

TO BE 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.

Short title
and
commencement.

(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.

- Amendment of section 2. **2.** In the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act), in section 2,— 34 of 1948.
- (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;
- (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;'.
- Amendment of section 10. **3.** In section 10 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:— 35 of 1952.
- "(a) the Director General, the Employees' State Insurance Corporation, *ex officio* as Chairman;
- (b) the Director General, Health Services, *ex officio* as Co-chairman;".
- Amendment of section 12. **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."
- Amendment of section 17. **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,";
- Amendment of section 37. **6.** In section 37 of the principal Act, for the words "five years", the words "three years" shall be substituted.
- Amendment of section 45. **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),—

Amendment
of section
45A.

(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:—

Insertion of
new section
45AA.

"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:

Appellate
authority.

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.

Amendment
of sections
51A and 51B.

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

Amendment
of sections
51C and 51D.

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

Insertion of
new section
51E.

"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."

Accidents
happening
while
commuting to
the place of
work and *vice
versa*.

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

Amendment
of section 56.

"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."

Amendment of section 59.	<p>14. In section 59 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—</p> <p style="padding-left: 40px;">"(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."</p>
Insertion of new section 59B.	<p>15. After section 59A of the principal Act, the following section shall be inserted, namely:—</p> <p style="padding-left: 40px;">"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."</p>
Medical and para-medical education.	<p style="padding-left: 40px;">"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."</p>
Substitution of new Chapter for Chapter VA.	<p>16. For Chapter VA, the following Chapter shall be substituted, namely:—</p> <p style="text-align: center;">'CHAPTER VA SCHEME FOR OTHER BENEFICIARIES</p>
Definitions.	<p>73A. In this Chapter,—</p> <p style="padding-left: 40px;">(a) "other beneficiaries" means persons other than the person insured under this Act;</p> <p style="padding-left: 40px;">(b) "Scheme" means any Scheme framed by the Central Government from time to time under section 73B for the medical facility for other beneficiaries;</p> <p style="padding-left: 40px;">(c) "underutilised hospital" means any hospital not fully utilised by the persons insured under this Act;</p> <p style="padding-left: 40px;">(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.</p>
Power to frame Schemes.	<p>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.</p>
Collection of user charges.	<p>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.</p>
Scheme for other beneficiaries.	<p>73D. The Scheme may provide for all or any of the following matters, namely:—</p> <p style="padding-left: 40px;">(i) the other beneficiaries who may be covered under this Scheme;</p> <p style="padding-left: 40px;">(ii) the time and manner in which the medical facilities may be availed by the other beneficiaries;</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 40px;">(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.</p>
Power to amend Scheme.	<p>73E. The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind the Scheme.</p>
Laying of Scheme framed under this Chapter.	<p>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</p>

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.

Validation.

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

Amendment of section 87.

"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.

Amendment of section 91A.

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

Insertion of new section 91AA.

"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."

Central Government to be appropriate Government.

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

Amendment of section 95.

(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), —

Amendment of section 97.

(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 non-seasonal factories using power and employing ten or more coverable employees and non-power 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 unutilised 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)

* * * * *
Definitions. 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—

62 of 1961.

(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,

35 of 1952.

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 constiute a Medical Benefit Council consisting of—

Medical Benefit Council.

(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) * * * * *

Cessation of membership.

(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:

Valuation of assets and liabilities.

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 Corproation 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.

Inspectors their functions and duties.

(2) Any Inspector appointed by the Corporation under sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised 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.

Determination of contributions in certain cases.

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.

* * * * *

Presumption as to accident arising in course of employment.

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.

Accidents happening while acting in breach of regulations, etc.

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.

Accidents happening while travelling in employer's transport.

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.

Accidents happening while meeting emergency.

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, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

* * * * *

Medical benefit.

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).

Employer's special contribution.

(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

may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court.

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 as they 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.

Benefits under Chapter V to depend upon employee's contribution.

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.

Mode of recovery of employer's special contribution.

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

Power to call for additional information or return.

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.

Power to exempt to be exercised by Central Government alone in respect of employer's special contributions.

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.

Application of certain provisions of this Act to employer's special contribution.

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 they 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).*

Duration of Chapter VA.

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:

10 of 1897. 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.

* * * * * Exemption to be either prospective or retrospective.

97. (1) * * * * * Power of Corporation to make regulations.

(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.