteja | - | Under Secretary     |

## INTRODUCTION

I, the Chairman of the Standing Committee on Labour having been authorized by the Committee to submit the report on their behalf, present this Second Report on 'The Employees' State Insurance (Amendment) Bill, 2009' of the Ministry of Labour and Employment.

2. The 'The Employees' State Insurance (Amendment) Bill, 2009' was introduced in Lok Sabha on 7<sup>th</sup> August, 2009 and was referred to the Standing Committee on Labour by the Speaker, Lok Sabha for examination and report within three months from the date of publication of the reference of the Bill in the Bulletin Part- II of Lok Sabha dated 9<sup>th</sup> September, 2009.

3. In the process of examination of the Bill, the Committee invited the representatives of the Ministry of Labour and Employment on 22<sup>nd</sup> October, 2009 and heard their views. The Committee also sought written information on various aspects of the Bill from the Ministry.

4. The Committee invited the views of major Central Trade Unions on the Bill through Memorandum. On 3<sup>rd</sup> November, 2009, the representatives of Trade Unions also deposed before the Committee to share their views and give their suggestions on the proposed amendments.

5. The Committee further took oral evidence of the officials of the Ministry of Labour and Employment on 11<sup>th</sup> November, 2009 on the proposed amendments by the Government.

6. The Committee considered and adopted their draft Report on the Bill at their sitting held on 4<sup>th</sup> December, 2009.

7. The Committee also wish to express their thanks to the representatives of Trade Unions for tendering evidence before the Committee and furnishing written inputs/suggestions on the amending Bill.

8. For facilitation of reference and convenience, the observations and recommendations of the Committee have been printed in bold in the body of the Report.

**NEW DELHI;**

**HEMANAND BISWAL,  
Chairman,**

**4<sup>th</sup> December, 2009**  
**13 Agrahayana , 1931 (Saka)**

***Standing Committee on Labour***

## **REPORT**

### CHAPTER-I

#### **Introductory**

The Employees' State Insurance Act, 1948 applies to factories using power in the manufacturing process and employing 10 or more employees and non-power using factories employing 20 or more employees for wages. The Act is being implemented area-wise, in a phased manner. The Act was last amended in 1989.

2. The Employees' State Insurance Scheme, formulated under the Employees' State Insurance Act, 1948, is in operation in 780 centres situated in 28 States/Union Territories. The employees drawing monthly wages upto Rs.10,000/- per month are covered under the Scheme. As on 31.3.2008, 1.21 crore insured persons and about 4.70 crore beneficiaries were covered under the Scheme.

3. The ESI Scheme is administered by the Employees' State Insurance Corporation (ESIC). The Scheme is mainly financed by contributions from the employers and employees. The rates of the employers' and the employees' share of contribution are 4.75% and 1.75% respectively. The State Governments' share of the expenditure on the provision of medical care is to the extent of 12.5% (1/8<sup>th</sup> within the per capita ceiling).

4. The sub-Committee appointed by ESIC in 2007 to review the existing provisions of the entire act and to suggest comprehensive amendments keeping in view the changed economic scenario, recommended the following amendments in the ESIC Act, 1948:-

- \* facilitating coverage of smaller factories;
- \* streamlining the procedure for assessment of dues from defaulting employers;
- \* providing an Appellate Authority within the Corporataion against assessment to avoid unnecessary litigation;

- \* streamlining the procedure for grant of exemptions;
- \* third party participation in commissioning and running of the hospitals;
- \* opening of medical/dental/paramedical/nursing colleges to improve quality of medical care; and
- \* making an enabling provision for extending medical care to non-insured persons against payment of user charges to facilitate providing of medical care to the BPL families covered under the Rashtriya Swasthaya Bima Yojana introduced by the Ministry of Labour and Employment w.e.f. 1.4.2008.

5. The salient features of 'The Employees' State Insurance (Amendment) Bill, 2009' are as follows:—

- (i) it enhances the age limit from the existing eighteen years to twenty-one years for the purpose of giving benefits to dependants';
- (ii) it includes an apprentice appointed under the standing orders as an employee for the purpose of this Act;
- (iii) it provides benefits to workers for the accidents happening while commuting to the place of work and vice versa;
- (iv) it enables the Central Government to make rules to decide dependency of the parents on the basis of income;
- (v) it incorporates for a new definition of "factory" to provide that when ten or more persons are employed or were employed in the preceding twelve months irrespective of the use of power;
- (vi) it empowers the Central Government to include the Director General of Employees' State Insurance Corporation as the *ex-officio* Chairman and Director General, Health Services as the *ex-officio* Co-Chairman in the Medical Benefit Council;
- (vii) it provides for cessation of membership of the Employees' State Insurance Corporation of a member of Parliament such a Member

becomes Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of State or ceases to be a member of Parliament;

- (viii) it enables the Employees' State Insurance Corporation to appoint consultants and specialists on contract without referring the matter to the Central Government for better delivery of super-speciality services;
- (ix) it increases public accountability by valuation of assets once in three years from existing once in five years;
- (x) it re-designates the Insurance Inspector as Social Security Officer;
- (xi) it simplifies the determination of employer's contribution;
- (xii) it empowers the Central Government to specify by rules the other conditions for medical treatment of an insured person who retires under Voluntary Retirement Scheme or takes premature retirement;
- (xiii) it empowers the Employees' State Insurance Corporation to enter into an agreement with any local authority, local body or private body for commissioning or running ESI hospitals through third party participation for providing medical treatment and attendance to insured persons; and
- (xiv) it aims to improve the quality of its service delivery and raise infrastructural facilities by opening medical colleges and training facilities in order to increase its medical and para- medical staff.

## **CHAPTER-II**

### **Clause by Clause analysis of 'The Employees' State Insurance (Amendment) Bill, 2009'**

#### **I. Definition of dependant-Amendment to Section-2**

6. In the Employees' State Insurance Act, 1948 (hereinafter referred to as the Principal Act), in section 2,—

(A) in clause (6A),—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) a widow, a legitimate or adopted son who has not attained the age of twenty-one years, an unmarried legitimate or adopted daughter,";

(b) in sub-clause (ii), for the words "eighteen years", the words "twenty-one years" shall be substituted;

7. The Ministry in their explanatory note stated that:-

“To bring the provision relating to definition of family for eligibility to receive dependants benefit (Section2-(6-A) at par with the definition of family for eligibility to medical care [(Section2 (11)] of the ESI Act, 1948.”

8. When asked why cannot the definition of dependant be at par with the CGHS to provide benefits to maximum number of people for a longer time, the Ministry of Labour and Employment in their post evidence reply stated that:-

“...While under CGHS Scheme only medical care is provided, under the proposed clause in case of ESI Act, periodical cash payments of dependant benefit are provided from a reserve fund created for the purpose. Before taking up any substantial increase in the liability, actuarial valuation to find out adequacy of the DB reserve fund would have to be carried out to ensure financial viability of the scheme...”

9. On being further asked regarding the criteria adopted for determining dependency on the insured person, the Ministry in their written reply stated that:-

“The criteria for assessing that a person was wholly dependant on the earnings of the deceased insured person is the claim of dependency made by the dependants at the time of applying for grant of dependant’s benefit and the subsequent claims made for periodical payments thereof.

In case of legitimate or adopted daughter, she is entitled to dependant’s benefit till she remains unmarried irrespective of her age. In case of legitimate or adopted son, the proposal is to enhance the age limit for entitlement to dependant’s benefit from the existing age limit of 18 years to 21 years.”

10. The representative of the Trade Union, during his evidence before the Committee, stated that:-

“The first amendment is with regard to the enhancement of age from 18 to 21. Our submission is that dependents mean generally the children. There are, of course, provisions in the scheme. When the insurer is unmarried, in that case, his unmarried sisters and unmarried brothers are also coming as dependents. But keeping the total unemployment

situation in the country in view, age of 21 also seems to us very little. I do not think, changes of getting employment in this country are very bright up to that age. In fact, the Government of India itself has been, year after year, consistently at periodical intervals increasing the minimum entry age to the Central Services. Therefore, we would suggest you that if you cannot raise it too much, at least raise it to 25 instead of 21. You should make it a little more reasonable. Even upto 25 years of age, there is no employment nowadays. It is not just possible to get employment now. This is one suggestion we want to make.”

## **II. Apprentices-Clause (9) of Section 2**

11. (B) in clause (9), the words "or under the Standing Orders of the establishment," shall be omitted;

12. It is proposed to provide for coverage of Apprentices appointed under Standing Orders of establishment under the Act.

13. The Ministry in their explanatory note stated that:-

“As there is no uniformity in appointing Apprentices under the Standing Orders leading to misuse of the provisions resulting in denial of social security benefits to many workers termed as Apprentices, it is essential that only those Apprentices who are well defined under the Apprentices Act and are treated as such are exempted from the coverage.”

14. A representative of Trade Union, speaking on the proposed amendment, stated as follows:-

“The second thing is about the Standing Orders and Apprentices Act. We welcome this move. They should be covered by the scheme. But our submission is apart from these two Standing Orders. ; it is about those apprentices, who are appointed under Standing Orders of the company and those apprentices or trainees, who are appointed on the

basis of Apprentices Act. Now, the latest practice in various factories, which is by and large getting universalized, is to appoint trainees on a nominal amount. If I am an unskilled worker, I may be getting Rs.12,000 to Rs.15,000 per month. If you take a trainee, you can take him on Rs.3,000 to Rs.4,000 per month. You may keep him for three to four years and assess his performance. If you find his work very satisfactory, you may continue him; if you do not find his work satisfactory, you may throw him out. Now, that trainee is neither under the Apprentices Act nor under the Standing Orders. So, our appeal to you is that whether the trainee is under the Apprentices Act or under the Standing Orders, even if he is under none of these two, he should be covered by the proposed amendment and should also be given the benefit.”

**III. Dependent Parents-Prescription of income limit-Section 2 (11) (v) & 95 (eff)**

15. (C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;

16. It is proposed to empower the Central Government to prescribe an income limit for determining the dependency of parents of insured persons for eligibility to medical care.

17. The Ministry in their explanatory note stated that:-

“In order to ensure that only those parents who are wholly dependent on the income of the insured person receive medical benefit, it is proposed to amend the definition of ‘Dependant Parents’ under Section 2 (11) (v) incorporating income limit for the parents at par with the Civil Services

(Medical Attendance) Rules, 1944 for eligibility to medical benefit.”

#### **IV. Minor Brother and Sister of Unmarried Insured Person**

18. (C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:—

(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;”;

19. It is proposed that in case of unmarried insured persons whose parents are also not alive, dependant minor brother or sister be made eligible for medical care.

20. The Ministry in their explanatory note stated that:-

“To provide medical care to dependant minor brother or sister in case of insured persons who do not have a family and whose parents are also not alive.”

#### **V. Definition of Factory- Section 2 (12)**

21. (D) for clause (12), the following clause shall be substituted, namely:—

“(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;’.

22. It is proposed to amend the definition of 'factory' with a view to ensuring that the provisions of the Act are applied to all premises/precincts, where 10 or more workers are employed irrespective of whether power is used in manufacturing process or not. It is also proposed to ensure that all persons including those drawing wages above the wage limit would be taken into account for the purpose of counting 10 persons for coverage of a factory/establishment.

23. The Ministry in their explanatory note stated that:-

“The purpose of the amendment is to simplify the definition and reduce litigation/scope for misinterpretation.”

24. When asked to explain why the limit of 10 or more persons has been kept, the Ministry in their reply stated that:-

“As the insured persons and their family members become entitled to medical care and attendance from the day the scheme becomes applicable to them, therefore, before the scheme is extended to any new area or to any other sector, necessary arrangements for medical care have to be made by the concerned State Government. Because of this constraint, the scheme is being extended to new areas or to new sectors of employment in a phased manner.

