

WORKING CONDITIONS AND ASPIRATIONS OF THE UNORGANISED WORKERS IN TOURISM INDUSTRY IN THE STATE OF SIKKIM

The Kingdom of Sikkim, which earlier enjoyed the status of Protectorate of the Union of India, became the 22nd state of the Indian Union on 16th May 1975.¹ Prior to its merger in the Indian Union, the Kingdom of Sikkim had good relation with the Kingdom of Tibet, and bilateral trade between the two Kingdoms supplied their people with consumable and durable goods. Tourism though was not seen as an economic activity, many tourists visited Sikkim. The main visitors consist of Tibetans relatives of the Sikkimese people and those come for business and British expedition teams from India (as it is the position prior to the merger of the Kingdom of Sikkim into the Indian Union) and tourists from rest of the country. During this time many practices of forced labour were witnessed in the kingdom of Sikkim. The labour was forcibly obtained from the workers. The workers were usually not paid for the work. The ones who protested or denied work were to be severely punished. The main forms of such evil practices were “Jharlangi”, “Bhethi”, “Kuruwa” and “Kalo Bhari”. “Jharlangi” was the system of unpaid labour recruited by the

¹ Vide the Constitution Thirty-Eighth Amendment Bill, which received the assent of the President of India on 16th May 1975

Government for the purpose of construction of road and bridges.² It also included the workers employed for the purpose of carrying goods³ and British expeditions resorted to "Jharlangi" extensively. "Bhethi" was the system of each household providing unpaid labour to *Mandals* and *Kazis*⁴ for a fixed number of days in a year. "Kuruwa" was a type of labour conscripted to carry the luggage of Government officials passing through the villages. "Kalo Bhari", as its name implies, were goods that were packed in black tarpaulin to be illegally exported to Tibet.⁵

The system of "Kuruwas" in the whole of Sikkim was formally abolished by the Sikkim *Darbar*⁶ on 31st January, 1947, by a notification by the General Secretary to His Highness the Maharaja of Sikkim.⁷ The system of "Bhethi" and "Kalo Bhari" were also abolished during the rule of Maharaja Tashi Namgyal.⁸ The most controversial system of labour that also resulted in the public agitation against the *Darbar* was the system of "jharlangi". "Jharlangi" labour could be availed of only by Government Officials on duty, and State officials for transport purposes and for no other. Also on emergent occasions it was allowed be utilized for Public Works Department or for any other administrative purpose.⁹ However the labour was exploited by these

² Rajesh Verma, Sikkim- a guide and Handbook, Narendra Bhatia & Company, New Delhi, 12th ed. January 2005 at 27

³ Refer to Notification No. 3590-4089 G issued by the General Secretary of the Maharaja of Sikkim on 31st December 1946

⁴ Landlords

⁵ Supra note 101

⁶ Royal Court

⁷ Vide Notification No. 4816 G (M), General Department (Misc. Branch), dated 31st January 1947¹¹

⁸ Supra note 101

⁹ Refer to Notification No. 1 060/G., dated 16th July, 1943

officials. Such exploitation caused massive public agitation. After the public agitation compelling any person to labour against the will of that person was made punishable with imprisonment of either description for a term which extended to one year, or with fine, or with both.¹⁰ However, such labour could be requisitioned for any administrative purpose and ceremonial occasions. The power of such requisition lay on Landlords, Managers and their "Kamdaries".¹¹ For transportation the "Jharlangi" labour could now only be requisitioned on the payment of the wages fixed by the *Darbar*. Later with the merger of the kingdom of Sikkim into the Indian Union all evil practices relating to labour gradually disappeared.

The post-merger Sikkim not only witnessed various labour reforms but also huge development in many other fields. Of late, tourism has received a massive development. Today tourism is one of the fastest growing sectors in the State of Sikkim and holds tremendous potential for future economic growth with equity and employment generation. Realizing this potential of tourism sector the State Government has accorded top most priority to this sector with adequate policy and financial support. Sikkim has been witnessing a steady and healthy rate of growth of 15% per annum tourist arrival, both domestic as well as foreign and the total arrival stood at 3.2 lakhs for domestic and around 18,000 for foreign tourist during 2006.¹² The tourist inflow reportedly

¹⁰ In the tune of Section 374 of IPC

¹¹ Employee; refer to Notification No.3590-4089 G issued by the General Secretary of the Maharaja of Sikkim on 31st December 1946

¹² Annual Report 2006-2007 Department of Tourism, Government of Sikkim.

increased by 10% in 2007. Of 3.51 lakh tourists visiting the State in 2007, 3.31 lakh were domestic visitors, while the number of foreign tourists stood at 19,844.¹³

For the last few years the state of Sikkim has been following a policy of Development of tourism infrastructure in the public domain and that of tourism trade infrastructure, which includes hotels, restaurants, tourist agent and tour operators in the private domain. Along with the State Government of Sikkim, Ministry of Tourism, Government of India has been very supportive of the efforts of tourism Department and has been quite liberal in their financial support for Development of tourism infrastructure in the State. As a result of this Sikkim has been able to upgrade its tourism infrastructure considerably. Spurred by the demand of tourism trade infrastructure coupled with positive policy initiative of the State Government the private sector has responded with enthusiasm in creating the required tourism trade infrastructure. Tourism is one of the most important economic sectors of the State; the wealth of natural resources the third highest mountain in the world, the rich flora and fauna, cultural festivals and festivities and a rich tradition are some of the tremendous potentials that is available in Sikkim for the promotion of Tourism. Further the State is also developing tourism infrastructures with many mega projects targeting eco tourism, pilgrimage tourism, village tourism etc..

¹³ Annual Report 2007-2008 Department of Tourism, Government of Sikkim

The lack of large and medium industries ensures tourism as one of the most sustainable industries in the State capable of contributing immensely to the revenue and creating tremendous employment opportunities. With these potentials, the Government has not lagged behind and has therefore declared tourism is one of the topmost priorities in the over all developmental scenario of the State. In order to bring about a long term perspective plan on the development of tourism sector, the Department has prepared a perspective plan for 15 years beginning 1997 -98 and terminating in the year 2011-2012.

During the course of the present research, in order to understand the ground reality and the problems of the unorganised workers engaged in tourism in the state of Sikkim an empirical study was done. For this purpose four hundred workers engaged in different employments were interviewed for the purpose of collection of data. The data was collected through a questionnaire. The data so collected was tabulated. Further informal interactions were made with the workers, employers, government officials of the Department of Labour, Government of Sikkim and the leaders of the welfare associations in some employments. The expenses for the empirical study were met through the contingency grant granted under the fellowship scheme of the Human Resource Development, Department, Government of Sikkim. The conclusions of the study on the condition of the main contributors of tourism in the present time in the state of Sikkim may be briefly discussed under the following heads:

Travel Agents and Tourist Guides:

Until recently no systematic arrangement to generate revenue from tourism in the State of Sikkim was made. Now that tourism in Sikkim is flourishing and it is being carried on more systematically. Apart from heavy boost to all the sub sectors, the development in tourism and influx of tourists in the State has resulted in tremendous growth of employments in the front players of tourism industry. The special mention may be made of the travel agents and tourist guides. The travel agents arrange packages for the tourists or simply arrange transportation for them. They employ guides for the tourists and seldom work as guides themselves. They are mostly self employed and make good earning. However, the seasonal nature of tourism in the State causes many of them to remain unemployed during the off season. Some of the travel agents work all year through and organize off season packages. Both male and female travel agents can be found in the State but the percentage of male Agents is many times higher than the female Agents.

Travel agents are mostly well educated. The data collected for the present work reveals that about 100% of the travel agents have completed secondary education, about 83.33% have completed Senior Secondary education and about 50% of them are graduates. Travel agents have good monthly earning. They also have a larger contribution to the monthly income of

the family. The empirical study conducted for the present work shows that about 33.33% of the travel agents belong to joint family.¹⁴

Though no trade union law is in force in the State of Sikkim, most of the travel agents are the members of travel agents associations. These Associations operate as welfare associations and are not in the nature of trade unions. There are two Associations in the State working for the welfare of the Travel Agents viz. Sikkim Association of Adventure Tour Organizers (SAATO) and Travel Agents' Association of Sikkim (TAAS).

