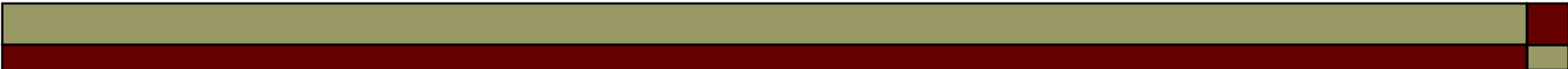


# STANDING ORDERS

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# Overview

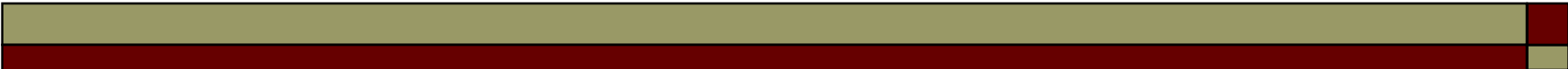
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- Contract of Employment:
  - An imbalanced document:
    - Unequal bargaining power;
    - Incomplete;
    - Subordination;
    - Longevity
- Role of Labour Law: To remove imbalance

# Overview

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- ❑ Labour Law in India: Tussle between
  - Compulsory Adjudication;
  - Collective Bargaining
- ❑ TU Act – Collective Bargaining
- ❑ ID Act – Compulsory Adjudication
- ❑ Standing Orders Act can be understood as a compromise between the two approaches



# Objectives

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- ❑ Define terms and conditions of employment with clarity
- ❑ Give workers a voice
- ❑ Apply them uniformly to workers
- ❑ Make workers aware and reduce discrimination
- ❑ Fairness and reasonableness in conditions

# Nature of Standing Orders

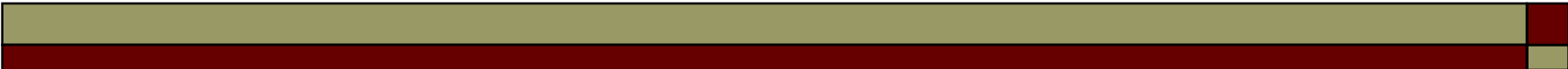
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- ❑ RSRTC v Krishna Kant – Statutory terms and conditions of service.
- ❑ Western India Match v Workmen – Standing Orders prevail over terms in contract of service in existence on enforcement of SO. Posterior and inconsistent agreement will also not prevail.

# Nature of Standing Orders

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- ❑ Rasiklal Vaghajibhai Patel – Any settlement will not override Model Standing Order, unless more beneficial to employees.
- ❑ BKKKS v Jet Airways - The Act being the beneficial legislation provides that any agreement/contract/settlement wherein the rights of the employees are waived off would not override the Standing Orders.



# Definitions

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- Appropriate Government
  - Central Government – if controlled by CG or railway administration or major port, mine or oil field.
  - State Government – In all other cases.

# Definitions

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- Appropriate Government
- Sindri Workers Union - The test for finding out whether an industrial establishment is controlled by the Central Government ... is a realistic test, namely, whether the Central Government has control over the industrial establishment under the Articles of Association in the case of a Private Limited Company or by the provisions of the special statute in the case of a public corporation

# Definitions

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## □ Industrial Establishment:

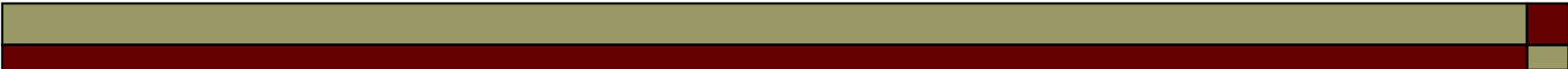
- an industrial establishment as defined in Section 2(ii) of the Payment of Wages Act, 1936;
- a factory as defined in Section 2(m) of the Factories Act, 1948;
- railway as defined in Section 2(4) of Indian Railways Act, 1890;
- the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen

# Definitions

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## □ Employer:

- in a factory, any person named under Section 7(1)(f) of the Factories Act, 1948 as the manager of the factory;
- in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; and
- in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment



# Definitions

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- ❑ Definitions of Trade Unions, Workmen and Wages are defined by references to TU Act and ID Act.

# Applicability

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- ❑ Industrial Establishments where 100 or more workmen are/were employed on any day in preceding 12 months.
- ❑ Continues to apply even if number falls below 100.
- ❑ Can apply to establishments with less than 100 persons after giving two months' prior notice.

# Applicability

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- ❑ does not apply to:
  - any industry to which provisions of Chapter VII of the Bombay Industrial Relations Act, 1946; or
  - any industrial establishment to which provisions of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 applies. However, the provisions of the Standing Orders Act will continue to apply to all industrial establishments under the control of the Central Government.