The threshold limit for factory is kept keeping in view the requirements of infrastructure for providing medical care including super specialty treatment and cash benefits and to maintain uniformity with other Social Security legislations such as Maternity Benefit Act, 1961, Workmen Compensation Act, 1923 and Payment of Gratuity Act, 1972.”

25. A representative of the Trade Union during his appearance before the Committee stated that:-

“The next point is about providing 10 or more persons. We are against this. This would deprive a large number of establishments. ...this limit of 10 should go. Establishment may be five, it may be seven, or it may be a little less or a little more. If it is an establishment, it should be covered. If I have my worker or person, who has got five workers, employee-employer relationship does exist. So, the number

10 is not relevant. We do not agree with number 10. As we have argued against 20 in the case of the Industrial Disputes Act, we are against this also. In fact, this 10 should go. In fact, this is only method by which they keep the unorganized sector workers' out of the purview of these beneficial social labour legislations.”

26. Another representative of the Trade Union while speaking on the definition of 'Factory' stated as follows:-

“This ESI Act is a social security legislation. Why should its application be conditional? For the Act to be applicable, till now, there has to be a minimum of ten workers if it is a factory and 20 workers if it is other than a factory. This has been depriving the eligible workers in the factory for the last sixty years. This is the highest deprivation of the workers which happens by putting this minimum threshold. Now, this amendment Bill proposes to remove this threshold, but the proposal for bringing it down from 20 to 10 in respect of other than factories is a very small one. Here, my submission is that it should be removed entirely. For all the factories, big or small registered under the Factories Act or under any other Act and are in the organized sector, the minimum condition of ten should also be removed. Establishments other than factories are registered under the Establishment Act. So, they are organized establishments. So, this condition should be removed...As long as a worker is contributing, he should get social security. We want ESI to get involved even if there are 8-10 workers are working. Today, more and more workers want to go to ESI hospitals for treatment as treatment outside is very expensive.

Here, I would also like to mention about the recommendation of the 2<sup>nd</sup> National Commission on Labour. It has made a unanimous recommendation that in the social security legislations like ESI and EPF Acts, this minimum threshold should be removed. They have suggested to remove it in stages, first to ten and then to five and then to zero. There was a unanimous recommendation of all the representatives on the Commission on this issue. We will be

doing injustice or dishonor to the 2<sup>nd</sup> National Commission on Labour Report if we do not take that into account. So, this minimum threshold of 10, 20 or 5 or whatever it is, should be removed completely and all the organized sector establishments and unorganized sector establishments should be covered under this legislation.”

**VI DG, ESIC to be Chairman of Medical Benefit Council- Section 10 (1) (a) & (b)**

27. In section 10 of the Principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) the Director General, the Employees' State Insurance Corporation, *ex officio* as Chairman;

(b) the Director General, Health Services, *ex officio* as Co-chairman;”.

28. It is proposed to make Director General, ESIC as Chairman and Director General of Health Services (DGHS) as Co-Chairman of Medical Benefit Council.

29. The Ministry in their explanatory note stated that:-

“The Medical Benefit Council of ESIC makes recommendations on important aspects like the quantum and the delivery of medical benefits as also the Health Care policy of the Corporation. The Council is chaired by the Director General, Health Services. The Director General, ESIC is presently not a member of this important decision taking body. To enable the Director General to appreciate the problems in the medical scheme and also get an external feed back from the Council from time to time, it is proposed that Director General ESIC should be the Chairman and he will replace the DGHS who will be Co-Chairman.”

**VII. Cessation of Membership of an MP on becoming Minister, Speaker or Deputy Speaker-Section 12 (3)**

30. In section 12 of the Principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) A person referred to in clause (i) of section 4 shall cease to be a member on becoming a Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of States or when he ceases to be a member of Parliament."

31. It is proposed that a member of Parliament on becoming a Minister or Speaker or Deputy Speaker of Lok Sabha or Deputy Chairman of Rajya Sabha or when he ceases to be a member of Parliament, shall cease to be a member of the Corporation.

32. The Ministry in their explanatory note submitted that:-

“As per the suggestions of the Ministry of Parliamentary Affairs, it is proposed to amend Sub-Section (3) of Section 12, so as to provide that consequent on a member of Parliament becoming Minister or Speaker or Deputy Speaker of Lok Sabha or Deputy Chairman of Rajya Sabha, his nomination/election to the Corporation shall be deemed to have been terminated.”

**VIII. Corporation to engage consultants on market rate of compensation-Section 17 (2) (a)**

33. In section 17 of the Principal Act, in sub-section (2), in clause (a), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis,";

34. It is proposed to empower the Corporation to engage consultants on market rate of compensation instead of pay for corresponding categories of Central Government employees.

35. The Ministry in their explanatory note stated that:-

“In order to overcome the problem of shortage of Specialists in ESI Hospitals, one of the options available is to appoint Specialists and Consultants on contract basis. However, such Specialists are not willing to come on the remuneration as per the Government Pay Scales. They can only be hired if market rate of compensation is provided to them. It is, therefore, proposed to make a provision for such appointments without taking approval from Central Government in each case.”

36. The Ministry were asked whether the willingness of Specialists to join ESIC had been assessed after the revision of pay scales by the 6<sup>th</sup> Pay Commission, the Ministry in their reply stated that:-

“ESIC is in the process of starting super specialty hospitals and other specialized services in the existing ESI Hospitals along with Medical Colleges and PG Institutes. There is shortage of super specialists in the country as such. To ensure that the huge investments made in establishing super specialty and specialized facilities do not lie idle an enabling provision is proposed in the ESI Act for engaging the Consultants at market rate of compensation. However, before engaging the consultants, all efforts will be made to get these specialized manpower on regular basis as per the existing pay scales.

Further to attract best of the talent for medical teachers, ESIC has adopted the pay structure of All India Institute of Medical Sciences.”

**IX Actuarial valuation of the Assets and liabilities of the Corporation by a valuer from 5 years to 3 years –**

**Section 37**

37. In section 37 of the Principal Act, for the words "five years", the words "three years" shall be substituted.

38. It is proposed to reduce the periodicity of actuarial valuations of the assets and liabilities of the Corporation by a Valuer from five years to three years.

39. The Ministry in their explanatory note stated that:-

“Section 37 of the Act prescribes a five year interval for valuation of assets and liabilities of the Corporation. It is proposed that the actuarial valuation should be conducted at an interval of three years to enable the Corporation to make timely adjustments.”

**X Inspector to be renamed as `Social Security Officer`- Section 45, 45-A & 97**

40. In section 45 of the principal Act,—

(a) for the words "Inspectors" and "Inspector", wherever they occur, the words "Social Security Officers" and "Social Security Officer" shall respectively be substituted;

41. It is proposed to replace the nomenclature of `Inspector` with that of `Social Security Officer`.

42. The Ministry in their explanatory note stated that the change was required in order to correctly reflect the nature of duty of the officer.

**XI. Re-Inspection/Test Inspection of the records-Section 45 (4)**

43. (b) After sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer."

44. It is proposed to add a new sub-section (4) to provide for re-inspection/Test inspection by any other officer authorized by the Corporation.

45. The Ministry in their explanatory note stated that:-

“In order to check the correctness of inspections carried out by the Insurance Inspectors, random test checking of the records is carried out by Assistant Directors/Deputy Directors/Joint Directors of the Corporation or any other Officer of the Corporation. Some employers have contested this in Courts as well as others on the plea that once records have been inspected by the Insurance Inspector, same records should not again be inspected by other authority as there is no provision in the Act for test inspection/re-inspection.”

**XI. Assessment of contribution after five years-Section 45 (A)**

46. In section 45A of the Principal Act, in sub-section (1),—

- (i) for the word `Inspector`, the words `Social Security Officer` shall be substituted:-
- (ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable."

47. It is proposed to provide a time limit of five years for assessing contribution under Section 45A.

48. The Ministry in their explanatory note stated as under:-

“Presently, there is no time-limit on determining and claiming contribution for past periods by the assessing officers under Section 45-A. It is proposed to prescribe a reasonable time limit for the same in the light of observations made by Hon’ble Supreme Court in the case of ESIC Vs C.C. Santhakumar.”

**XII. Constitution of Appellate Authority -Section 45-AA and 97**  
**(xxa)**

49. After section 45A of the Principal Act, the following section shall be inserted, namely:—

"45AA. If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation."

50. It is proposed to provide for an appellate authority and its constitution, in respect of orders passed under Section 45A.

51. The Ministry in their explanatory note stated as under:-

“Under the existing provisions of the Act, if an employer is aggrieved with an order determining the contribution under Section 45-A passed by an assessing officer, the only remedy open to him is to approach the Employees’ Insurance Court which results in unnecessary litigation. It is therefore proposed to provide for appeals to the Appellate Authority within the Corporation itself. Similar provisions exist in case of Income Tax Act, 1961 and Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.”

**XIII. Replacement of the words `an insured person' with the words `an employee' – Section 51 C and 51 D**

52. In the principal Act, in sections 51C and 51D, for the words "Insured person", the word "employee" shall be substituted.

53. It is proposed to replace the words `insured person' with the words `employee' in Section 51 A to 51 D.

54. The Ministry in their explanatory note have been stated that:-

“Under the ESI Scheme, the Insured Persons after ceasing to be in insurable employment are entitled to only Sickness, Medical and Maternity Benefits for certain period. However, use of words “insured persons” in Section 51-A to 51-D has created confusion in interpretation. Presumptions made in Section 51-A to 51-D relate to accidents caused to the employee in the course of employment. These presumptions are, however, not intended for persons who are out of employment. Some Courts have taken the view that employment injury (ESI) benefits are admissible to all the Insured Persons which is contrary to the provisions of Section 51-A, 51-B, 51-C and 51-D of the Act. In order to remove this misreading and confusion, it is proposed to substitute the words “insured person” by the word “employee”, wherever they occur in the above mentioned Sections”.

**XIV Commuting accidents to be treated as employment injury-  
new Section 51 E**

55. After section 51D of the Principal Act, the following section shall be inserted, namely:—

"51 E. An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established."

It is proposed to add a new Section 51 E to treat commuting accidents as employment injury.

56. The Ministry in their explanatory note stated that:-

“Commuting accidents were earlier treated as 'employment injury' but are now not covered due to Supreme Court Judgment in Francis De Costa case dt.11-9-1996. It is now proposed to treat injuries as employment injury by amending the Act”.

**XV Continuing medical benefit to insured persons retiring under VRS schemes or taking premature retirement and their spouse- Sections 56 (3) and 95 (ehh)**

57. In section 56 of the Principal Act, in sub-section (3), for the third proviso, the following proviso shall substituted, namely:—

"Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to

payment of contribution and such other conditions as may be prescribed by the Central Government."

58. It is proposed to make a provision for continuing medical care to insured persons retiring under VRS Schemes or taking premature retirement and their spouse.

59. The Ministry in their explanatory note stated as under:-

"There has been a demand from various quarters that the medical benefit being provided to insured persons who retire on attaining the age of superannuation, permanent disablement, on payment of Rs.120 per annum under Section 56 of the Act read with Rule 60 & 61 of ESI (Central) Rules, should be extended to insured persons retiring under VRS schemes or taking premature retirement."