Tourist guides can broadly be classified into two classes viz. travel guides and trekking guides. In contrast to the travel agents tourist guides in the State of Sikkim are mostly employees of the travel agents. Though a few unemployed and students work as self employed guides seasonally, they do not get much work. Since a registered tour operator receives more tourists and is generally trusted by the tourists, the guides working in the agency have more work in hand and thus more income through salary and tips. Tourist guides work on permanent nature of employment or in casual nature of employment. According to the data collected for the present work about 68.18% of the guides work on permanent employment and 31.81% of them work on casual employment. The term of payment however is found to be monthly in all

¹⁴ Table 1.3 Family Structure of Travel Agents

Total interviewed	06	100%
Joint Family	02	33.33%
Nuclear Family	04	66.66%

cases.¹⁵ The guides work for long hours. They do not have holidays. They have uncertain working hours and have to continuously travel distances. The landscape of the State and the road conditions in the far flung places exposes them to the treat of accidents. They work hard and on many occasions do not get adequate rest.

A few tourist guides are paid lesser minimum wages. In the present study about 6.66% of the tourist guides in permanent employment and about 9.09% working in casual employments received wages lesser than the Statutory Minimum Wage. Out of the total tourist guides interviewed about 90.90% responded that they receive Minimum or More than Minimum Wages. Tourist¹⁶ guides have a large contribution to the monthly income of the family. The data collected for the present study shows that about 31.81% of them have joint family structure.¹⁷

Most tourist guides in the State of Sikkim are educated upto primary level. The study conducted for the present work shows that 100% of them have

¹⁵ Table 1.1 Wage Structures of Tourist Guides

	Permanent	Casual	Total
Total interviewed	30 100%	14 100%	44 100%
Receiving Min Wages 90.90%	28 93.33%	12 85.71%	40
Not Receiving Min Wages	02 6.66%	02 14.28%	04 9.09%

¹⁶ ibid

¹⁷ Table 1.2 Family Structure of Tourist Guides

	Permanent	Casual	Total
Total interviewed 100%	30 100%	14 100%	44
Joint Family 31.81%	10 33.33%	04 10%	14
Nuclear Family 68.18%	20 66.66%	10 90%	30

completed primary schooling, about 84.9% have completed junior high schooling, about 65.90% have completed secondary schooling, about 25% have completed senior secondary schooling and about 6.81% of them are graduates.¹⁸ Unlike Travel Agents Tourist Guides do not have any welfare associations.

Taxi Drivers:

Transportation in the state of Sikkim is mostly dependant on taxis. Though a few buses ply in the State and though a helicopter service is also available, taxis serve most of the tourists visiting the State. Taxi drivers are thus the main contributors of tourism in the state of Sikkim. In many cases drivers also serve as tourist guides and porters. These workers have indefinite and long hours of work. On many occasions they have to work till late night. Sometimes they have to be away for work for many days.

¹⁸ Table 1.6 Literacy and Education of Tourist Guides

	Permanent		Casual		Total	
Total interviewed	30	100%	14	100%	44	
100%						
Illiterates	00	0%	00	0%	00	0%
Literates	30	100%	14	46.66%	44	
100%						
Primary Schooling	30	100%	14	100%	44	
100%						
Jr. High Schooling	24	80%	13	92.85%	37	
84.09%						
Secondary Schooling	18	60%	11	78.57%	29	
65.90%						
Sr. Secondary Schooling	08	26.66%	03	21.42%	11	25%
Graduation	02	6.66%	01	7.14%	03	
6.81%						

Both employee and self employed taxi drivers may be found in the state of Sikkim. The sample study conducted for the purpose of the present work shows that about 22% of the taxi drivers in the state are self employed. The remaining about 78% therefore are employees. Though the self employed taxi drivers make good income and have quite independent working hours the case with employees is just the opposite. They do not enjoy weekly holidays or even holidays during the festivals. They are paid very low wages, even lower than the statutory minimum wages and made to work for long hours. The study conducted shows that only 11.53% of the total taxi drivers (employees) are paid Statutory Minimum Wages. The data collected for the present work shows that about 92.30% of the employee drivers and 95.45% of the self employed drivers have completed primary schooling. About 23.07% of the employee drivers and about 72.72% of the self employed drivers have completed secondary schooling. There are quite a few graduates and post graduates in both the class of taxi drivers. Despite their education they are discriminated on various fronts. They often face police harassment. The very nature of job is such that these workers are vulnerable to accidents. The victims and dependants have no adequate social security.

When asked about the low wages of taxi drivers the employers responded that since the drivers work independently the whole day and they do not have any supervision on the income made by them during the day, the drivers often do not hand over the entire proceed to them and thus share a much

larger part of the employer's income through the taxi than the amount of wage they receive. Many drivers confided this to be true during the interaction which according to them was due to the low wages they received. It was found that the taxi drivers with higher wages normally brought in better fare proceeds. The taxi drivers are highly unaware of the labour laws.

Most of these workers have problems relating to digestion. Irregular eating hours, constant working, smoking, drinking alcohol, constant exposure to cold weather etc. causes problems relating to stomach, liver etc. Sitting in the same posture for long hours causes problems like lower and upper back pain. Constant limited motion of their hands on the steering wheel causes repetitive strain injury (RSI) or tenosynovitis. They are most prone to sexually transmitted diseases. They constantly come in contact with sex workers and often indulge in unsafe sexual practices. This causes them to contract STDs including HIV/AIDS.

The absence of trade union law in the state has deterred the taxi drivers from unionizing. However, there are numerous welfare associations working for the welfare of drivers in the state. About 64% of the taxi drivers are members of such associations.

Hotel Workers:

Hotel workers are one of the main contributors in the tourism industry. The workers include unskilled, semi-skilled and skilled workers. The workforce in hotel industry in the state of Sikkim is clearly male dominated. Though a few females work in hotels but most of them are self-employed engaged in their own establishments on managerial or supervisory capacities. Since the hotel work goes on till late night, employers prefer male workers. Further the regulatory provision under Sikkim Shops and Commercial Establishment Rules deter the women workers working at night.

Hotel workers work hard for long hours. Generally, hotel workers start work at 4 A.M. to 5 A.M. in the morning and which goes on till 11 P.M. or midnight. Though a few big hotels engage workers on shifts, medium and small establishments same workers are engaged for the entire business hours.

Hotel workers in the state of Sikkim work both on permanent and casual basis. The responses collected for the present work shows that about 12% of the hotel workers work on seasonal employments. These workers are relatively more educated than the workers in various other sub sector of tourism. The collected data shows that only 6% of the workers are illiterates and about 67% of the workers have completed primary schooling. Many literate workers however are not functionally literate.¹⁹

¹⁹ Table 4.4 Literacy and Education of the Hotel Workers

	Permanent		Casual		Total
Total Interviewed	88	100%	12	100%	100
100%					

Hotel workers have significant contribution in the monthly income of their families. About 31% of the workers have joint family structure.²⁰ The workers in some hotels receive good wages but many workers do not receive even the minimum wages. Mostly workers engaged in unskilled works as cleaners, helpers etc and those newly employed do not receive minimum wages. The responses collected for the present work shows that about 37% of the hotel workers do not receive minimum wages.²¹

There is no trade union law in force in the state of Sikkim. No welfare association is in existence either to work for the welfare of the hotel workers. During the interaction with them for the present work most of them wished to have an organization for collective bargaining and welfare.

Illiterates	06	6.81%	00	0%	06	6%
Literates	82	93.18%	12	100%	94	94%
Primary Schooling	59	67.04%	08	66.66%	67	67%
Jr. High Schooling	28	31.81%	05	41.66%	33	33%
Secondary Schooling	13	14.77%	02	16.66%	15	15%
Sr. Secondary Schooling	02	2.27%	00	0%	02	2%
Graduates	01	1.13%	00	0%	01	1%

During the collection of data, an informal interaction done with them revealed that 3% of the total workers knew only to write their names.

²⁰ Table 4.2 Family Structure of Hotel Workers

	Permanent		Casual		Total	
Total Interviewed	88	100%	12	100%	100	
100%						
Joint Family	27	30.68%	04	33.33%	31	31%
Nuclear Family	61	69.31%	08	66.66%	69	69%

²¹ Table 4.1 Wage Structure of Hotel Workers

	Permanent		Casual		Total	
Total Interviewed	88	100%	12	100%	100	
100%						
Receiving Min Wages	55	62.5%	08	66.66%	63	63%
Not Receiving Min Wages	33	37.5%	04	33.33%	37	37%

The hotel workers mostly stay in the place of their work. Some attend their work from their private residence. The living accommodation or house rent allowance is generally not provided by the employer. Those staying in the hotels sleep in the rooms of the lodges which remains unoccupied by the customers. During the peak seasons many workers share a single room and beds. On many occasions they cannot get adequate sleep at night.

The workers in hotels as workers in other sub sectors of tourism are highly unaware of labour laws. The essentials under the laws are not properly maintained. The name of the inspector having jurisdiction is also not known to the workers. The first aid boxes are not maintained in many hotels. The hotels in towns managed their first aid facilities from medical shops. In the areas away from towns first aid boxes were found in many hotels, though many articles required under the law were missing from the boxes.