# Applicability

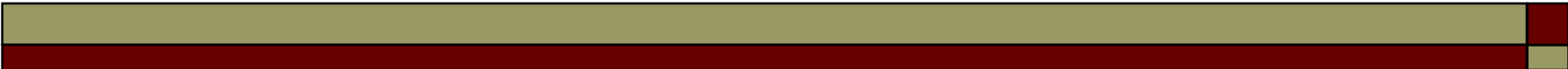
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- ❑ does not apply to industrial establishments insofar workmen employed are persons to whom:
  - Fundamental and Supplementary Rules,
  - Civil Services (Classification, Control and Appeal) Rules,
  - Civil Services (Temporary Services) Rules,
  - Revised Leave Rules,
  - Civil Service Regulations,
  - Civilians in Defence Service (Classification, Control and Appeal) Rules,
  - the Indian Railway Establishment Code, or
  - Any other rules or regulation notified by appropriate government apply.

# Applicability

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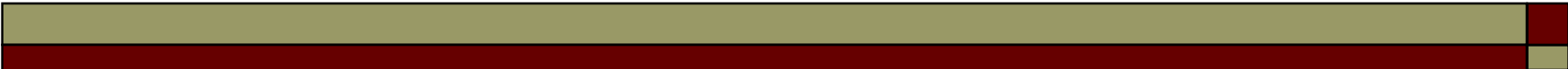
- ❑ The U.P. State Electricity Board and Ors. vs. Hari Shankar Jain and Ors. - The language of Section 13B is that a rule or regulation, if notified by the Government, will exclude the applicability of the Act to the extent that the rule or Regulation covers the field.
- ❑ Appropriate government can exempt, with or without conditions, any industrial establishment or class of industrial establishments from any or all of the provisions of the Act.



# Applicability

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- ❑ Under Code on Industrial Relations, the threshold has been increased to 300 workers.
- ❑ Industrial Establishment is understood as a place where industry is carried on.



# Matters to be covered by SO

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- Schedule I provides for the matters to be mentioned in the Standing Orders

# Process under the Act

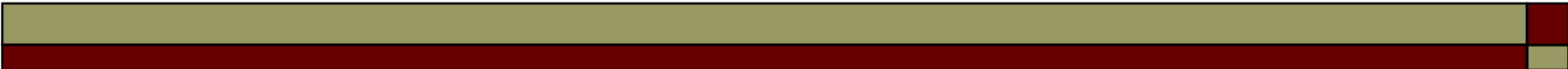
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- ❑ Within 6 months of Act becoming applicable to an establishment, employer is to submit DSO to certifying officer.
  - Has to provide for all matters mentioned in Schedule, as applicable to the establishment
  - If MSO are prescribed, then, as far as practicable, DSO have to be in conformity with MSO.
  - Accompanied with particulars of workmen (including their trade unions)

# Process under the Act

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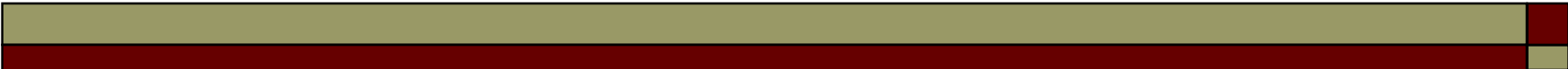
- ❑ ACC v PD Vyas – DSO need not be identical to MSO but must conform to it in substance. Duty of the Certifying Officer to consider if DSO are in conformity to MSO and if practicable to insist upon conformity.
- ❑ Air Gases Mazdoor Sangh v Indian Air Gases – If CO finds that some provisions of standing orders relate to matters not included in the Schedule, he must refuse certification



# Process under the Act

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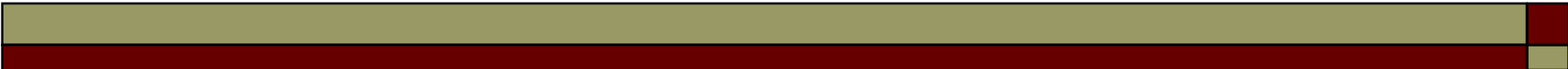
- ❑ Rohtak and Hissar Districts Electric Supply – Draft Standing Orders cannot relate to matters outside the Schedule. Employer cannot insist upon adding a condition not provided in the Schedule.



# Process under the Act

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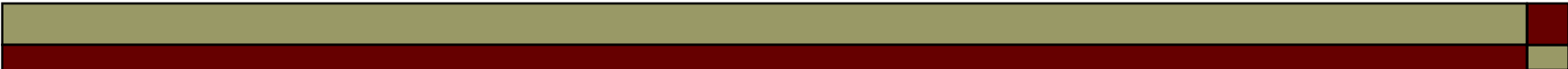
- ❑ Certifying officer to consider if DSO provides for every matter provided in Schedule and DSO are otherwise in conformity with Act.
- ❑ Further required to adjudicate on fairness or reasonableness of provisions.