60. On being asked why can't an insured person (after ceasing to be in insurable employment), who is willing to contribute towards the scheme, be allowed to avail the benefits as long as he is willing to contribute towards the scheme as it has already been done in case of those insured persons who have taken VRS or retired prematurely, the Ministry in their reply stated that:-

"The ESI Scheme is mainly financed from contributions from employees and employers. Once an insured person ceases to be in insurable employment, while he may be willing to pay employees' contribution, there may not be any employer to pay the employees' contribution. Further, being an insurance scheme, if voluntary continuance of coverage is allowed, there is a possibility that only those requiring costly medical treatment may volunteer to stay while those who are healthy may not opt for continuance and the financial viability of the scheme may be eroded due to this. The medical benefit, being provided to the insured persons who retire on attaining the age of superannuation after being in

insurable employment for 5 years, is presently being provided on a nominal contribution of Rs.120 per annum for the insured and his/her spouse. This amount does not fully cover the medical expenses of such insured persons and their spouse.”

61. When the Ministry were informed that, the ESIC is not a profit oriented Corporation and it appeared that the intention of the Ministry is to only retain healthy people under its coverage and throw out those who suffer from ailments, and asked why should not an insured person who has lost his job but is willing to contribute through his meagre means towards medical security be allowed to continue, the Ministry replied as follows:-

“Being a social insurance scheme, the ESI scheme operates on the insurance principle where all persons contribute as per their capacity and the resources are pooled to provide need based benefits. As the scheme is mainly financed out of contributions from employers and employees, if medical care is extended to all persons who lose their jobs on payment of token contribution, it may adversely affect the viability of the scheme.”

#### **XVI Third Party Participation in ESI Hospitals-Section 59 (3)**

62. In section 59 of the Principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families."

63. It is proposed to make provision for commissioning and running of ESI hospitals through a third party participation.

64. The Ministry in their explanatory note stated that:-

“Some of the hospitals constructed on the request of concerned State Governments are not being taken over and commissioned by the State Government even though construction is completed long back. A suggestion has been made in various forums that such hospitals may be commissioned through third party participation. It is, therefore proposed to make an enabling provision in this regard.”

65. The Committee asked the Ministry to apprise them regarding alternative measures taken and avenues explored for making these hospitals operational before going for third party participation and also to furnish the details of hospitals and their locations which have not been taken over by the State Governments.

66. The Ministry in their written reply stated that:-

“The alternative option for providing secondary care to insured persons and their family members is to either run the same through third party participation or outsource the services to other reputed hospitals. This is only an option which is being provided for alternative form of managing hospitals apart from ESIC or State governments directly managing the same.

The hospitals are located in the following places:-

1. ESI Hospital, Kohlapur, Maharashtra.
2. ESI Hospital, Bibvewadi, Pune
3. ESI Hospital, Chinchwad

Out of above these three hospitals, ESI Hospital, Chinchwad was commissioned by ESI Corporation directly and has since been handed over to the State Govt. of Maharashtra, which is running the hospital. Further the State Govt. has commissioned ESI Hospital, Bibvewadi and out patient services started.

10 new hospitals are proposed in areas where there is no existing ESI Hospital. Further, as per the decision of the ESI Corporation, ESIC is already running one hospital in each State as Model Hospital under the Model Hospital Scheme. Further, ESI Corporation has approved taking over ESI Schemes in the States from the State Govt. to be run directly, wherever the State Govt. gives consent for the same and accordingly letters have been sent to all the State Governments. Further ESI Corporation in its 147<sup>th</sup> Meeting held on 25<sup>th</sup> August, 2009, has also taken a decision that all the new hospitals being constructed now will be run by ESI Corporation directly.

The under utilised ESI Hospitals, besides opening its facilities to non IPs on user charges can also be used for implementations of other schemes of Govt. of India. ESI Corporation has already proposed opening of under utilized facilities in ESI Hospitals to beneficiaries of Rashtriya Swasthya Bima Yojana and other similar schemes that may be implemented by Government of India, once the Act is amended.”

67. A representative of Trade Union while deliberating on the issue stated that:-

“...It is to empower the Employees’ State Insurance Corporation to enter into agreement with any local authorities, local bodies or private bodies for commissioning or running ESI hospitals through third party participation for providing medical treatment. We are against it. It is only with reference to this that we have already brought to your notice that the coverage is very poor. The performance of this Corporation is very poor. Workers do not very often go to

the dispensaries because the dispensaries do not provide proper medical attention either due to absence of doctors or due to absence of para-medical staff or due to absence of medicines. But if this provision is also brought in, then it may lead finally to outsourcing and privatization. We are against it. That is why we submitted in the beginning itself that we want a comprehensive review of this entire Act, the Corporation and its functioning and performance by the Parliamentary Standing Committee on Labour. So, the Trade Unions may submit their views as to what complaints are there against its functioning and how to bring in an improvement in its functioning.”

68. Another representative of the Trade Union while speaking on the same issue stated as follows:-

“Clause 14 of the amendment Bill, is making provision for commissioning and running of ESI hospitals through third party participation. As a trade union, we will vehemently oppose this. The ESIC is having capacity and strength to operate or run a hospital. This ESIC is a government establishment and Government need not go for third party participation. Here, I would not like to mention what the difficulties and deficiencies in services will be if a third party comes in ...I will make only one humble submission that it should be run by the ESIC hospitals only...”

**XVII Establishment of medical colleges, nursing colleges and training institutions for para-medical staff - Insertion of Section 59 B**

69. After section 59A of the Principal Act, the following section shall be inserted, namely:—

"59B. The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme."

70. It is proposed to make provision for establishment of medical colleges, nursing colleges and training institutions for para-medical staff by ESIC with a view to overcoming shortage of medical/para-medical staff in ESI hospitals/dispensaries and for general improvement in the quality of services.

71. The Ministry in their explanatory note stated that:-

“There is an acute shortage of doctors and para-medical staff in ESI Hospitals/dispensaries which is adversely affecting the delivery of health care services to insured persons. It is therefore necessary for ESIC to have its own medical colleges and other training institutions to produce doctors and para-medical staff. These doctors/para-medical staff would be required to render such minimum service in ESI hospitals/dispensaries/institutions as may be decided by the Corporation. This will also improve the quality of medical care and enable provision of super-specialty care to insured persons and their families in these hospitals.”

72. When the Ministry were asked to give a detailed account of vacancies vis-à-vis recruitment of medical and para-medical staff done during each of the last five years, the Ministry in their written reply furnished the following information and also explained the steps taken for filling up the vacancies in ESIC run institutions and State run institutions :-

“The vacancy position in respect of medical and para-medical staff, State-wise is as follows:-

**VACANCY POSITION STATE WISE IN RESPECT OF MEDICAL , PARA  
MEDICAL AND OTHER STAFF FOR THE YEAR 2004-05**

Sl. no.	Name of the State	Medical	Para Medical	Others
1	Andhra Pradesh	285	414	430
2	Assam	17	27	4
3	Bihar	59	171	178
4	Chandigarh Admn.	7	26	16
5	Chhatisgarh	10	14	16
6	Delhi	413	723	377
7	Goa	03	3	5
8	Gujarat	216	607	401
9	Haryana	32	129	207
10	Himachal Pradesh	-	8	17
11	Karnataka	144	282	260
12	Kerala	190	303	148
13	Madhya Pradesh	49	160	91
14	Maharashtra	127	464	909
15	Meghalaya	-	5	4
16	Orissa	53	46	80
17	Pondicherry	10	16	1

18	Punjab	+12	17	281
19	Rajsthan	58	134	65
20	Tamilnadu	116	625	779
21	Uttar Pradesh	107	279	158
22	Uttaranchal	6	6	2
23	West Bengal	215	933	1090
24	Jammu & Kashmir	3	6	10
25	Jharkhand	100	191	347
	<b>Total</b>	<b>2208</b>	<b>5555</b>	<b>5966</b>

**VACANCY POSITION STATE WISE IN RESPECT OF MEDICAL , PARA  
MEDICAL AND OTHER STAFF FOR THE YEAR 2005-06**

Sl. no.	Name of the State	Medical	Para medical including nurses	Others
1	Andhra Pradesh	235	566	306
2	Assam	88	29	13
3	Bihar	54	186	175
4	Chandigarh Admn.	10	27	15
5	Chattisgarh	10	10	14
6	Delhi	463	713	543
7	Goa	06	03	05
8	Gujarat	246	531	218
9	Haryana	36	111	196
10	Himachal Pradesh	+5	03	08
11	Karnataka	192	282	157
12	Kerala	170	228	206

13	Madhya Pradesh	268	141	110
14	Maharashtra	196	619	1016
15	Meghalaya	--	05	03
16	Orissa	82	85	104
17	Pondicherry	09	16	02
18	Punjab	49	169	505
19	Rajasthan	49	140	90
20	Tamil Nadu	139	641	665
21	Uttar Pradesh	179	450	208
22	Uttaranchal	04	11	20
23	West Bengal	239	899	1145
24	J&K	12	11	14
25	Jharkhand	02	218	317
	<b>TOTAL</b>	<b>2733</b>	<b>6094</b>	<b>6055</b>

**VACANCY POSITION STATE WISE IN RESPECT OF MEDICAL , PARA  
MEDICAL AND OTHER STAFF FOR THE YEAR 2006-07**

<b>Sl. No.</b>	<b>State / UT</b>	<b>Medical</b>	<b>Para Medical including Nurses</b>	<b>Others</b>
1	Andhra Pradesh	229	215	128
2	Assam	15	26	14
3	Bihar	32	120	170
4	Chandigarh Admn.	06	18	15
5	Chattisgarh	12	12	17
6	Delhi	394	330	640
7	Goa	05	02	04
8	Gujarat	236	542	277
9	Haryana	36	195	288
10	Himachal Pradesh	02	12	06
11	Karnataka	176	171	190
12	Kerala	126	111	170
13	Madhya Pradesh	69	137	75

14	Maharashtra	145	510	983
15	Meghalaya	0	05	04
16	Orissa	54	77	71
17	Pondicherry	14	30	05
18	Punjab	12	80	281
19	Rajasthan	48	46	56
20	Tamil Nadu	60	485	750
21	Uttar Pradesh	56	248	06
22	Uttaranchal	11	09	05
23	West Bengal	215	796	1115
25	Jharkhand	56	127	172
	<b>TOTAL</b>	<b>2009</b>	<b>4304</b>	<b>5442</b>

**VACANCY POSITION STATE WISE IN RESPECT OF MEDICAL , PARA  
MEDICAL AND OTHER STAFF FOR THE YEAR 2007-08**

Sl. no.	Name of the State	Medical	Para medical including nurses	Others
1	Andhra Pradesh	140	225	110
2	Assam	18	08	24
3	Bihar	26	75	77
4	Chandigarh Admn.	01	10	08
5	Chattisgarh	20	28	31
6	Delhi	316	700	520
7	Goa	05	05	07
8	Gujarat	207	472	379
9	Haryana	28	162	462
10	Himachal Pradesh	02	12	06
11	Karnataka	196	214	252
12	Kerala	102	137	191
13	Madhya Pradesh	54	223	31
14	Maharashtra	145	510	983

15	Meghalaya	00	05	04
16	Orissa	59	82	79
17	Pondicherry	14	30	05
18	Punjab	13	99	273
19	Rajasthan	55	45	40
20	Tamil Nadu	60	490	712
21	Uttar Pradesh	63	253	25
22	Uttaranchal	04	09	05
23	West Bengal	264	938	1233
24	J&K	02	11	11
25	Jharkhand	45	118	154
	<b>TOTAL</b>	<b>1839</b>	<b>4861</b>	<b>5622</b>

**VACANCY POSITION STATE WISE IN RESPECT OF MEDICAL , PARA  
MEDICAL AND OTHER STAFF FOR THE YEAR 2008-09**

Sl. no.	Name of the State	Medical	Para medical including nurses	Others
1	Andhra Pradesh	178	216	447
2	Assam	22	10	19
3	Bihar	26	75	77
4	Chandigarh Admn.	01	10	08
5	Chattisgarh	22	28	31
6	Delhi	316	700	520
7	Goa	07	0	0
8	Gujarat	255	569	437
9	Haryana	51	138	340
10	Himachal Pradesh	02	12	06
11	Karnataka	193	230	239
12	Kerala	93	143	215
13	Madhya Pradesh	83	243	41

14	Maharashtra	145	510	983
15	Meghalaya	0	05	03
16	Orissa	64	97	74
17	Pondicherry	14	30	05
18	Punjab	13	99	273
19	Rajasthan	56	30	46
20	Tamil Nadu	60	474	791
21	Uttar Pradesh	97	260	95
22	Uttaranchal	14	15	14
23	West Bengal	241	955	1524
24	J&K	02	16	11
25	Jharkhand	62	190	221
	<b>TOTAL</b>	<b>2017</b>	<b>5055</b>	<b>6420</b>

ESI Corporation has taken several steps for filling up of the vacancies in the ESI hospitals and dispensaries directly run by the Corporation and also taken several steps to facilitate State Governments to fill up the vacancies at the earliest.