Hotel workers generally are exposed to sexually transmitted diseases including HIV/AIDS. They frequently come in contacts with the sex workers and indulge in unsafe sexual intercourse. Therefore there is a need also to take steps towards protecting these workers from such diseases.

Construction Workers:

Construction workers may be broadly classified as skilled and unskilled. Usually couples work on the same worksite. Children are often engaged in unskilled jobs. Most of these workers are employed on casual basis. In the state of Sikkim, most of the construction workers work on casual basis on daily wages. A few work on monthly basis but their employment remains primarily casual. In the present study 96% of the construction workers were found to be engaged on casual basis on daily wages. The remaining 4% were engaged on casual basis on monthly wages. Females were found working mostly on daily basis. Employment and earning in this sector is highly unstable and shifting of workplace is basic characteristic of work. The fluctuating requirement of labour force results in periodic unemployment. The workers engaged in unskilled works were found to be paid wages lesser than the Statutory Minimum Wages. 8% of the male workers and 12% of the female workers interviewed responded that they receive wages lesser than the Minimum Wage fixed under the Minimum Wages Act.²² This percentage with the total workers interviewed stands at 16%. Construction workers interviewed mostly were the members of nuclear family. About 30% of the male workers and about 18% of the female workers interviewed have joint family structure. With the total number of workers interviewed the percentage stands at 24%.²³

²² Table 3.4 Rates of Wages of the Construction Workers

	Male		Female		Total	
Total Interviewed	50	100%	50	100%	100	
Minimum Wages or More	46	92%	38	76%	84	84%
Less than Minimum	04	8%	12	24%	16	16%

²³ Table 3.1 Family Structure of Construction Workers

	Male		Female		Total
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Female construction workers are more exploited. Frequent changes in their work and instability deprive them and their children of primary facilities like health, water, sanitary facilities, education and ration cards. They are constantly exposed to sexual harassment. The responses collected for the present work shows that about 8% of the women workers have faced sexual harassment. Both married and unmarried women workers between the age of 15 and 35 years were found to have faced sexual harassment in workplace.²⁴ It is noteworthy here that women workers generally did not know what amounts to sexual harassment. They generally regard most of the acts amounting to sexual harassment as moral wrong and have no idea that such acts amount to specific offences under the laws. Further, many workers were reluctant to reveal that they have been subjected to such inhuman treatment. Therefore the percentage shown above may quite be underestimated.

The workers engaged in construction works serious long term health effects the workers engaged in stone breaking (chips) suffer from problems

Total interviewed	50	100%	50	100%	100
100%					
Joint Family	15	30%	09	18%	24
Nuclear Family	35	70%	41	82%	76
					76%

²⁴ Table 3.5 Sexual Harassment of Women Workers Engaged in Construction

Total interviewed	50	100%	
Victims	4	8%	100%
Co-workers Perpetrated	2	4%	50%
Third Party perpetrated	3	6%	75%
Employer Perpetrated	0	0%	0%
No. of Married Victims	3	6%	75%
No. of Unmarried Victims	1	1%	25%

related to posture like lower and upper back pain, spondylitis and repetitive strain injury (RSI) or tenosynovitis. Their spinal columns bent from constant stooping. Women workers engaged in construction also face problems relating to lifting of weights like prolapse of the uterus, miscarriages. The construction workers generally suffer from back problems. They also face respiratory problems and skin diseases due to dust and fumes.

The temporary sheds or barracks put up by contractors lack separate cooking space, drinking water, lavatories, bathing and washing places. Crèche facilities are also not available. The barracks found in the worksite were made up of bamboo with tin sheets on the roof and tin sheets or gunny bags to serve as walls. Some of the sheds did not have windows. In most cases the contractor provides the articles and the workers and they are asked to build a hut for himself and his family. The site visited for the purpose of this work (one of the biggest tourism project in the State) did not have any sign boards. Notice boards or abstracts of the Acts were also not found in the workplace. The workers did not know the name of the inspector having jurisdiction of their worksite under the labour laws.

Construction workers are mostly illiterate or less educated. The data collected for the present work shows that about 24% of the male workers and 36% of the female workers are illiterate. The percentage of illiterate workers with the total number of workers interviewed stands at 30%. Only 31% of the

workers have completed primary schooling. Most of the literate workers are not functionally literate. 7% of the total workers know only to write their names.²⁵

Workers engaged in tourist spots:

Tourist spots provide a platform for a wide variety of activities. These spots support numerous kinds of employments and income sources. In the state of Sikkim various types of activities are carried on in such spots. The main employments here may be identified to include shop keeping, fruit vending, tea stalling, ticket selling, night and day guarding, gardening and maintenance of spots, yak and horse attending, photography, renting traditional costumes, fast food and other eating houses etc.

The workers in tourist spots are mostly self employed workers. Some workers also work as employees but the number of such workers is far less than the self employed. The employees in most employments have low wages. With the development of tourist spots and expanded need for educated workforce well educated people are also working in tourist spots. About 80% of the

²⁵ Table 3.6 Literacy and Education of the Construction Workers

	Male		Female		Total	
Total Interviewed 100%	50	100%	50	100%	100	
Illiterates	12	24%	18	36%	30	30%
Literates	38	76%	32	69%	70	70%
Primary Schooling	21	42%	10	20%	31	31%
Jr. High Schooling	12	24%	02	4%	14	14%
Secondary Schooling	05	10%	00	0%	05	5%
Sr. Secondary Schooling	01	2%	00	0%	01	1%

employees interviewed have completed junior high schooling and about 40% have completed secondary schooling.

Some self employed workers in the tourist spots earn handsomely. With the growth in the number of tourist visiting the state, the businesses in these spots have flourished remarkably. This flourishing has resulted in tremendous growth in the income of the self employed workers in such spots. The self employed workers in the tourist spots include people from various age groups. About 55% of the workers have completed primary schooling

The workers in tourist spots face various difficulties. Working in high altitudes during winters is extremely difficult. Since the main attraction of the state is snow and rhododendrons and orchids all of which are found in high altitudes, the spots mostly develop in highly altitudes. The workers engaged in such spots are constantly exposed cold weather and often fall prey of the diseases caused by such exposure.

Some workers walk long distances to reach their workplace. In most of such spots there is no provision for temporary or permanent stay near workplace. The tourist spots in many places lack sanitary facilities, toilets and clean drinking water. The workers like yak and horse attendants have difficult time during the winter rains. There are no sheds for the animals and workers to protect them from rain. In such situation they either leave the workplace

sacrificing the income of the whole day or stay under the open sky in chilling weather in the rain waiting for it to stop. There is no trade union or other institutional machinery to fight for the right of these workers. Neither self employed workers nor employees have any welfare association.

Women workers in tourist spots are not immune from the acts of sexual harassment. About 26.31% of the women workers interviewed for the purpose of data collection responded that they have faced sexual harassment at workplace. Mostly young girls are made victims of such inhuman treatment. The perpetrators are mostly third party visiting the spots. Co-workers also perpetrate such acts but it is comparatively less common. In all cases the harassment came by way of verbal expression in the form of sexually coloured remarks. Most of the workers did not know what amounts to sexual harassment. The women workers were generally reluctant to respond freely on this matter.

There are numerous other employments in the tourism sector. The workers like trekking guides and porters, rock climbers, cable car operators, gliders, jumpers, rafters and rescue workers have their own peculiar problems. These workers are prone to accidents. Their dependants have no adequate social security. Workers engaged in village tourism, home face different and distinct problems. Dancers, singers and amusers village guides, and other casual workers engaged in village tourism do not get paid adequately. The

workers engaged in the manufacture of traditional decorative are also not paid adequately for their skill and labour. Various other workers engaged in various other employments have problems distinct and peculiar to their employments.

Most of the sub-sectors under tourism are unorganized in the developing countries. More so in the Indian state of Sikkim as not much legal protection is available to the workers in tourism in the state. As a matter of fact barring governmental institutions and a few large establishments in the work-world state of Sikkim is largely Unorganized. Though not many labour legislations are being implemented in the State, it has a Department for Labour and Employment. The Government of Sikkim had established the Department of Labour in the year 1976. During the year 1976 to 1977, the Department had worked under the overall administrative supervision and control of the Secretary and one Labour Welfare Officer. At the inception, the Labour Department was linked with the Department of Heavy Industries. The first Labour Inspector of the Department was appointed in the year 1978. Objectives of the Labour Department is to ensure cordial relation between employers and employees, good hygienic conditions and safety measures at work sites, welfare and beneficial wages to workers in time and thereby to improve socio-economic condition of the working class in the State.²⁶

A good number of Central labour legislations are in force in the State of Sikkim. Till the present day 15(fifteen) labour legislations including two State

²⁶ Annual Report, Department of Labour and Employment, Government of Sikkim, (2005-2006)

Acts are in force to protect the rights and interests of the workers in the State.