# Process under the Act

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- ❑ Western India Match Co. v Workmen – CO has to consider and weigh social interest in the claims of employer and social interest in demands of workers.



# Process under the Act

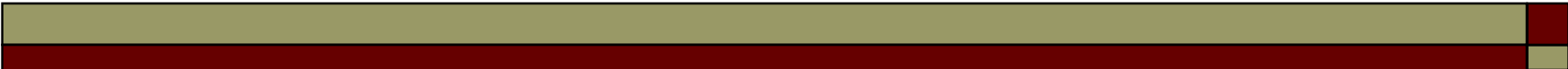
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- ❑ Certifying officer is to forward a copy of the DSO within fifteen days to the trade union of the workmen, asking for objections, if any.
- ❑ If there is no trade union, required to call a meeting of the workmen to elect three representatives to whom the copy of the draft standing orders shall be sent.

# Process under the Act

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- ❑ After giving an opportunity of being heard to employer and workmen, Certifying officer is required to decide if any modifications or additions are required, make an order in writing and then make the changes.
- ❑ After making the changes, certifying officer is required to certify the DSO and send copies within 7 days to employer and trade union.



# Process under the Act

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- ❑ If any employer, workmen, trade union or other prescribed representatives of workmen want to appeal, they can do so within 30 days from the date of copies being sent by certifying officer.
- ❑ Appellate authority is to confirm the SO or amend them by modification or addition.
- ❑ Thereafter, it is to be sent to certifying officer, employer and trade union within 7 days of order.

# Process under the Act

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- ❑ Punjab Khadi Gram Udyog - AA cannot set aside the order of CO. It can either confirm or amend the SO.
- ❑ Kerala Agro Machinery Corporation - AA cannot remand the matter back for fresh consideration.
- ❑ Can appeal even if did not participate in certification process.

# Operation of Standing Orders

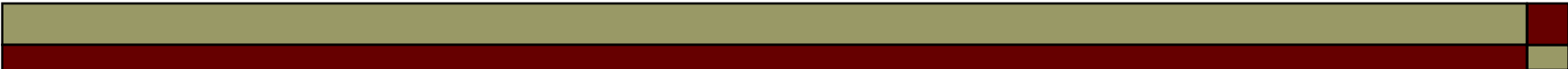
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- ❑ Standing Orders come into effect on expiry of 30 days from which Certifying Officer sends the copies. If appeal is preferred, it comes into effect on expiry of 7 days from which appellate officer's order is sent.
- ❑ Between the time Act becomes applicable and CSO come into operation, MSO are applicable.

# Operation of Standing Orders

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- ❑ CSO are not to be modified until expiry of 6 months from application or last modification, unless agreement between workmen and employer.
- ❑ Employer or any workmen or trade union can apply for modification by an application to Certifying Officer. However, majority trade union can object.



# Operation of Standing Orders

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- ❑ Indian Oil Corporation v Joint Chief Labour Commissioner - Nothing to indicate that proposed modification cannot be certified if it is in conflict with MSO but reasonable or fair.

# Penalties

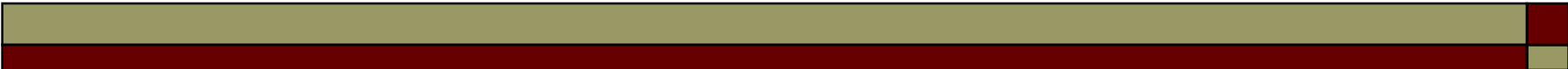
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- ❑ Failure to submit draft standing orders, modification of standing orders in contravention of the Act - a fine of up to five thousand Rupees.
- ❑ If the offence continues, a further fine of up to two hundred Rupees for every day during which the offence continues.

# Penalties

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- ❑ An employer who acts in contravention of the certified standing orders shall be punishable with a fine that can extend to one hundred Rupees. If the offence continues, a further fine of up to twenty-five Rupees for every day during which the offence continues.
- ❑ No prosecution without sanction of appropriate government.



# Interpretation of Standing Orders

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- ❑ Question of application or interpretation to be decided by Labour Court after giving parties an opportunity of being heard.
- ❑ No prosecution without sanction of appropriate government.

# Subsistence Allowance

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- ❑ Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct, he is to be paid subsistence allowance.
- ❑ To be at the rate of 50% of the wages for the first ninety days and 75% for remaining period of suspension if delay in completion of proceeding is not directly attributable to workman.

# Subsistence Allowance

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- ❑ Where provisions of subsistence allowance under any other law in any state are more beneficial, then the said law will apply.
- ❑ B.D. Shetty v Ceat Ltd – Delay due to order of judicial authority staying disciplinary proceedings pending criminal trial was not delay directly attributable.