**Action for filling up vacancies in ESIC run institutions**

- i) For filling up the post of Medical Officers and Specialists, recruitments have been under taken by ESI Corporation on zonal basis and appointment letters have already been issued. A total of 532 Medical Officers, 158 specialists, 8 Dental Surgeons and 10 Ayurvedic Physicians have been issued Offer of Appointment.

- ii) For recruitment of para medical staff, powers have been delegated to respective Medical Superintendents and they are doing the recruitments directly to fill up the vacancies.

### **Action for filling up of vacancies in State run institutions**

The vacancies are to be filled up by the State Govt. itself. To facilitate the State Govt. for filling up the vacancies, ESIC has taken following steps:-

- i) ESIC has increased the ceiling on reimbursement of expenditure on medical care from Rs.1000/- to Rs.1200/- per IP family unit per annum w.e.f. 01.04.2008.
- ii) In addition, ESI Corporation has also decided to reimburse the administrative expenditure incurred by the State Govt. towards Medical Scheme on actual basis subject to fulfilment of following conditions relating to human resources administration, apart from other conditions:-

❖ State Govt. shall rationalize and reorganize the infrastructure of ESIS Hospitals and dispensaries. The reorganisation shall primarily involve closure, amalgamation, merger, re-location, reduction in size, outsourcing, tie-up, etc. of the ESIS facilities as decided by the Corporation from time to time. A Verifying Committee consisting of the concerned Regional Director, SSMC/SMC, director, ESI Scheme and one representative each of the State Government and Hqrs. Office shall certify the implementation of the rationalization of the Scheme. This rationalization is an ongoing process and will be reviewed periodically. The above Verifying Committee shall meet in December every year and assess the progress and status of rationalization / reorganisation of ESIS infrastructure. Based on the report of the Verifying Committee the release of budget as per the actual administrative expenditure will be made by ESIC in the 4<sup>th</sup> quarter on account payment to the State Govt.

- ❖ The State Govt. shall have to delegate adequate powers to the field level functionaries i.e. Director ESI Scheme, Medical Superintendents of ESI Hospitals and Medical Officer In-charges of the ESI dispensaries for ensuring hassle free day to day functioning including purchase of drugs and dressings, maintenance of equipments and reimbursement of bills etc.
  - ❖ Hospital Development Committee shall be made fully functional and effective.
  - ❖ The State Govt. shall adopt the Scheme of Revolving Fund for the expenditure other than the expenditure on “Administration”.
  - ❖ The State Govt. should either agree for implementation of the Scheme in new areas as proposed by ESIC or allow ESIC to implement the Scheme directly i.e. if the State Govt. fails to make medical arrangement after notification of the Scheme ESIC will make the medical arrangement directly in the those areas and the expenditure will be deducted from on account payment due to the State Govt. after completion of three years.
- iii) Teaching / non teaching staff required in Medical Colleges/ PG Institutes / Dental Colleges in State run hospitals, will be provided by ESI Corporation and the total expenditure will be borne by the ESI Corporation.”

**XVIII For Chapter VA, the following Chapter shall be substituted, namely:—**

**'CHAPTER VA  
SCHEME FOR OTHER BENEFICIARIES**

73. 73A. In this Chapter,—

(a) "other beneficiaries" means persons other than the person insured under this Act;

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "under-utilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) "user charges" means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

73B. Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is under-utilised on payment of user charges.

73C. The user charges collected from the other beneficiaries shall be deemed to be the contribution and shall form part of the Employees' State Insurance Fund.

73D. The Scheme may provide for all or any of the following matters, namely:—

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73E. The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73F. Every Scheme framed under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.

All things done, or, omitted to be done, and all actions or measures taken or not taken during the period beginning on or after the 3rd day of July, 2008 and ending immediately before the date of commencement of the Employees' State Insurance (Amendment) Act, 2009, shall in so far as they are in conformity with the provisions of this Act, as amended by the Employees' State Insurance (Amendment) Act, 2009, be deemed to have been done, or taken, or not taken, under the provisions of this Act, as amended by the Employees' State Insurance (Amendment) Act, 2009, as if such provisions were in force at the time such things were

done or omitted to be done and actions or measures taken or not taken during the said period.

74. It is proposed to add Section 73A to 73 F in this Chapter to enable provisions of medical care under the Scheme to `other beneficiaries' from under-utilised hospitals on payment of user charges and to empower the Central Government to frame scheme therefor.

75. The Ministry in their explanatory note stated as follows:-

“This is to enable the ESI Corporation to provide medical care facilities from under-utilised ESI hospitals to the persons registered under the RSBY and their families as well as to other sections of the workforce such as beedi workers, construction workers, auto-taxi drivers etc. in future. The user charges collected can be utilized for better maintenance of these hospitals as well as for financing improvements in the quality of medical care services.”

### **Validation**

76. It is proposed to validate actions or measures taken during the period beginning on or after 3<sup>rd</sup> July, 2008 till the commencement of ESI (Amendment) Act, 2009.

77. The Ministry in their explanatory note stated as under:-

“The ESI (Amendment) Ordinance, 2008 was promulgated on 3.7.2008 for opening of facilities in ESI Hospitals to other beneficiaries on payment of user charges. However, as the Bill to amend the Act to replace the Ordinance could not be taken up in the Parliament due to dissolution of 14<sup>th</sup> Lok Sabha, the Ordinance lapsed. Hence, it is proposed to validate any action taken based on the Ordinance. Grant of exemptions by the State Governments result in denial of social security benefits to workers as well as under-utilisation

of infrastructure created for the insured persons of that area. It is therefore proposed that such exemptions may be granted judiciously only where benefits substantially similar or superior to the benefits provided under this Act are provided by the employers.”

**XVIII Exemption in case of availability of substantially similar or superior benefits-Section 87**

78. In section 87 of the Principal Act, the following provisos shall be inserted at the end, namely:—

"Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application.”

79. It is proposed to add a new proviso in Section 87 to specify that exemptions be granted by the State Governments only in cases where employees provides substantially similar or superior benefits than those available under the Act.

80. The Ministry in their explanatory note stated as follows:-

“Grant of exemptions by the State Governments result in denial of social security benefits to workers as well as underutilization of infrastructure created for the insured persons of that area. It is therefore proposed that such exemptions may be granted judiciously only where benefits

substantially similar or superior to the benefits provided under this Act are provided by the employers.”

**XIX Exemptions to be granted prospectively-Section 91 A**

81. In section 91A of the Principal Act, for the words "either prospectively or retrospectively", the word "prospectively" shall be substituted.

82. It is proposed to provide that exemptions are granted only prospectively and not retrospectively as at present.

83. The Ministry in their explanatory note stated as under:-

“It is proposed to do away with the power to grant exemptions retrospectively as the Corporation incurs expenditure on medical and cash benefits to the workers of such factories/establishments and grant of retrospective exemptions by State Governments results in loss of revenue.”

**XX Central Government to be the `Appropriate Government’ in States where Corporation has taken over-Insertion of new Section 91AA**

84. After section 91A of the Principal Act, the following section shall be inserted, namely:—

"91AA. Notwithstanding anything contained in this Act, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government."

85. It is proposed to insert new Section-91-AA to ensure that in States where the medical benefit is administered directly by the Corporation, the `Appropriate Government' for extending the provisions to other establishments (Section 1 (5)) and for granting exemptions (Sec 87-88) shall be the `Central Government'.

86. The Ministry in their explanatory note stated as under:-

“The power to extend the scope of coverage to other establishments (Section 1 (5)) and the power to grant exemptions (Section 87 & 88 ) have been given to State Governments because they are admiring the medical care in the States. Once the administration of medical care is taken over by the Corporation, these powers should be vested with the Central Government.”

**XXI . Income of dependant parents for eligibility to medical benefit-Insertion of clause (eff) and (ehh) in Section 95**

87. In section 95 of the principal Act, in sub-section (2),—

(i) after clause (ef), the following clause shall be inserted, namely:—

"(eff) the income of dependant parents from all sources;"

(ii) after clause (eh), the following clause shall be inserted,

namely:—

"(ehh) the conditions under which the medical benefits shall be payable to the insured person and spouse of an insured person who has attained the age of superannuation, the person who retires under Voluntary Retirement Scheme and the person who takes pre- mature retirement;"

88. The Ministry in their explanatory note stated as follows:-

“To empower the Central Government to prescribe the income limit for dependant parents for eligibility to medical benefit and also to prescribe eligibility conditions for continuing medical benefit to insured persons retiring under VRS or taking premature retirement and their spouse.”

### **CHAPTER-III**

#### **Analysis of other important sections of Employees' State Insurance Act, 1948 which are not covered by the 'The Employees' State Insurance (Amendment) Bill, 2009**

#### **89. Six months notice for application of the Act**

(i) Section 1 (5) of the ESI Act provides that:-

“The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government after giving six months notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise”.

90. When asked as to why the `six months notice' to be given before extending provisions of the Act to an establishment should not be done away with or suitably reduced, the Ministry in their post evidence reply stated that:-

“We agree that considering the advancements made in electronic and print media, the provision of six months' notice of its intention of so doing by the appropriate governments before extending the provision of the Act to other establishment or class of establishments needs to be reduced to a reasonable period of about one month to enable speedy extension of the scheme to new sectors of employment.”

## **Dual Control**

91. According to the background note on the ESI (Amendment) Bill, 2009, the ESI Scheme is administered by the Employees' State Insurance Corporation (ESIC). The Scheme is mainly financed by contributions from the employers and employees. The rates of the employers' and the employees' share of contribution are 4.75% and 1.75% respectively. The State Governments' share of the expenditure on the provision of medical care is to the extent of 12.5% (1/8<sup>th</sup> within the per capita ceiling). The Scheme provides full medical facilities from primary health care to super specialty treatment in respect of the insured persons and their family members. The medical care under the Scheme is administered by the State Governments, except in Delhi.

92. The Secretary, Ministry of Labour and Employment during the briefing on the Bill stated that:-

“You have indicated one of the most serious problems that is encountering the ESI scheme. This dual control is certainly creating problem but as we are in the federal structure as the Act provides, we can take over a scheme in a State with the consent of the State as per the present provision of section 59 (a) of the Act. And that is why, as told by the hon. Member, the ESI Corporation had taken a decision to write to the State Governments that the Corporation would like to take over the scheme from the State Governments so that the problem that the hon. Member has indicated, that is, dual control, can be sorted out. The States have their own problems. They are able to recruit doctors and they are not able to recruit para-medical staff. Due to the procedures and inadequate delegation of powers to the field functionaries, they are not able to purchase medicines and equipments. Even the money to which they are entitled is also not being utilized because of these problems. So, we have been trying hard and trying to emphasize with the State Governments that they are not going to lose anything, it is a win-win situation for all because ultimately it is the money of the employers and the employees. So, they should agree to hand over the Scheme to the Corporation to be run directly.