The Central legislations which are in force in the State are:

1. Bonded Labour System (Abolition) Act, 1976;
2. Equal Remuneration Act, 1976;
3. Inter-State Migrant Workmen Act, 1979;
4. Sikkim Shops and Commercial Establishments Act, 1983;
5. Workmen's Compensation Act, 1923;
6. Fatal Accidents Act, 1855;
7. Employers' Liability Act, 1938;
8. Child Labour (Prohibition and Regulation) Act, 1986;
9. Payment of Wages Act, 1936;
10. Employees' Provident Fund and Miscellaneous Provisions Act, 1952;
11. Payment of Gratuity Act, 1972;
12. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
13. Building and Other Construction Workers Welfare Cess Act, 1996;
14. Minimum Wages Act, 1948;
15. Sikkim Labour Protection Act, 2005.

Among the Central laws that are relevant for the purpose of present study and thus included in Chapter IV in the present work, barring those Acts

which are implemented by the Central Government, the only Acts which are actually being implemented in the State are:

1. Workmen's Compensation Act, 1923;
2. Payment of Gratuity Act, 1972;
3. Payment of Wages Act, 1936; and
4. Minimum Wages Act.

These Acts have been implemented in the State with the appropriate Rules made in the years 1996, 2002, 1992 and 2005 respectively. Apart from these Central Acts, there are two State Acts which are also being implemented in the State of Sikkim.

The Sikkim Labour Protection Act, 2005:

With an aim to regulate the employment and conditions of services of employed workers and self employed workers and to protect them from exploitation and for the statistical purpose, by registration of individual workers and to make provisions for certain matters in the interest of public order thereto,²⁷ the Sikkim Labour Protection Act was enacted in the year 2005.²⁸ The Act applies to all the workers employed or self-employed within

²⁷ Vide the Object Clause, the Sikkim Labour Protection Act, 2005

²⁸ Refer to Notification No. 20/LD/2005 dated 24.09.05, Extraordinary Gazette No. 360 dated 29.09.2005

the state of Sikkim but does not apply to the Muster Roll and Work Charged workers in Government Departments.²⁹

Section 3 of the Act requires the appointment of Registering Officers. The requirement and procedure of registration can be found in Section 4. For the employed workers, the principal employer or the employer or the contractor or the owner of an establishment is required to apply for registration. Self employed workers are required to apply themselves. The Registering Officer under the Act has to register the workers within six months of the submission of the application. If the application is complete in all respects the authority may consider to keep a record in the register or other prescribed form. The authority may also issue a token or receipt of such application. Where such registration of any worker has been obtained by misrepresentation or suppression of any material fact, it may be revoked provided that previous approval should be taken from the Government for such revocation.³⁰

Section 6 prohibits the employment of workers without registration. The registration remains valid upto the end of Financial Year and an application for renewal has to be submitted not less than 15 day before the expiry of such registration.³¹

²⁹ Section 1 (4)

³⁰ Section 5

³¹ Section 7

A person aggrieved by the order of the Registering Officer may prefer an appeal to the Secretary in the Department of Labour, Government of Sikkim within 30 days. The order of such Appellate Authority would be final.³²

The Principal employer or the employer or the owner of establishment or the individual workers as the case may be have duty under the Act to furnish the prescribe particulars about workers within 15 days of the employment. They are also required to surrender the token or receipt of application of registration if any worker leaves Sikkim on vacation or forever as the case may be. On occurrence of any change in the particulars so furnished, they are required to furnish particulars of such change. They also have duty under the Act to maintain a record register with particulars such as name, father's name, sex, age, temporary address, permanent address, designation, rates of wages, date of employment, and nature of work and also keep a passport size photograph in the record.³³

Chapter IV of the Act enunciates provisions for payment of wages, welfare measures and other facilities to be provided to workers. The Act requires that the wage rates, holidays, hours of work and other conditions of service of workers should be same for all workers in an establishment who perform the same of similar kind of work.³⁴ Where a male and a female worker do the same and similar nature of work, the Act requires the employer to pay

³² Section 8

³³ Section 9

³⁴ Section 10 (1) (a)

equal remuneration without discrimination on the ground of sex.³⁵ Workers must not be paid less than the wages fixed as per the existing policy and law of the State Government of Sikkim.³⁶ If a worker works without being absent during the period of 6 (six) days consecutively in a week, she/he is required under the Act to be given one paid holiday either on Sunday or any other holidays.³⁷ Normal working hours of workers as enunciated by the Act is 8 (eight) hours a day.³⁸ The Act also bears a provision prohibiting the employment of any person below the age of 14 years from all works.

Regarding the wages, the Act says that in all establishments in which less than one thousand persons are employed the wages should be paid before the expiry of the seventh day of the succeeding month. In other establishments employing more than one thousand persons, wages should be paid before the expiry of the tenth day of the succeeding month. All the wages payable to workers are to be paid in cash.³⁹

The Act casts a duty on every principal employer or employer or contractor or the owner of establishment as the case may be to:⁴⁰

- a. ensure suitable conditions of work to such workers having regard to the fact that they are required to work;

³⁵ Section 10 (1) (b)

³⁶ Section 10 (1) (c)

³⁷ Section 10 (1) (d)

³⁸ Section 10 (1) (e)

³⁹ Section 10 (2) & (3)

⁴⁰ Section 11

- b. to provide and maintain suitable residential accommodation to such workers during the period of their employment;
- c. to provide prescribed medical facilities to the workers free of charge;
- d. to provide such protective clothing and other amenities to the workers, as may be prescribed.

Under Section 11 (2), in case of fatal accident or accident resulting in serious bodily injury to any worker on duty the employer is liable to give notice to the Commissioner for Workmen's Compensation, Sikkim under Section 10 (B) of the Workmen's Compensation Act, 1923.

The Act makes provision for the nomination by the principal employer a representative at the time of disbursement or payment of wages. The contractor is under a duty to ensure disbursement of wages in the presence of the authorized representative of the principal employer. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer is liable to pay the wages in full or pay the balance due, as the case may be, and recover the amount from the

contractor either by deduction from any amount payable to the contractor or as debt.⁴¹

Under Section 13 the State Government is required to appoint inspectors for the purpose of carrying on the provisions of the Act.

Chapter VI of the Act deals with cognizance of offences and penalties. Cognizance of offences committed under the Act may be taken on complaint filed before the Court of Judicial Magistrate. The original Act empowered a registered worker or a NGO or an inspector to file such complaint but the worker and NGO are no more empowered under the Act to file such complaints.⁴² Penalties for contravention of the provisions of the Act are provided in Section 21. Different penalties have been categorized according to the severity of the offences. An appeal would lie in the Court of District and Sessions Judge. The period of limitation for appeal is 60 days.⁴³

Section 26 necessitates the maintenance of registers and records by the employer and display in the premises of the establishment of the prescribed notices. Section 27 empowers the State Government to make rules.

On a comprehensive study of the Sikkim Labour Protection Act, 2005 and the Amendments Acts of 2006 and 2007 one can safely conclude that the Act does not bear any special protection or welfare provision. The Act seems to

⁴¹ Section 12

⁴² Section 3, the Sikkim Labour Protection (Amendment) Act, 2006, Notification No. 43/LD/2007 dated 10.01.2007, Extraordinary Gazette No. 3 dated 17.01.2007

⁴³ Section 20

serve more the Department of Labour for securing statistics than to serve any good for the workers. The only way the Act goes beyond the existing laws like Minimum Wages Act, Equal Remuneration Act, Workmen's Compensation Act and Payment of Wages Act, is that this Act applies to all establishments irrespective of the number of workers employed. The Act, except for the special provision of registration, restates provisions of the abovestated Acts.

The Act does not provide any provision for regulation. Except the provision for registration no regulatory scheme is pronounced in the Act. There is no provision for protection of the workers. The purpose that the Act desires can mush easily be achieved if a few national legislations which are already in force in the State are seriously implemented. The Act has no provision pointing towards collective bargaining. Since Trade Unions Act is not in force in the State and since almost the entire workforce in the State is unorganized, a protective legislation which is named as "the Sikkim Labour Protection Act" was expected to spell out concrete provisions in this regard.

It is clear that the present Act is hardly of any advantage to the workers. The crucial guarantee of justice to the workers lie in minimum wages, safety, job security and at least an elementary or basic level of security to the workers which the present Act simply does not point at. The Act was emasculated

further by its amendment in the year 2006.⁴⁴ The Amendment curtailed the *locus standi* of the workers and NGOs to register a case or the offences committed under this Act. Thus the Act has only remained a guarantee of registration of the workers.