93. Asked about the States which have agreed that the Scheme be implemented directly by the Corporation, the witness submitted:-

“So far, in-principle approval has been given by the State of Bihar, Himachal Pradesh and Madhya Pradesh. These are the three States which have given in-principle approval, and formally it has not been taken over in these States also. Sir, ...in Delhi and in NOIDA, this scheme is run directly by the ESI Corporation, and one can see the difference in the quality of delivery of service that is there in Delhi and in other States. So, we are trying hard but as I said, Sir, under Section 59 (a), it can be done only with the consent of the State Governments. Since we are in a federal structure, we keep pursuing it with the State Governments. Some State Governments have improved the situation but in many States the situation is like that. But dual control is certainly one of the biggest problems.”

94. Asked about the views of the Ministry on the suggestion that ESI should set up one Subsidiary Corporation in each State and State Government should not be given any role and that the share of State Government i.e. 12.5% towards the expenditure should also be paid by the Corporation itself. The Ministry in their reply stated that:-

“A proposal for formation of State Level Subsidiary Corporation under the control of ESIC to run medical care scheme in the States was circulated amongst the Labour Ministers during the Conference of Labour Ministers held at New Delhi on July 7 – 8, 1997 and they were requested to examine the proposal and offer their comments/views. In spite of persistent efforts only 7 States/UTs. sent their responses. While the State Govt. of J&K, Karnataka, Tamil Nadu and UT of Pondicherry responded favourably for forming State Level Subsidiary Corporations, the Govt. of West Bengal, Orissa and Gujarat opposed the idea. In the absence of a consensus and non-receipt of views of

majority of State Governments no further progress in the matter could be arrived at. Health being a State subject, by providing medical care to a large section of the population of the State ESIC reduces the burden of the state government to a large extent and hence it is felt that the state government's share of 12.5% should continue”.

### **Wage ceiling for coverage under ESI Act**

95. One of the representatives of the Trade Union while appearing before the Committee and speaking on the issues of wage ceiling stated as follows:-

“...If any employee wants coverage under ESI, he should be given the same. As far as any factory or establishment is concerned, if a worker's income is Rs.10,000/- he is under the coverage of ESI. But as soon as his income reaches Rs.10,001/- he is out of the coverage of ESI. So, I feel that this wage ceiling of Rs.10,000/- should be enhanced so that maximum workers are benefitted and come under the ESI coverage. This ceiling should at least be increased to Rs.15,000/-.”

**CHAPTER-IV****OBSERVATIONS/RECOMMENDATIONS**

96. While making their observations and recommendations on 'The Employees' State Insurance (Amendment) Bill, 2009, the Committee wish to place on record that the Government, on 21.10.2008 (Fourteenth Lok Sabha), had introduced 'The Employees' State Insurance (Amendment) Bill, 2008' to replace The Employees' State Insurance (Amendment) Ordinance, 2008 and was referred to the their predecessor Committee for examination and report. The Employees' State Insurance (Amendment) Ordinance, 2008 was promulgated on the 3.7.2008 to enable ESIC to participate in the implementation of the Health Insurance Scheme called the 'Rashtriya Swasthya Bima Yojana' formulated under the Unorganised Sector Workers Social Security Act, 2008 and which came into effect from 1.4.2008 by the ESIC making available its vast network of hospitals for providing medical care on user charges, wherever the same are under-utilised to the workers covered under the Scheme. The Amendment proposed in the Bill were examined by the Standing Committee on Labour (2008-09) and Report thereon was presented on 19.12.2008. However, 'The Employees' State Insurance (Amendment) Bill, 2008' lapsed due to dissolution of 14<sup>th</sup> Lok Sabha. The Government have, however, included the said amendment in the present Bill.

97. 'The Employees' State Insurance Act, 1948' is a piece of social welfare legislation enacted primarily with the avowed objective of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain other matters incidental thereto. The Act, in fact, tries to attain the goal of socio-economic justice enshrined in the Directive Principles of State Policy under Part-IV of the Constitution, in particular articles 41, 42 and 43 which enjoin the State to make effective provisions for securing, the right to work, to education and public assistance in cases of unemployment, old-age, sickness, disablement and in other cases of undeserved want.

#### **Definition of dependant**

**98. The Committee note that the Government propose to raise the age limit of legitimate or adopted son from existing 18 years to 21 years for entitlement to dependants' benefit. The Committee are of the view that in the present employment scenario in the country, it is very unlikely that a person would get employment by the age of 21 years. The Committee, therefore, strongly feel that this age of dependant children needs to be reasonable as well as practical. The Committee would like to draw attention of the Government to the 'condition of dependency' as stipulated under the CGHS Rules stating that 'for availing medical facilities under CGH Scheme, parents, sisters, widowed sisters, widowed/divorced/separated daughters, brothers, stepmother and children shall be deemed to be dependent on the Government servant, if they are**

normally residing with him and their income from all sources including pension and pension equivalent of DCRG benefit/family pension, does not exceed Rs.3500 plus amount of dearness relief thereon drawn.' The Committee recommend that the age of dependant children should be raised to 25 years so as to extend the requisite benefits to the dependant children. The Committee also recommend that the definition of 'dependant' under the ESI Act should be brought at par with the CGHS Rules.

### Apprentices

99. The Committee note that as of now there is no uniformity in appointing Apprentices under the Standing Orders which is leading to denial of social security benefits to a number of workers who are appointed as Apprentices. The Committee are also of the view that there may be a number of trainees whose training period is extended indefinitely by the establishments on a meagre stipend resulting in avoidance of their coverage under the ESI Scheme. The Committee, however, welcome the proposal of the Government that 'Apprentices' who are appointed under the 'Standing Orders' of the establishment may now be eligible for benefit under ESI Scheme. The Committee, nevertheless, recommend that Government should ensure that trainees whose training period is extended indefinitely by various establishments should not be left out

**and they may also be brought under the purview of coverage of ESI Scheme.**

**Dependent Parents- Prescription of income limit and medical benefit to dependant minor brother/sister**

**100. The Committee note that amendment to sub clause (v) and (vi) of Clause (11) of Section 2 seeks (i) inclusion of dependant minor brother and sister in the definition of family for eligibility to medical benefit in case of an unmarried insured person whose parents are not alive; (ii) to empower the Central Government to prescribe the income limit for dependant parents. The Committee have already recommended in the preceding paragraph for revision of condition of dependency so as to bring it at par with that of CGHS. As regards empowering the Central Government for prescribing the income limit, the Committee recommend that the income limit as prescribed in CCS (MA) Rules may be enforced, that too, after giving due weightage to the current price index.**

**Definition of Factory**

**101. The Committee note that the definition of ‘factory’ is amended to include all the premises/precincts, where 10 or more workers are employed irrespective of whether power is used in the manufacturing process or not. The Committee find no justification in retaining the restriction in respect of the number of persons employed on the application of the Act. In the present scenario, with advancement in technology and growing computerization there are a number of establishments where less than 10 persons are employed. Undoubtedly, such a restriction would deprive social security benefits to those employees who are working in establishments, where their number is less than 10 but at the same time they are willing to contribute towards the ESI Scheme. The Committee, therefore, strongly recommend that the social security benefits may be extended to all the establishments irrespective of number of persons employed by them.**

**DG, ESIC to be Chairman of Medical Benefit Council**

**102. The Committee approve the proposal of making DG ESIC as Chairman & DGHS as Co-Chairman of Medical Benefit Council and hope that DG ESIC's direct involvement in the Medical Benefit Council would enable the Director General to better appreciate the problems in the medical scheme and in getting feedback from the Council from time to time.**

**Cessation of Membership**

**103. The Committee observe that amendment to Section 12 (3) is in the backdrop of the suggestion given by the Ministry of Parliamentary Affairs. The Committee concur with the proposal that nomination or election to the Corporation of a Member of Parliament shall deem to have been terminated on his becoming Minister or Speaker or Deputy Speaker of Lok Sabha or Deputy Chairman of Rajya Sabha.**

### **Engagement of Consultants**

**104. The Committee were informed that ESIC hospitals are facing shortage of Specialists as they are not willing to come on the remuneration as per the Government's existing pay scales and the Corporation is being empowered to engage Consultants on market rate of compensation instead of pay for corresponding categories of Central Government employees. Keeping in view the revision in pay scales, following the recommendations of Central Sixth Pay Commission especially when the ESIC has adopted the pay structure of AIIMS, the Committee are of the view that concerted efforts should be made to recruit Consultants on revised pay scales on regular basis before opting to engage Consultants on market rate of compensation. The Committee, therefore, recommend that a fresh assessment should be made in respect of the availability of Specialists on revised attractive pay scales before any proposal for engagement of Specialists on market rates is considered.**

**Actuarial valuation of the Assets and liabilities of the Corporation**

105. The amendment to Section 37 seeks to reduce the periodicity of actuarial valuation of the assets and liabilities of the Corporation by a valuer from 5 years to 3 years. The Committee opine that the proposed amendment would certainly help the Corporation in making timely adjustments. The Committee, therefore, are in agreement with the proposed amendment to reduce the periodicity from 5 years to 3 years.

**Substitution of `Inspector` as `Social Security Officer`**

106. The Committee observe that the nomenclature of `Inspector` is proposed to be replaced with that of `Social Security Officer`. The Committee, however, find that there is no change in the duties and responsibilities attached to the post of `Inspector`. The Committee feel that merely changing the nomenclature would not serve any useful purpose unless

**additional duties are assigned to the `Social Security Officer' so as to engender and promote the climate of social security.**

### **Re-Inspection/Test Inspection of records**

**107. The present Bill proposes to add a new section to provide for re-inspection or test inspection by any other officer authorized by the Corporation in order to check the correctness of inspection carried out by the insurance inspector. The Committee feel that this is a welcome step as such a provision would act as a regulator on the checks and inspections carried out by the insurance inspectors.**

### **Assessment of contribution**

**108. The Committee observe that presently there is no time limit on determining and claiming contribution for past period by the assessing officer under Section 45A. The present amendment seeks to provide a time limit of 5 years for assessing contribution under Section 45A in the light of the observations made by the Hon'ble Supreme Court. The Committee are in agreement with the proposed amendment**

**for determining and claiming contribution for past periods within the stipulated time.**

### **Constitution of Appellate Authority**

**109. The proposed new Section 45AA seeks to provide for an Appellate Authority and its constitution in respect of Orders passed under Section 45A. The Committee observe that presently there is no provision for appeal in case the employer has any grievance with an order passed by the assessing officer determining the contribution. The only remedy open to him is to approach the Employees' Insurance Court. As per the provisions of the Bill, the aggrieved party may prefer an appeal within sixty days of the date of such order after depositing 25% of the contribution ordered or the contribution as per his own calculation, whichever is higher, with the Corporation. The Committee feel that this is a justified insertion to the existing Act as this would reduce litigation and also reduce the time wasted on avoidable litigations.**

**Replacement of words `an insured person' with `an employee'**

110. The Committee note that amendment to Sections 51 A to 51 D seeks to replace the word `an insured person' with that of `employee'. The Committee observe that the ESI Scheme covers persons after ceasing to be in insurable employment such as sickness, medical and maternity benefits for certain period. To avoid any confusion between the persons within employment or out of employment, the Committee find the substitution of the word with `employee' justified. The Committee feel that since Sections 51 A to 51 D relate to accidents caused to the employee in the course of employment, it is essential to have a clear differentiation between the `serving' and `out of employment' insured persons. Hence, the Committee agree with the proposal of replacement of the word i.e. `insured person' with that of `employee'.

**Commuting accidents as employment injury**

111. The Committee find that the Bill proposes to insert a new Section viz. Section 51 E, which seeks to treat commuting accidents as employment injury which are now not covered due to Supreme Court Judgement. The Committee welcome the proposal for insertion of the propose new Section to the existing Act.

**Medical benefit to insured persons retiring under VRS/pre-mature retirement**

112. The Committee note that as per the existing provision only insured persons who retire on attaining the age of superannuation or permanent disablement, can avail the benefit under ESI on payment of Rs.120 per annum. The proposed amendment seeks to make a provision for continuing medical benefit to insured persons retiring under VRS or taking premature retirement including their spouse. Though, the present amendment is a welcome step, the Committee desire

**that the dependants of the insured persons may also be covered under the Scheme as is done under the CGHS.**

**Further, the Committee observe that at present an insured person (after ceasing to be in insurable employment) who is willing to contribute towards the Scheme is not allowed to avail the benefits under the Scheme as is done in case of those insured persons who have taken the VRS or retired prematurely. The Committee were informed that ESI Scheme, being an insurance scheme, if voluntary continuance of covering is allowed, there is a possibility that only those requiring costly medical treatment may volunteer to stay and those who are healthy may not opt for continuance and the financial viability of the scheme may be eroded, hence, they cannot be covered under the Scheme. Such an approach is not acceptable as the Committee feel that the ESI Scheme is primarily a social security scheme and not a profit oriented scheme. The Committee find that under Rajiv Gandhi Shramik Kalyan Yojana (which is an unemployment insurance scheme), workers who lose their job involuntarily due to retrenchment, closure of factories/establishments and permanent disability**

not arising out of employment injury are entitled to get a monthly cash allowance of about 50 percent of the wage as well as medical care for themselves and their dependant family members, for a period of one year which may be available in a single spell or in spells of not less than one month each. The Committee feel that if these workers remain unemployed even after completion of one year, they may be allowed to avail medical benefits from ESI hospitals on payment of annual subscription. The Committee, therefore, recommend that wherever an insured person, after ceasing to be in insurable employment, is willing to continue to contribute towards the Scheme, he may be allowed to avail of the benefits of the ESI Scheme.

### Third Party Participation

113. The Committee note the proposal of the Government for making a provision for commissioning and running of ESI hospitals through third party participation. The Committee find that ESIC has the required capacity and wherewithal to run hospitals on their own since Government have taken a

**decision that all new hospitals would be run by ESIC directly. The Committee, do not find any justification in, and therefore outright reject, the contention of the Government that ‘some of the hospitals constructed on the request, and not taken over by the concerned State Governments may be commissioned through third party participation’. The Committee take note of the reply of the Government that there were only three hospitals which had not been taken over by the State Government and out of these three, one, at Chinchwad, had already been commissioned by the ESIC directly and already handed over to the State Government. Another hospital at Bibvewadi has also been commissioned by the State Government. Therefore, the Committee feel that there is no justification on the part of the Government for making such an enabling provision in the Bill for commissioning and running these hospitals through third party participation.**

**Establishment of medical colleges, nursing colleges and training institutions for para-medical staff**

114. The Committee observe that there is an acute shortage of doctors and para-medical staff in ESI hospitals/dispensaries which is adversely affecting the delivery of healthcare services to the beneficiaries under the Scheme. The Committee concur with the proposal of the Government for establishment of medical colleges, nursing colleges and training institutions for para-medical staff by ESIC and that doctors/para-medical staff passing out of these institutions would be required to render minimum mandatory service in these hospitals. The Committee, however, recommend that these medical colleges and hospitals should be established in such places where more number of insured persons and poor working class people are living so as to provide them the much needed healthcare.

## **Exemptions by State Governments**

**115. The Bill seeks to add a new proviso in Section 87 to specify the exemptions granted by the State Governments. The Committee agree with the proposal that exemptions from coverage under ESIC should be granted by the State Government only in cases where employers provide substantially similar and superior benefits than those available under the Act. The Committee desire that the State Governments, before considering grant of exemptions to any factory or establishment, should ensure that it does not result in denial of social security benefits to workers as well as under-utilization of infrastructure created for the insured persons of that area.**

**Exemptions to be prospective**

**116. The Bill proposes to amend Section 91A to provide exemptions prospectively. Keeping in view the fact that the Corporation incurs expenditure on medical and cash benefits being given to the workers of such factories/establishments, and, therefore, grant of retrospective exemptions by State Governments results in loss of revenue to the Corporation. The Committee are in agreement with the proposal that exemptions from the coverage may only be granted prospectively and not retrospectively.**

**Definition of 'Appropriate Government'**

**117. The Bill proposes to insert new Section 91AA vesting power with the Central Government to take over the administration of medical care by the Corporation where the medical benefit is administered by the Corporation directly. The Committee note that presently the powers to extend the scope of coverage to other establishments and to grant exemptions rest with the State Governments because they are administering the medical care in the States. The Committee are in agreement with the proposal that once the administration of medical care is taken over by the Corporation, its powers should be vested with the Central Government.**

**Duration for application of Act**

**118. As per the existing provisions of the ESI Act, the `Appropriate Government' may, in consultation with the Corporation and where the `Appropriate Government' is a State Government, with the approval of the Central Government, after giving six months notice to extend the provisions of this Act or any of them, to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise, do so by a notification in the Official Gazette. Considering the advancements made in electronic and print media, the Committee are of the view that the period of six months notice is very long and appears to be unjustified. The Committee, therefore, recommend that the period of six months notice should be reduced to a reasonable period of one month to enable speedy extension of the Scheme to new sectors of employment.**

**Dual Control**

119. The Committee note that the medical care under the ESI Scheme is administered by the State Governments except in Delhi. The State Governments provide contribution to the Scheme to the extent of  $1/8^{\text{th}}$  ( $12\frac{1}{2}\%$ ) of the cost of medical benefits. In addition, the State Governments are also required to bear expenditure in excess of the ceiling fixed by the Corporation for purpose of reimbursement. The imposition of ceiling appears to be unrealistic, and also has been resented to by the State Governments who are demanding its withdrawal. Further, the ceiling appears to be one of the reasons for the unsatisfactory service, provided by the State Governments in ESI hospitals and dispensaries run by them. Furthermore, the ESI Corporation has approved to take over ESI Schemes in the States from the State Governments to be run directly, wherever the State Governments give consent for the same and accordingly letters have been sent to all the State Governments. Certainly, this is a welcome move and needs speedy implementation.

**The Committee further recommend that the suggestion of Second National Labour Commission that a `subsidiary of ESIC should be set up in each State', should be considered and its feasibility evaluated.**

### **Wage ceiling under ESI Act**

**120. The Committee note that at present the employees drawing wages upto Rs.10,000/- per month are covered under the ESI Scheme. However, as soon as their wages exceed Rs.10,000/-, they fall out of the purview of the Scheme. Considering the admission of the Government that there is a vast infrastructure of ESI lying under-utilised on one side and at the same time there has been revision in wages also, the Committee are of the view that the current ceiling of Rs.10,000/- should be raised to Rs.15,000/- so that considerable number of employees who are now out of the purview of the ESI Scheme, may also be covered so that infrastructure of the ESI could be utilized to the optimum possible.**

**Vacancies in ESI Hospitals**

121. The Committee note with serious concern the dismal position of vacancies of medical and para-medical staff in ESI hospitals particularly the hospitals run by the ESI Corporation directly. The Committee also note that in Delhi itself, there are 316 vacancies in medical cadre and 700 in para-medical cadre. Running of the schemes along with the hospitals and dispensaries is the core activity of the ESI Corporation. Keeping in view the sorry state of affairs in the hospitals and dispensaries, the Committee recommend that concrete steps be taken to fill up vacancies of medical and para-medical staff without further delay so that the infrastructure in these hospitals which is under-utilized may be utilized optimally.

**NEW DELHI;**

**HEMANAND BISWAL,  
Chairman,**

**4<sup>th</sup> December, 2009  
13 Agrahayana , 1931 (Saka)**

***Standing Committee on Labour***

## AS INTRODUCED IN LOK SABHA

Bill No.66 of 2009**THE EMPLOYEES' STATE INSURANCE (AMENDMENT)  
BILL, 2009****A****BILL***further to amend the Employees' State Insurance Act, 1948.*

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Employees' State Insurance (Amendment) Act, 2009.
- (2) Section 16 shall be deemed to have come into force on the 3rd day of July, 2008 and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**Short title  
and  
commencement.**

2. In the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act), in section 2,—

(A) in clause (6A),—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

"(i) a widow, a legitimate or adopted son who has not attained the age of twenty-one years, an unmarried legitimate or adopted daughter,";

(b) in sub-clause (ii), for the words "eighteen years", the words "twentyone years" shall be substituted;

(B) in clause (9), the words "or under the standing orders of the establishment," shall be omitted;

(C) in clause (11), for sub-clause (v), the following sub-clauses shall be substituted, namely:—

"(v) dependant parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;

(vi) in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependant upon the earnings of the insured person;"

(D) for clause (12), the following clause shall be substituted, namely:—

'(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;'.

3. In section 10 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) the Director General, the Employees' State Insurance Corporation, *ex officio* as Chairman;

(b) the Director General, Health Services, *ex officio* as Co-chairman;"

4. In section 12 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) A person referred to in clause (i) of section 4 shall cease to be a member on becoming a Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of States or when he ceases to be a member of Parliament."

5. In section 17 of the principal Act, in sub-section (2), in clause (a), after the proviso, the following proviso shall be inserted, namely: –

"Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis,";

6. In section 37 of the principal Act, for the words "five years", the words "three years" shall be substituted.

7. In section 45 of the principal Act, –

(a) for the words "Inspectors" and "Inspector", wherever they occur, the words "Social Security Officers" and "Social Security Officer" shall respectively be substituted;

(b) After sub-section (3), the following sub-section shall be inserted, namely: –

"(4) Any officer of the Corporation authorised in this behalf by it may, carry out re-inspection or test inspection of the records and returns submitted under section 44 for the purpose of verifying the correctness and quality of the inspection carried out by a Social Security Officer."

8. In section 45A of the principal Act, in sub-section (1), –

(i) for the word "Inspector", the words "Social Security Officer" shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely: –

"Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable."

9. After section 45A of the principal Act, the following section shall be inserted, namely: –

"45AA. If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation."

10. In the principal Act, in sections 51A and 51B, for the words "an insured person's", the words "an employee's" shall be substituted.

11. In the principal Act, in sections 51C and 51D, for the words "Insured person", the word "employee" shall be substituted.

12. After section 51D of the principal Act, the following section shall be inserted, namely:—

"51 E. An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established."

13. In section 56 of the principal Act, in sub-section (3), for the third proviso, the following proviso shall substituted, namely:—

"Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government."

14. In section 59 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families."

15. After section 59A of the principal Act, the following section shall be inserted, namely:—

"59B. The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme."

16. For Chapter VA, the following Chapter shall be substituted, namely: —

**'CHAPTER VA  
SCHEME FOR OTHER BENEFICIARIES**

73A. In this Chapter, —

(a) "other beneficiaries" means persons other than the person insured under this Act;

(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;

(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;

(d) "user charges" means the amount which is to be charged from the other beneficiaries for medical facilities as may be notified by the Corporation in consultation with the Central Government from time to time.

73B. Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, frame Scheme for other beneficiaries and the members of their families for providing medical facility in any hospital established by the Corporation in any area which is underutilised on payment of user charges.