The Sikkim Labour Protection Rules, 2006:

In exercise of its powers under Section 27 of the Sikkim Labour Protection Act, 2005 the State Government of Sikkim has made Sikkim Labour Protection Rules, 2006.⁴⁵ As nothing concrete is spelt out in the parent Act, the Rules amply fulfill the purpose of the Act. Chapter III of the Rules deals with the manner of making application for registration of workers, grant of certificate of registration of workers etc. According to Rule 5 (1) and Rule 5 (2) the application for registration may be rejected by the Registering Officer on the following grounds:

- i. if the application is not complete in all respects
- ii. if the applicant, on being required by the Registering Officer to amend his application for registration, fails or omits to do so.

In granting or refusing the application the Registering Officer has to take following matters into consideration:⁴⁶

⁴⁴ The Sikkim Labour Protection (Amendment) Act, 2006, Notification No. 43/LD/2007 dated 10.01.2007, Extraordinary Gazette No. 3 dated 17.01.2007

⁴⁵ Vide Notification No. 1/DL dated 18.04.2006, Extraordinary Gazette No. 110 dated 18.04.2006

⁴⁶ Rule 7 (1)

1. whether the applicant is a minor and has not attained the age of 14 years;
2. whether the applicant is of unsound mind and stands so declared by a competent Court;
3. whether the applicant is an undercharged insolvent;
4. whether the applicant has been convicted at any time during the period of five years immediately proceeding the date of application, for an offence which, in the opinion of the State Government, involves moral turpitude;
5. whether any order has been made in respect of the applicant under Section 5 of the Act and if so whether a period of three years has elapsed from the date of order;⁴⁷ and
6. whether the prescribed fees have been deposited.⁴⁸

Under Rule 9 terms and conditions for grant of Certificate of Registration have been stipulated. Though the parent Act has been amended to exclude the Certificate of registration and in lieu of the Certificate only token or receipt of the application is to be given to the applicants, the process of registration is kept intact. However, for want of amendment in the Rules the word 'certificate' still subsists. The (Certificate of) Registration granted is subject to following conditions:

1. the (Certificate of) Registration is non transferable;

⁴⁷ Rule 7 (2)

⁴⁸ Rule 7 (3)

2. the Registration (Certificate) of individual worker granted is valid for a period of one year from the date of issue;
3. the application for renewal shall be submitted to the Registering Officer not less than fifteen (15) days before the date of expiry of the registration or the renewed registration or token number as the case may be;
4. fees paid for the grant of registration is non-refundable;
5. individual workers should abide with all instruction given by the Department of Labour from time to time;
6. the workers should produce original copy of Registration Certificate, Identity Card, Token Number as the case may be whenever required by Registering Officer and other officer equivalent to or above the rank of Inspector of the Labour Department.

In conformity with the provisions relating to the registration of workers, Chapter III of the Rules imposes certain duties on the principal employer, or the employer, or the contractor or the owner of establishment or as the case may be to the self employed individual worker. The duty of furnishing particulars of the employee rests on the principal employer or employer or contractor or owner of establishment. Such particulars are to be submitted in Form I within 15 days of the commencement of employment. Self employed workers are required to submit such particulars in Form II. Any change in the

particulars of information so given, as may occur in time is to be furnished in Form VI within 15 days. The list of workers leaving the State of Sikkim is to be furnished in Form IX to the Registering Officer. A copy each of the Form should also be submitted to the police station and to the inspector of respective jurisdiction.

Rule 15 (1) requires the principal employer or employer or owner of establishment or contractor to ensure provision of suitable and adequate medical facilities of out-door treatment of the worker free of cost of any ailment from which the worker may suffer during his employment in the establishment. Whenever any medicine is purchased by a worker from the market on the prescription issued by any doctor "provided" by principal employer/ employer/contractor or any registered medical practitioner, the cost of such medicine should be reimbursed by the contractor to the worker concerned within a period of seven days from the date of presentation of the bill by the worker. In the event of worker suffering from any ailment requiring hospitalization during his employment in establishment/ workplace, the contractor is required under Rule 15 (2) to promptly arrange for the hospitalization of the worker. The contractor has to bear the entire expenses on treatment, hospital charges including diet and travel expenses for patient from the place of his/her residence to the hospital and back.

The Rules also require the contractor to provide and maintain first aid boxes at the rate of not less than one box per every fifty workers. The person in charge of the first aid box should be a person trained in first aid treatment.

The provisions relating to medical benefits in the Rules are unclear in terms of liability of providing these benefits. The provisions creating liability of providing medical facilities do not name employer or owner of the establishment and it seems that only contractors are liable for providing these facilities. Therefore the rights of a number of workers in the State working in different establishment in direct employment under the employer to medical benefit remains shadowed.

The Rules require the contractor or employer to provide to every worker where the temperature falls below 20 degree centigrade, protective clothing consisting of one woolen coat and one woolen trousers and one pair of gumboot in every tow years.⁴⁹ Provisions are also made for the facilities like respiration masks and helmets in necessary circumstances.⁵⁰

Rule 20 casts certain other duties on the principal employer or the employer or the contractor or the owner of the establishments as the case may be. They have duty under the Rules to;

- 1: provide ensure suitable conditions of work to the workers having regard to the fact that they are required to work;

⁴⁹ Rule 16(1)

⁵⁰ Rule 16(3)

2. provide and maintain suitable residential accommodation to such workers during the period of their employment with separate latrine and bathrooms for male and female workers;
3. ensure adequate supply of clean and wholesome drinking water in the quarters or barracks as the case may be;
4. provide a canteen in every establishment wherein work is likely to continue for six months and where one hundred or more workers are ordinarily employed.

All workers performing in any establishments, the same or similar kind of work should have same wages and conditions of service.⁵¹ If there is any dispute with regard to rate of wages, applicability of wage rate etc. the same is to be decided by the Secretary to the Government of Sikkim; Department of Labour, whose decision shall be final.⁵² In case where a male worker and a female worker do the same and similar nature of work, the employer or the contractor or the owner of establishment and in default of the contractor, the principal employer has to pay equal remuneration to both male and female workers without discrimination on the ground of sex.⁵³ Payment of minimum wages and one weekly paid holiday are also required by the Rules.⁵⁴

Where the employment of any worker is terminated by or on behalf of the contractor, the wages earned by the worker should be paid before the expiry

⁵¹ Rule 21 (1)

⁵² Proviso to Rule 21 (1)

⁵³ Rule 21 (2)

⁵⁴ Rule 21 (3) & (4)

of the second working day from the day on which his employment is terminated.⁵⁵

Since the Act and the Rules have stipulated a eight hours working day excluding one hour rest, Rule 26 provides for payment of overtime wages for works over and above the ordinary work period. For such overtime work, the worker is entitled to wages at the rate of twice his ordinary rate of wages.⁵⁶ Such overtime should not spread more than ten and half hours in any day.⁵⁷ However, the Registering Officer may, for the reasons to be specified in writing, increase such time upto twelve hours.⁵⁸

The periods of intervals should be so fixed that no worker shall work for more than five hours before he has had an interval for rest of at least one hour.⁵⁹

The workers under the Rules are entitled to the following paid holidays over and above one weekly paid holiday.⁶⁰

1. 26th January- Republic Day
2. 1st May- May Day (Labour Day)
3. 16th May- State Day
4. 15th August- Independence Day
5. 2nd October- Gandhi Jayanti

⁵⁵ Rule 24

⁵⁶ Rule 26

⁵⁷ Proviso to Rule 26

⁵⁸ Second Proviso to Rule 26

⁵⁹ Rule 27

⁶⁰ Rule 28

The employer or contractor is required under the rules to maintain following registers:

1. attendance register;
2. payment register;
3. register of advance payment;
4. register of overtime work;
5. register of deduction; and
6. register of medical expenses.

The employer or contractor is also required under the Rules to display the abstract of the Act and the Rules in English and in the language spoken by the majority of workers in such form as approved by the Department of Labour, Government of Sikkim.⁶¹ Notices showing rates of wages, hours of work, wage periods, date of payment of wages, name and address of inspector having jurisdiction are also required to be displayed in similar manner.⁶²

Every employer or contractor or owner of establishment are required under Rule 40 to submit half yearly returns in Form XII (in triplicate) so as to reach to the Registering Officer concerned within 30 days from the day of close of half year i.e. a period of six months commencing from 1st of July every year. The Secretary or the Registering Officer has powers under the Rules to call for

⁶¹ Rule 38

⁶² Rule 39

any information or statistics in relation to workers from any principal employer or employer or contractor or owner of establishment at any time by an order in writing. Any person so called upon to furnish information is legally bound to do so.

The Sikkim Labour Protection Rules, 2006 has successfully carried on the provisions of the Sikkim Labour Protection Act, 2005. The Act was amended twice in 2006 and 2007. The Bill needs adequate amendments to tune it with the provisions of the parent Act. The requirement of the issuance of Registration Certificate is done away with in the Act. Therefore a necessary change in the Rules is desirable. Ambiguity in the Rules can be seen in the provisions relating to medical benefits in Rule 15 (1) and 15 (2). In these provisions, though it seems that every employer is required to ensure suitable and adequate medical facilities of outdoor treatment to the workers free of cost, on point of refunding of the expenses in Rule 15 (2) only the word “contractor” is used. Therefore, adequate amendment in Rule 15 (1) and (2) is also desirable.

The Sikkim Shops and Commercial Establishment Act, 1983:

With the increase of shops and commercial establishments in the state of Sikkim and employment of large number of people in these establishments need for legislation to protect the interest of these people was seriously felt. As

a result the Sikkim Shops and Commercial Establishments Act, 1983 was enacted by the Sikkim Legislative Assembly. The Act provides for the regulation of conditions of work and employment in shops; commercial establishments; residential hotels; restaurants; eating houses; theatres; other places of public amusement or entertainment and other establishments. The Act applies to the whole of Sikkim.

The Act requires for the registration of every establishments to which it applies.⁶³ The hours of work in establishments have been fixed under Section 13 of the Act. It says that no employee should be required or allowed to work in any shop or commercial establishment for more than nine hours in any day and forty eight hours in any week. An employee may be required to work in a shop or commercial establishment for any period in excess of the limit fixed if such period does not exceed three hours in any week.⁶⁴ Further the State Government may fix not more than six days in a year on which for the purposes of making of accounts, stock taking settlements or other prescribed occasions, any employee may be required or allowed to work in a shop or commercial establishment in excess of the period fixed if such period does not exceed twenty four hours.⁶⁵

The Act also provides for the period of at least one interval for rest after five hours of continuous work. No employee should be required or allowed to

⁶³ Section 6

⁶⁴ Section 13 (2)

⁶⁵ Section 13 (3)

work for more than five hours before he has had an interval for rest of at least one hour.⁶⁶ However, in the case of employee in a commercial establishment engaged in any manufacturing process, interval for rest may be of half an hour. Further the State Government has power to reduce the interval for rest of any other employee to half an hour if he so applies for.⁶⁷

The spread over time of an employee in a shop should not exceed eleven hours in any day. In case where an employee works on any day, for an excess time as permitted under Sub-Section (2) of Section 13 or Sub-Section (3) of Section 13 the spread over should not exceed fourteen hours or sixteen hours as the case may be.⁶⁸

The Act requires the shops or establishments to be closed on any one day of the week. Such day may also be fixed by the Government by notification in the official gazette. If the day notified is a holiday happens to be a public festival the employer may keep the shop or establishment open and in turn keep the same closed on some other day within three days before or after such holiday. On such day of closure it will not be lawful on the part of the employer to call an employee at or send the employee to any other place for any work in connection with the business of such shop or commercial establishment. The employer should not make any deduction from the wages of any employee on account of any day on which it has remained closed. The

⁶⁶ Section 14

⁶⁷ Proviso (a) and (b) to Section 14

⁶⁸ Section 15

employee should be paid his daily wages for such day. Where the employee works on piece rate wage he shall be paid his wage for the day at the rate equivalent to the daily average of his wages for the days on which he actually worked during the six days immediately preceding such closed day exclusive of any earning in respect of overtime.⁶⁹

Keeping in mind the nature of establishment separate provisions have been made for the residential hotels, restaurants and eating houses. In these establishments except on the ten days of festive or special occasions declared by the State Government by notification in the official gazette the normal working hour of an employee is nine hours in a day. However, if the employee so wishes he may work for three hours over and above his normal working hours. On the festive or special occasions as stated above any employee may be required or allowed to work for a period of three hours over and above his normal working hours or over and above his normal working hours plus the excess working hours of three hours as stated above as the case may be.⁷⁰ The spread over of an employee in such establishments should not exceed fourteen hours.⁷¹ The Act also requires that on each day there must be an interval for rest of at least one hour at or before five hours of continuous service of the employee.⁷²

⁶⁹ Section 17

⁷⁰ Section 20

⁷¹ Section 22

⁷² Section 21

Separate provisions have been made in the Act for theatres or other places of public amusement or entertainment. In such establishments an employee may work for a period in excess of his normal working hours of nine hours if such period does not exceed six hours in any week.⁷³ The spread over of an employee should not exceed eleven hours in any day.⁷⁴ Interval of at least one hour for rest at or before five hours of continuous service⁷⁵; one weekly paid holiday⁷⁶ etc. have also been ensured.

The Act prohibits the employment of any child in any establishments.⁷⁷ Young persons and women, whether as employee or otherwise, can be required or allowed to work only from 6 a.m. to 7 p.m.⁷⁸ Young persons cannot be required or allowed to work for more than six hours in any day. They are entitled to an interval for rest of at least half an hour before at or before three hours of continuous service.⁷⁹ Women or young persons cannot be required or allowed whether as an employee or otherwise work which is declared by the State Government as involving danger to life, health or morals.⁸⁰

The Act also includes provisions on maternity benefits: Section 35 of the Act says that no woman should engage herself in employment in any establishment during six weeks following the day on which she has delivered a

⁷³ Section 26

⁷⁴ Section 28

⁷⁵ Section 27

⁷⁶ Section 29

⁷⁷ Section 31

⁷⁸ Section 32

⁷⁹ Section 33

⁸⁰ Section 34

child and no owner or manager etc. of an establishment should knowingly employ such woman. Where any woman employed is pregnant and gives notice in writing to the employer that she expects to deliver a child within six weeks from the date of such notice, the employer is required to permit her leave if she so desires upto the day of her delivery.⁸¹ Every woman employed in an establishment who has been continuously employed in such establishment or in establishment belonging to the owner of such establishment for not less than six months preceding the date of delivery, is entitled to maternity benefit for every day during the six weeks immediately preceding and including the day of her delivery and for each day of the six weeks following her delivery at such rate as fixed by the State Government.⁸² However no payment may be made for any day on which she attends work and receives payment during the six weeks preceding her delivery.⁸³ A woman employee who has delivered a child, should while she is nursing such child, be allowed half an hour twice a day during her working hours for purposes of such nursing in addition to regular intervals for rest.⁸⁴

The Act prohibits the dismissal of a woman employee on account of absence from work owing to her maternity.⁸⁵ In the case of miscarriages or operation for medical termination of pregnancy the concerned woman is also

⁸¹ Section 36

⁸² Section 38

⁸³ Proviso to Section 38

⁸⁴ Section 39

⁸⁵ Section 40 (2)

entitled to leave for six weeks or such period as may be medically certified and here absence will be treated as authorized absence or leave.⁸⁶

Any employee who undergoes sterilization operation is entitled under the Act to special casual leave with wages for a period not exceeding six days in case of male employee and fourteen days in case of a female employee with effect from the day on which the operation is undergone.⁸⁷

Every employee in a shop or other commercial establishment is entitled after twelve months of continuous service to holidays with wages for a period of twenty days in the subsequent period of twelve month. Further such employee is also entitled to leave with wages for a period not exceeding 12 days on ground of any sickness or accident sustained by him and also to a casual leave with wages for a period not exceeding 12 days on any reasonable ground.⁸⁸

The Act rests the responsibility of the payment of wages on the employer who is required to fix a wage periods not exceeding one month.⁸⁹ Where any person employed in any establishment is required to work overtime

⁸⁶ Section 41

⁸⁷ Section 42

⁸⁸ Section 49

⁸⁹ Sections 53 and 54

he is entitled in respect of such overtime work to wages at twice the ordinary rate of wages.⁹⁰

The Act also provides for the payment of gratuity. An employee who has completed ten or more years of continuous service with full wages in the event of quitting the service is entitled or on death his legal heirs are entitled to gratuity equivalent to fifteen days' wages last drawn for each year of service.⁹¹

The wages of every person employed should be paid before the expiry of the fifth day after the last day of the wage period in respect of which the wages are payable. Where the employment of any person is terminated by or on behalf of the employer, the wages earned by such person should be paid before the expiry of the second working day from the day on which his employment terminated. All payments of wages should be made on a working day.⁹² Further all wages should be paid in current coins or currency notes or in both.⁹³

Similar to the Payment of Wages Act the Sikkim Shops and Commercial Establishments Act authorizes certain kinds of deductions from the wages. The manner of making deductions is also similar to that provided in the Payment of Wages Act.