73C. The user charges collected from the other beneficiaries shall be deemed to be the contribution and shall form part of the Employees' State Insurance Fund.

73D. The Scheme may provide for all or any of the following matters, namely: —

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

73E. The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.

73F. Every Scheme framed under this Chapter shall be laid, as soon as may be after it

is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.

**17.** All things done, or, omitted to be done, and all actions or measures taken or not taken during the period beginning on or after the 3rd day of July, 2008 and ending immediately before the date of commencement of the Employees' State Insurance (Amendment) Act, 2009, shall in so far as they are in conformity with the provisions of this Act, as amended by the Employees' State Insurance (Amendment) Act, 2009, be deemed to have been done, or taken, or not taken, under the provisions of this Act, as amended by the Employees' State Insurance (Amendment) Act, 2009, as if such provisions were in force at the time such things were done or omitted to be done and actions or measures taken or not taken during the said period.

**18.** In section 87 of the principal Act, the following provisos shall be inserted at the end, namely: —

"Provided that such exemptions may be granted only if the employees in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same shall be taken by the appropriate Government within two months of receipt of such application."

**19.** In section 91A of the principal Act, for the words "either prospectively or retrospectively", the word "prospectively" shall be substituted.

20. After section 91A of the principal Act, the following section shall be inserted, namely:—

"91AA. Notwithstanding anything contained in this Act, in respect of establishments located in the States where medical benefit is provided by the Corporation, the Central Government shall be the appropriate Government."

21. In section 95 of the principal Act, in sub-section (2), —

(i) after clause (ef), the following clause shall be inserted, namely:—

"(eff) the income of dependant parents from all sources;"

(ii) after clause (eh), the following clause shall be inserted, namely:—

"(ehh) the conditions under which the medical benefits shall be payable to the insured person and spouse of an insured person who has attained the age of superannuation, the person who retires under Voluntary Retirement Scheme and the person who takes pre-mature retirement;"

22. In section 97 of the principal Act, in sub-section (2), —

(i) in clause (xx), for the word "Inspectors", the words "Social Security Officers" shall be substituted;

(ii) after clause (xx), the following clause shall be inserted, namely:—

"(xxa) the constitution of the appellate authority and the interest on amount deposited by the employer with the Corporation."

## STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948 is a social security legislation that provides for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto.

2. Keeping in view the changing needs of medical insurance and also to take care of the shift towards providing medical care to unorganised sector workers, it was considered that the Employees' State Insurance Corporation being the premier social security agency running a health care scheme in the country, must come forward to participate in the Rashtriya Swasthya Bima Yojana to cover Below Poverty Line workers in the unorganised sector. The Rashtriya Swasthya Bima Yojana Scheme had already become operational with effect from 1-4-2008. The Scheme had picked up momentum. Almost all the States had agreed to implement the Scheme and a majority of them had already advertised for the implementation of the same. More than 1.25 lakh smart cards had been issued by 15-6-2008. The number at present had risen to over 54 lakhs. Some recipients of these cards had already been assisted by way of hospitalisation. It was, therefore, considered essential and urgent to enable the Employees' State Insurance Corporation to participate in the Scheme with immediate effect. By providing health services to the unorganised sector workers under the Rashtriya Swasthya Bima Yojana Scheme, both unorganised sector workers and the Employees' State Insurance Corporation would benefit by the Employees' State Insurance Corporation making available its vast network of hospitals for providing medical care on user charges, wherever the same were underutilised. In view of the urgency as pointed out above, the Employees' State Insurance (Amendment) Ordinance, 2008 was promulgated on the 3rd July, 2008. To replace the said Ordinance, the Employees' State Insurance (Amendment) Bill, 2008 was introduced in Parliament on 21-10-2008 and the same was referred to the Department-related Parliamentary Standing Committee on Labour for examination and report. The Committee presented its report on the 19th December, 2008. The Committee agreed in principle the provisions of the said Bill. However, it made certain recommendations for improvement in the proposed Scheme. However, due to the dissolution of the Fourteenth Lok Sabha, the said Bill lapsed.

3. In the meantime, the Sub-Committee constituted by the Employees' State Insurance Corporation to review the existing provisions of the said Act keeping in view the changed economic scenario had recommended comprehensive amendments in the said Act. In view of the above, it is considered necessary to bring the provisions of the said lapsed Bill and the recommendations of the said Sub-Committee in the proposed legislation. Hence, the present Bill.

4. The salient features of the Bill are as follows: —

(i) it enhances the age limit from the existing eighteen years to twenty-one years for the purpose of giving benefits to dependants;

(ii) it includes an apprentice appointed under the standing orders as an employee for the purpose of this Act;

(iii) it provides benefits to workers for the accidents happening while commuting to the place of work and *vice versa*;

(iv) it enables the Central Government to make rules to decide dependency of the parents on the basis of income;

(v) it provides for a new definition of "factory" to provide that when ten or more persons are employed or were employed in the preceding twelve months irrespective of the use of power;

(vi) it empowers the Central Government to include the Director General of Employees' State Insurance Corporation as the *ex officio* Chairman and Director General, Health Services as the *ex officio* Co-chairman in the Medical Benefit Council;

(vii) it provides for cessation of membership of the Employees' State Insurance Corporation for member of Parliament when he becomes Minister or Speaker or Deputy Speaker of the House of the People or Deputy Chairman of the Council of State or when he ceases to be a member of Parliament;

(viii) it enables the Employees' State Insurance Corporation to appoint consultants and specialists on contract without referring the matter to the Central Government for better delivery of super-speciality services;

(ix) it increases public accountability by valuation of assets once in three years from existing once in five years;

(x) it re-designates the Insurance Inspector as Social Security Officer;

(xi) it simplifies the determination of employer's contribution;

(xii) it empowers the Central Government to specify by rules the other conditions for medical treatment of an insured person who retires under Voluntary Retirement Scheme or takes premature retirement;

(*xiii*) it empowers the Employees' State Insurance Corporation to enter into an agreement with any local authority, local body or private body for commissioning or running ESI hospitals through third party participation for providing medical treatment and attendance to insured persons; and

(*xiv*) it improves the quality of its service delivery and raise infrastructural facilities by opening medical colleges and training facilities in order to increase its medical and para-medical staff.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 30th July, 2009.*

MALLIKARJUN KHARGE.

## FINANCIAL MEMORANDUM

The Employees' State Insurance Act, 1948 is a social security legislation that provides for medical care and cash benefits in the contingencies of sickness, maternity, disablement and death due to employment injury to workers. It applies, in the first instance, to nonseasonal factories using power and employing ten or more coverable employees and nonpower factories employing twenty or more coverable employees for wages. The provisions of the Act are being extended area-wise by stages. The Act contains an enabling provision under which the appropriate Government is empowered to extend the provisions of the Act to other classes of establishment industrial, commercial, agricultural or otherwise.

2. Comprehensive amendments in the Employees' State Insurance Act, 1948 are proposed to be made pursuant to the recommendations of the Sub-Committee constituted to review the existing provisions of the said Act keeping in view the changed economic scenario and to improve service delivery to the insured persons under the ESI Scheme. Under the existing provisions of the Act, medical care can be provided only to insured persons and their families. The amendments in the Act are also proposed to optimally utilise the existing unutilized infrastructure for other beneficiaries in the unorganised sector to augment funds of the ESI Corporation.

3. The Bill does not involve any expenditure whether recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill empowers the Central Government to specify by rules the income of the dependant parents from all sources for the purpose of including them as the relatives of the insured person.

2. Clause 9 of the Bill seeks to empower the Employees' State Insurance Corporation to provide an appellate authority by regulation for hearing appeal from an employer against the determination of contribution payable in respect of employees and to specify the interest on the deposit made by the employer in case the employer is finally succeeds in the appeal.

3. Clause 13 of the Bill empowers the Central Government to specify by rules the other conditions for medical treatment of an insured person who retires under Voluntary Retirement Scheme or takes premature retirement.

4. Clause 16 of the Bill seeks to substitute Chapter VA so as to empower the Central Government to frame a Scheme for other beneficiaries and the members of their families providing medical facility in hospital established by the Corporation in any area which is underutilised on payment of user charges. The Scheme may provide for all or any of the following matters, namely:—

(i) the other beneficiaries who may be covered under this Scheme;

(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;

(iii) the form in which the other beneficiary shall furnish particulars about himself and his family whenever required as may be specified by the Corporation;

(iv) any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

5. The matters in respect of which the rules or regulations, as the case may be, to be made, are of administrative and procedural details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE EMPLOYEES' STATE INSURANCE ACT, 1948

(34 OF 1948)

\* \* \* \* \*

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

\* \* \* \* \*

(6A) "dependant" means any of the following relatives of a deceased insured person, namely: —

(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

\* \* \* \* \*

(ii) if wholly dependant on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

\* \* \* \* \*

(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and —

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include –

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;

	*	*	*	*	*
(11)	*	*	*	*	*

(v) dependant parents;

(12) "factory" means any premises including the precincts thereof –

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) where on twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;

\* \* \* \* \*

10. (1) The Central Government shall constitute a Medical Benefit Council consisting of—

(a) the Director General, Health Services, *ex officio*, as Chairman;

(b) a Deputy Director-General, Health Services, to be appointed by the Central Government;

\* \* \* \* \*

12. (1)

\* \* \* \* \*

(3) A person referred to in clause (i) of section 4 shall cease to be a member of the Corporation when he ceases to be a member of Parliament.

\* \* \* \* \*

37. The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government: Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

\* \* \* \* \*

45. (1) The Corporation may appoint such persons as inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Inspector appointed by the Corporation under sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorized in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with—

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;

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

(3) An Inspector shall exercise such functions and perform such duties as may be authorized by the Corporation or as may be specified in the regulations.

**45A.** (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Inspector or other official of the Corporation referred to in sub-section (2) of section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

\*

\*

\*

\*

\*

**51A.** For the purposes of this Act, as accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

**51B.** An accident shall be deemed to arise out of and in the course of an insured person's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if—

(a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

(b) the act is done for the purpose of and in connection with the employer's trade or business.

**51C. (1)** An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if –

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle –

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) is not being operated in the ordinary course of public transport service.

(2) In this section "vehicle" includes a vessel and an aircraft.

**51D.** An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succor or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimize serious damage to property.

\* \* \* \* \*

**56. (1)** \* \* \* \* \*

(3) A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations:

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations:

Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:

Provided also that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

*Explanation.* — In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.

\*

\*

\*

\*

\*

## CHAPTER VA

## TRANSITORY PROVISIONS

73A. (1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employer's special contribution) at the rate specified under sub-section (3).

(2) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.

(3) The employer's special contribution shall consist of such percentage, not exceeding five per cent. of the total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time:

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied:

Provided further that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

*Explanation.* – "Total wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as Employer's special contribution may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

**73B.** (1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

(2) The provision of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

**73C.** The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

*Explanation.* – In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employee's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

**73D.** The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land-revenue.

**73E.** Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

**73F.** Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location of, or the nature of the industry carried on in, any factory or establishment or class of factories or establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in sections 87 to 91 inclusive shall be deemed to authorize any State Government to grant any such exemption.

**73G.** Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

**73H.** [*Power to remove difficulties.*] *Rep. by the Employees' State Insurance (Amendment) Act, 1966 (44 of 1966), s. 31 (w.e.f.17-6-1976).*

**73I.** The Central Government may, by notification in the Official Gazette, direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification:

Provided that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897, shall apply as if the provisions of this Chapter had been repealed by a Central Act.

\* \* \* \* \*

**91A.** Any notification granting exemption under section 87, section 88, section 90 or section 91 may be issued so as to take effect either prospectively or retrospectively on such date as may be specified therein.