⁹⁰ Section 55

⁹¹ Section 56

⁹² Section 57

⁹³ Section 59

The Act incorporates detailed provisions for enforcement including the creation of enforcement agency and procedure for prosecution. The contravention of the provisions of the Act is punishable with fine which on first conviction extends from fifty rupees to five hundred rupees and on second or subsequent conviction extends from one hundred rupees to one thousand rupees.⁹⁴

Though the Act is an attempt to regulate the service condition of the workers engaged in shops and other commercial establishments in the state of Sikkim, it is not free from shortcomings. The provisions relating to the working hours may need reconsideration. The provisions relating to maternity benefits can be criticized on the point that though there is provision for two nursing breaks, unlike the Maternity Benefits Act, the present Act does not provide for the number of months during which such breaks must be allowed.

Till date, around 5,400 shops and commercial establishments have been registered in Sikkim. The days of weekly closures of different Bazaars as per Section 17(2) of the Act have been notified by the Government. Required modifications are also notified from time to time. The concerned Statutory Authorities under the Act have already been notified by the Government. The powers and functions of Appellate Authority under the Act will be exercised by the Secretary, Labour Department, Joint Secretary, Labour will be deemed

⁹⁴ Section 73

to be Chief Inspector under the Act and the powers and functions of Inspectors will be exercised by the Deputy Directors, Labour Enforcement Officers and Labour Inspectors.⁹⁵

The Sikkim Shops and Commercial Establishments Rules, 1984:⁹⁶

The Sikkim Shops and Commercial Establishments Act, 1983 was implemented through the Sikkim Shops and Commercial Establishments Rules, 1984 made under Section 80 of the Act and the Rules came into force on 16th April 1985.

The Rules under Rule 6 allows an employee or allows the employer to require the employee to work in a Shop or Commercial establishment under of in excess of the period fixed under Section 13 (1) on any of the following days for the purpose of making accounts, stock, taking or settlements if such excess period does not exceed twenty four hours:

- i. the 31st day of March;
- ii. the 30th day of June;
- iii. the 31st day of December; and
- iv. the tree days proceeding the *Rama Nawami* day.

⁹⁵ Annual Report, Department of Labour and Employment, Government of Sikkim, (2005-2006)

⁹⁶ Refer to Notification No. 11/DI. dated 16. 04.1985, Extraordinary Gazette No. 56 dated 16.04.1985

Further the operation of the provisions of the Sikkim Shops and Commercial Establishments Act, 1983 may be under Rule 3 by the State Government by notification exempted on the following holidays, namely;

1. Maghey Sankrati Mela;
2. Tibetan New Year's Day;
3. Saga Dawa;
4. Id-ul-Fitr;
5. Dukpa Thechi;
6. Pang Lhabsol;
7. Durga Puja;
8. Lahab Thuchen;
9. Dewali;
10. Christmas;
11. Any occasion on which a public emergency is declared in this behalf by the State Government;
12. Public fairs or exhibitions or religious festivals recognized in this behalf by the State Government;
13. Any other occasion which the State Government deems fit.

Thus in abovementioned dates too overtime work as stated above may be required by the employer.

Notice of the intention to require employees in a Shop or Commercial Establishment to work under Sub Section (3) of Section 13 in excess of the period fixed under Sub Section 13 and Sub Section 2 of Section 20 on any day as specified should be given by the employer in English or in any of the official languages of the State of Sikkim to the Inspector within whose jurisdiction such establishment is situated at least 24 hours in advance.⁹⁷

The Rules requires identity card to be issued under Section 23 and 30 of the Act, to the employees after necessary verification.⁹⁸

An inspector may require an employer to produce in respect of any person employed by him whom the inspector suspects to be child or young person as proof of his age an authentic extract from the school record, or a certificate of age from a registered medical practitioner in form G.⁹⁹

The Rules prescribes first aid appliances for the first aid box as required to be maintained in the shop or commercial establishment under Section 48 of the Act. The box should contain:¹⁰⁰

1. 3 small sterilized dressings,
2. 2 medium size sterilized dressings,

⁹⁷ Rule 7

⁹⁸ Rule 8

⁹⁹ Rule 10

¹⁰⁰ Rule 12

3. 2 large size sterilized dressings,
4. 2 (1/2 dozen) packets sterilized cotton wool,
5. 1 pair of dressing scissors,
6. 1 (1 oz.) bottle containing solution of iodine or mercurochrome,
7. 1 (1 oz.) bottle containing solution salvolative having the dose and mode of administration indicated on the label;
8. 1 (1 oz.) bottle containing potassium permanganate crystals,
9. any antidote for burns.

Rule 15 requires maintenance of registers and records and display of notices. Every employer or manager of a shop or commercial establishment is required to maintain *inter alia* a register of employment in form I provided that where the opening and closing hours and period of interval for rest are ordinarily uniform, the employer or manager may maintain such register in form K. Every employer or manager of a residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment has to maintain a register of employment in form J provided that where the opening and closing hours and period of interval for rest are ordinarily uniform the employer or manager may maintain such register in form L. Such employer or manager of a residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment is also required to exhibit in his establishment a notice in form M, specifying the day or days of the week on which his employees shall be given a holiday (such notice being exhibited

before the employee to which it relates cease work on the Saturday immediately preceding the first week during which it is to have effect). Every employer or manager is also required to maintain a register of leave in form N. The employer or manager is required to provide each employee a book called "Leave Book" in form O. The book should be the property of the employee and the employer or his manager should not demand it except to make entries therein and should not keep it for more than a week at a time.

Every employer or manager should exhibit in his establishment a notice containing such extracts of the Act and these rules, in any of the languages understood by of the majority of his employees, as the Government may direct.¹⁰¹ Such notice should be so exhibited that it is readily seen and read by any person whom it affects and shall be replaced whenever it becomes defaced or otherwise ceases to be clearly legible.¹⁰² In the registers or record which an employer or manager is required to maintain under these rules, entries relating to any day should be made on such day and should be authenticated under the signature of the employer or manager on the same day. Entries relating to overtime work should be made immediately after the completion of such overtime work in the same manner.¹⁰³

The employer or the manager as the case may be is also required to maintain a visit book in which an inspector visiting the establishment may

¹⁰¹ Rule 15 (6)

¹⁰² Rule 15 (7)

¹⁰³ Rule 15 (8) and Proviso thereto

record his remarks regarding any defects that may come to light at the time of his visit or give directions regarding the production of any documents required to be maintained or produced under the Act.¹⁰⁴

The Sikkim Workmen's Compensation Rules, 1986:

In exercise of the powers conferred under Sub Section (1) of Section 34 of the Workmen's Compensation Act, 1923, the State of Sikkim has made Sikkim Workmen's Compensation Rules, 1986 to carry on the provisions of the Said Act.¹⁰⁵

Part I of the Rules deal with the review of half monthly payments and computation thereof. Rule 3 clarifies who and on what ground can make an application for the review of half monthly payments without medical certificate. Such an application can be made:

- a. by the employer, on the ground that since the right to compensation was determined the workmen's wages have increased;
- b. by the workman, on the ground that since the right to compensation was determined his wages have diminished;

¹⁰⁴ Rule 15 (10)

¹⁰⁵ Vide Notification No. 18/ DL dated 20.10.1986, Extraordinary Gazette No. 116 dated 23.10.1986

- c. by the workman, on the ground that the employer, having commenced to pay compensation, has ceased to pay the same, notwithstanding the fact that there has been no change in workmen's conditions such as to warrant such cessation;
- d. either by the employer or by workman, on the ground that the determination of the rate of compensation for time being in force was obtained by fraud or undue influence or other improper means;
- e. either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of record.

If on examining an application for review by an employer in which the reduction or discontinuance of half-monthly payments is sought, it appears to the Commissioner that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may, at any time issue an order withholding the half monthly payments in whole or in part pending his decision on the application.¹⁰⁶

The Rules also formulate the procedure on application for computation. Rule 5 of the Sikkim Workmen's Compensation Rules, 2005 says that where

¹⁰⁶ Rule 4

an application is made to the Commissioner under Section 7 for the redemption of a right to receive half-monthly payments by the payment of a lump sum, the Commissioner shall form an estimate of the probable duration of the disablement and shall award a sum equivalent to the total of the half monthly payments which would be payable for the period during which he estimates that the disablement will continue, less one half percent of that total for each month comprised in that period. The fractions of a rupee in the sum so computed should be disregarded. Where in such cases, the Commissioner is unable to form an approximate estimate of the probable duration of the disablement; he may from time to time postpone a decision on the application for a period not exceeding two months at any one time.¹⁰⁷

Part II of the Rules provide for the deposit of Compensation with the Commissioner under Sub Section 1 of Section 8 of the parent Act. In respect of a workman whose injury has resulted in death, the employer depositing compensation has to furnish a statement in Form A along with the amount. In both cases receipt should be given in Form C. the statement of disbursements are to be furnished in Form D.