\* \* \* \* \*

**97. (1)** \* \* \* \* \*

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

\* \* \* \* \*

(xx) the duties and powers of Inspectors and other officers and servants of the Corporation;

\* \* \* \* \*

**LOK SABHA**

**A**

**BILL**

further to amend the Employees' State Insurance Act, 1948.

— — — —

*(Shri Mallikarjun Kharge, Minister of Labour and Employment)*  
GMGIPMRND—3623LS(S5)—04-08-2009.

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON LABOUR HELD ON 22<sup>ND</sup> OCTOBER, 2009.**

The Committee met from 1130 hrs. to 1300 hrs in Committee Room `A', Parliament House Annexe, New Delhi to have briefing by the representatives of the Ministry of Labour and Employment on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009'.

**PRESENT**

**Shri Hemanand Biswal – CHAIRMAN**

**MEMBERS**

**LOK SABHA**

2. Shri M. Anandan
3. Shri P. Balram
4. Dr. Shafiqur Rahman Barq
5. Shri Kaushalendra Kumar
6. Shri Hari Manjhi
7. Shri P.R. Natarajan
8. Km. Mausam Noor
9. Shri S. Pakkirappa
10. Shri Ramkishun
11. Shri Chandu Lal Sahu

**RAJYA SABHA**

12. Shri G. Sanjeeva Reddy
13. Shri Rudra Narayan Pany
14. Shri Rajaram
15. Smt. Renubala Pradhan

**SECRETARIAT**

- |                          |   |                     |
|--------------------------|---|---------------------|
| 1. Shri Devender Singh   | - | Joint Secretary     |
| 2. Shri Ashok Sajwan     | - | Additional Director |
| 3. Smt. Bharti S. Tuteja | - | Under Secretary     |



6. The main discussion on the Bill was held on the following amendments to the Bill:-

- (i) dual control over ESIC.
- (ii) provision for commissioning and running of ESI hospitals through third party participation.
- (iii) requirement of six months notice by the appropriate government for extending the provisions of this Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
- (iv) proposal to enhance the age limit of dependant legitimate or adopted son for eligibility to dependants benefit from 18 years to 21 years.
- (v) coverage of contract labourers under the Act.

7. A copy each of List of Points relating to amendments on both the Bills was handed over to the Secretary for furnishing replies thereto to the Committee, within a week.

**The witnesses then withdrew.**

The verbatim proceedings were kept for record.

**The Committee then adjourned.**

---

XX Do not pertain to this Report.

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON LABOUR HELD  
ON 3<sup>RD</sup> NOVEMBER, 2009.**

The Committee met from 1130 hrs. to 1330 hrs in Committee Room 'B', Parliament House Annexe, New Delhi to hear the views of the representatives of Central Trade Unions on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees' State Insurance (Amendment) Bill, 2009'.

**PRESENT**

**Shri Hemanand Biswal – CHAIRMAN**

**MEMBERS  
LOK SABHA**

2. Shri K. Murugesan Anandan
3. Shri Sudarshan Bhagat
4. Shri Hassan Khan
5. Shri Kaushalendra Kumar
6. Shri P. Lingam
7. Shri Hari Manjhi
8. Shri P.R. Natarajan
9. Shri Ramkishun
10. Shri Chandu Lal Sahu

**RAJYA SABHA**

11. Shri Rudra Narayan Pany
12. Shri Rajaram
13. Smt. Renubala Pradhan

**SECRETARIAT**

- |    |                       |   |                     |
|----|-----------------------|---|---------------------|
| 1. | Shri Devender Singh   | - | Joint Secretary     |
| 2. | Shri B. S. Dahiya     | - | Director            |
| 3. | Shri Ashok Sajwan     | - | Additional Director |
| 4. | Smt. Bharti S. Tuteja | - | Under Secretary     |

**REPRESENTATIVES OF THE CENTRAL TRADE UNIONS**

<b>Sl. No.</b>	<b>Name of the Organisation</b>	<b>Name of the representative</b>	<b>Designation</b>
1.	<b>Bharatiya Mazdoor Sangh</b>	<b>Shri R. V. Subba Rao</b>	<b>Vice President</b>
2.	<b>Hind Mazdoor Sabha</b>	<b>Shri R. A. Mittal</b>	<b>Secretary</b>
3.	<b>Centre for Indian Trade Unions</b>	<b>Shri Swadesh Dev Roye</b>	<b>National Secretary</b>
4.	<b>Indian National Trade Union Congress</b>	<b>Shri Chandra Prakash Singh</b>	<b>President</b>
5.	<b>All India Trade Union Congress</b>	<b>(i) Shri D.L. Sachdev  (ii) Shri G. L. Dhar</b>	<b>Secretary  Secretary</b>

2. At the outset, the Chairman welcomed the representatives of the Trade Unions to the sitting of the Committee convened to hear the views of the Trade Unions on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees State Insurance (Amendment) Bill, 2009' and also drew their attention to Direction 55 of Directions by the Speaker, Lok Sabha. The Chairman, thereafter, sought their views on the various provisions of 'The Industrial Disputes (Amendment) Bill, 2009' in the first instance.

3. XX

XX

XX

4. The Chairman, then sought their views on the various provisions of 'The Employees' State Insurance (Amendment) Bill, 2009'.

5. The representatives of the Trade Unions expressed their views and gave their suggestions on various provisions of the Bill as under:-

- (i) enhancement of the age limit from the existing eighteen years to twenty-one years for the purpose of giving benefits to dependants;
- (ii) apprentice appointed under the Standing Orders as an employee for the purpose of this Act;
- (iii) new definition of "factory" to provide that when ten or more persons are employed or were employed in the preceding twelve months irrespective of the use of power;
- (iv) enabling the Employees' State Insurance Corporation to appoint consultants and specialist on contract without referring the matter to the Central Government for better delivery of super-speciality services;
- (v) enabling Employees' State Insurance Corporation to enter into an agreement with any local authority, local body or private body for commissioning or running ESI hospitals through third party participation for providing medical treatment and attendance to insured persons; and
- (vi) allowing Employees' State Insurance Corporation to open medical colleges and training facilities in order to increase its medical and para-medical staff.
- (vii) Comprehensive review of the Employees' State Insurance Act regarding functioning of Employees' State Insurance Corporation.

6. The queries raised by members, pertaining to both the Bills, were also responded to by the representatives of Trade Unions.

7. The Chairman then thanked the representatives of Trade Unions for giving valuable suggestions on both the Bills.

**The witnesses then withdrew.**

Verbatim proceedings of the sitting were kept for record.

**The Committee then adjourned.**

-----

XX Do not pertain to this Report.

**MINUTES OF THE FIFTH SITTING OF STANDING COMMITTEE ON LABOUR  
HELD ON 11<sup>TH</sup> NOVEMBER, 2009.**

The Committee met from 1400 hrs. to 1545 hrs in Committee Room No. `139', Parliament House Annexe, New Delhi to have oral evidence of the representatives of the Ministry of Labour and Employment on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009' and to consider and adopt draft Action Taken Reports.

**PRESENT**

**Shri Hemanand Biswal – CHAIRMAN**

**MEMBERS  
LOK SABHA**

2. Shri M. Anandan
3. Shri P. Balram
4. Dr. Shafiqur Rahman Barq
5. Shri Sudarshan Bhagat
6. Shri Hassan Khan
7. Shri Kaushalendra Kumar
8. Shri P. Lingam
9. Shri Hari Manjhi
10. Shri P.R. Natarajan
11. Shri Chandu Lal Sahu

**RAJYA SABHA**

12. Shri G. Sanjeeva Reddy
13. Shri Rajaram
14. Smt. Renubala Pradhan
15. Shri G.N. Ratanpuri

**SECRETARIAT**

- |    |                       |   |                     |
|----|-----------------------|---|---------------------|
| 1. | Shri Devender Singh   | - | Joint Secretary     |
| 2. | Shri B.S. Dahiya      | - | Director            |
| 3. | Shri Ashok Sajwan     | - | Additional Director |
| 4. | Smt. Bharti S. Tuteja | - | Under Secretary     |

**REPRESENTATIVES OF THE MINISTRY OF LABOUR AND EMPLOYMENT**

1. Shri P. C. Chaturvedi, Secretary
2. Shri S. K. Dev Verman, Joint Secretary
3. Shri S. K. Mukhopadhyay, Chief Labour Commissioner (Central)
4. Shri Rajiv Dutt, Financial Commissioner, ESIC
5. Shri B. K. Sahu, Insurance Commissioner, ESIC
6. Dr. Mrs. K. Tyagi, Medical Commissioner, ESIC
7. Shri Devender Singh, Director
8. Shri S.K. Verma, Director
9. Shri A.V. Singh, Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Labour and Employment to the sitting of the Committee convened to take their oral evidence on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees' State Insurance (Amendment) Bill, 2009'. The Committee first took up 'The Industrial Disputes (Amendment) Bill, 2009'.

3.           XX                               XX                               XX

4.           XX                               XX                               XX

5. The Committee then took up 'The Employees' State Insurance (Amendment) Bill, 2009'. The Secretary, Ministry of Labour briefed the Committee on the proposed amendments in the Bill. The Members then sought clarifications on the amendments. The Secretary and other officials of the Ministry responded to the queries of the Chairman and members.

6. The main discussion on the Bill took place on the following amendments:-

- (i) dual control over ESIC.
- (ii) provision for commissioning and running of ESI hospitals through third party participation.
- (iii) requirement of six months notice by the appropriate government for extending the provisions of this Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
- (iv) coverage of contract labourers under the Act.

7. A copy each of supplementary list of points relating to amendments on both the Bills was handed over to the Secretary for furnishing replies thereto to the Committee, within three days.

**The witnesses then withdrew.**

The verbatim proceedings of the sitting were kept for record.

- |     |    |    |    |
|-----|----|----|----|
| 8.  | XX | XX | XX |
| 9.  | XX | XX | XX |
| 10. | XX | XX | XX |

**The Committee then adjourned.**

---

XX Do not pertain to this Report.

**MINUTES OF THE SITTING OF THE STANDING COMMITTEE ON LABOUR  
HELD ON 4<sup>TH</sup> DECEMBER, 2009.**

The Committee met from 1530 hrs. to 1600 hrs in Committee Room 'E', Parliament House Annexe, New Delhi to consider and adopt the draft reports on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees' State Insurance (Amendment) Bill, 2009'.

**PRESENT**

**Shri Hemanand Biswal – CHAIRMAN**

**MEMBERS**

**LOK SABHA**

2. Shri P. Balram
3. Dr. Shafiqur Rahman Barq
4. Shri Hassan Khan
5. Shri Kaushalendra Kumar
6. Shri P.R. Natarajan
7. Shri S. Pakkirappa

**RAJYA SABHA**

8. Shri G. Sanjeeva Reddy
9. Shri Rudra Narayan Pany
10. Shri G.N. Ratanpuri

**SECRETARIAT**

- |    |                     |   |                     |
|----|---------------------|---|---------------------|
| 1. | Shri Devender Singh | - | Joint Secretary     |
| 2. | Shri Ashok Sajwan   | - | Additional Director |

2. At the outset, the Chairman welcomed the Members and apprised them about the draft Reports on 'The Industrial Disputes (Amendment) Bill, 2009' and on 'The Employees' State Insurance (Amendment) Bill, 2009'.

3. XX

XX

XX

4. The Committee, then, took up the draft Report on 'The Employees' State Insurance (Amendment) Bill, 2009' for consideration. The Committee adopted the draft Report without any modification.

5. The Committee then authorized the Chairman to present the Reports to both the Houses of Parliament.

**The Committee then adjourned.**

-----

XX Do not pertain to this Report.