The Commissioner is required to publish the list of deposits together with the names and addresses of the depositors and the workman in respect of whose death or injury the deposits have been made.¹⁰⁸

¹⁰⁷ Rule 5 (2)

¹⁰⁸ Rule 7

A dependant of a deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman which has to be made in Form I. if the compensation has not been deposited, the commissioner is required under the Rules to dispose such application in accordance with the provisions of Part V of the Rules, provided that:¹⁰⁹

- a. The Commissioner may at any time before the issues are framed cause notice to be given in an appropriate manner to all or any of the dependants of the deceased workman who have not joined in the application, to join therein.
- b. If on such notice any such dependant fails to appear and to join the application on a specified day he/they shall not be permitted to claim that the employer is liable to deposit compensation unless shown sufficient cause of being prevented from appearing.
- c. After the Commissioner issues an order requiring the employer to deposit compensation in accordance with Section 8 (1) of the Act nothing in Sub Rule 2 will prohibit the allotment of any part of the sum deposited as compensation to a dependant.

¹⁰⁹ Rule 8 (2)

The employer depositing compensation under Section 8 (2) of the Act has to furnish a statement in Form E and he has to be given a receipt in Form F.¹¹⁰ The money so deposited may be invested for the benefit of the dependants of diseased workman in the State Bank of Sikkim or State Bank of India.

Part II of the Rules deal with the report of accidents. The report of the accident as required under Section 10 (B) of the parent Act has to be submitted in Form G.¹¹¹ the employer has a right to present a memorandum when the information is received.¹¹²

Part IV of the Rules stipulates the conditions under which a workman is required to submit to medical examinations. In cases where the workman and medical practitioner both are in the premises of the employer and the employer offers to have him examined free of charge, the workman has to submit himself for examination.¹¹³ In other cases the employer may send the medical practitioner to the place where the workman is residing. In such a case the workman has to submit himself for medical examination on the medical practitioner's request.¹¹⁴ The employer may also send to the workman an offer in writing for such examination free of charge and in which case the workman has to submit to such examination at the employer's premises or any other

¹¹⁰ Rule 9

¹¹¹ Rule 11

¹¹² Rule 12

¹¹³ Rule 14

¹¹⁴ Rule 15 (a)

place as proposed. However, the time of such examination should not be between the hours of 7 P.M. to 6 A.M.¹¹⁵

Where the examination in question is that of a woman, she should not be examined by a male practitioner without her consent or unless there is another woman present at the place of such examination. If the woman wishes to be examined by a woman practitioner and deposits a sum to cover the expenses of such examination, it is the duty of the employer to arrange for a female medical practitioner for such examination.

Part V of the Rules contains general procedure to be followed by the Commissioner in the disposal of cases under the Workmen's Compensation Act, 1923 and regulates the parties in such cases. The Commissioner has power to examine the applicant on oath or have such examination done by any officer authorized by the State Government and require a report therefrom.¹¹⁶ The Commissioner can summarily dismiss the application if he is of the opinion that there are no sufficient grounds for proceeding thereon. If the application is not so dismissed the Commissioner has to make a preliminary inquiry into the application¹¹⁷ and give notice to the opposite party.¹¹⁸ The opposite party may be called upon to file a written statement.¹¹⁹ If no such written statement is filed, the Commissioner has to examine him and reduce the result in writing. The issues should be framed and judgment should be made accordingly.

¹¹⁵ Rule 15 (b) and Proviso to Rule 15

¹¹⁶ Rule 23

¹¹⁷ Rule 25

¹¹⁸ Rule 26

¹¹⁹ Rule 27 (2)

Where any party to a proceeding is under the age of 15 years or is unable to make an appearance, the Commissioner has to appoint a representative.¹²⁰ In the interest of the party the Commissioner may also appoint a new representative.¹²¹

In Sikkim, during the financial year 2005-2006, Rs. 38, 05,151/- (Rupees thirty-eight lakhs five thousand one hundred fifty one) only have been realized in respect of 13 deceased and 5 injured workmen and Rs. 38, 05,810/- (Rupees thirty eight lakhs five thousand eight hundred ten) only have been disbursed to 3 injured workmen and to the dependants of 14 deceased workmen, who met with fatal accidents in the course of duties.¹²²

The powers conferred on the Commissioner for Workmen's Compensation under the Act and the Rules as notified are exercised in the State by the Secretary, Department of Labour and Employment Government of Sikkim.¹²³

The Sikkim Payment of Gratuity Rules, 2002:

Payment of Gratuity Act, 1972 has been extended to the State of Sikkim. For the implementation of this Act, the State Government of Sikkim has in

¹²⁰ Rule 46

¹²¹ Rule 47

¹²² Annual Report, Department of Labour and Employment, Government of Sikkim, (2005-2006)

¹²³ Ibid

exercise of its powers under Sub Section (1) of Section 15 of the Act, made Payment of Gratuity Rules, 2002.¹²⁴

Rule 4 requires the display of a notice at or near the main entrance of the workplace, in English, Nepali and in a language understood by the majority of the employees specifying the name of the officer with designation authorized by the employer to receive on his behalf notices or applications under the Act and the Rules. The abstract of the Act and Rules are also required to be displayed in similar manner.

The nomination for the purpose of payment of gratuity can be made by any employee completing one year of service in Form D in duplicate either to the employer or any officer authorized by him, ordinarily within one year of service or after such date.¹²⁵ On receipt of such nomination the employer or the authorized officer after necessary verification of the particulars has to return the duplicate copy to be kept by the employee as a token of recording of the nomination by the employer. The other copy has to be recorded by the employer.¹²⁶

If the employee has no family at the time making a nomination or if a nominee predeceases the employee the employer concerned has to make fresh nomination in Form E. Any modification of the particulars in Form E should be submitted in Form F. A nomination or a fresh nomination or a notice of

¹²⁴ Vide Notification no. 1/DL/2002 dated 23. 05.2002, Extraordinary Gazette No. 160 dated 07.06.2002

¹²⁵ Rule 5 (1)

¹²⁶ Rule 5 (2)

modification has to be signed or thumb impressed in the presence of two witnesses who have to sign a declaration to that effect in the document.¹²⁷

An employee, who is eligible for payment of gratuity under the Act has to apply ordinarily within one hundred and twenty days from the date on which the gratuity becomes payable, in Form G. In cases where the date of superannuation, retirement or resignation of an employee is known, the employee concerned may, before thirty days of the date of such superannuation, retirement or resignation, apply in Form G for the payment of gratuity.¹²⁸ Where a nominee of an employee is applying for the payment of gratuity, he is required to apply ordinarily within one hundred and eighty days from the date the gratuity becomes payable to him, in Form H.¹²⁹ An heir of an employee who is eligible for payment of gratuity has to apply ordinarily within one year from the date on which the gratuity becomes payable to him in Form I to the employer concerned.¹³⁰

An application for payment of gratuity filed after the specified periods should also be entertained if the applicant adduces sufficient cause for such delay. No claim is invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard should be referred to the Controlling Authority whose decision will be final.¹³¹ An application for payment of gratuity should be presented to the employer or any

¹²⁷ Rule 5 (3) & (4)

¹²⁸ Rule 6 (1)

¹²⁹ Rule 6 (2)

¹³⁰ Rule 6 (3)

¹³¹ Rule 6 (5)

officer authorized by him in this behalf either by personal service or registered post with acknowledgement due.

Within thirty days of the receipt of such application the employer is required to:¹³²

1. if the claim is found admissible on verification, issue a notice in Form J to the applicant specifying the amount of gratuity payable and fixing a date not being later than forty fifth day from the date of receipt of the application for payment, or
2. if the claim is not found admissible, issue a notice in Form K to the applicant specifying reasons why the claim for gratuity is not considered admissible.
- 3.

In each case a copy of the notice has to be endorsed to the Controlling Authority.

The gratuity payable under the parent Act has to be paid ordinarily in cash. If the payee so desires, the amount may be paid in Demand Draft or bank cheque which should be given personally to the eligible employee, nominee or heir as the case may be. If the amount of gratuity so payable is less than one thousand rupees and if the payee so desires the payment of the amount may be made by postal money order after deducting the postal money order commission for such money order from the amount. The employer and the

¹³² Rule 7

payee are also allowed under the Rules to devise any other mode of payment mutually acceptable to them.¹³³

The employer is required to maintain a register recording details of payment made on account of gratuity and intimate the Controlling Authority, the details of payments made.¹³⁴

If any employer refuses to accept nomination or issue a notice specifying an amount which is less than what is payable to the applicant according to the applicant's estimate or having received an application fails to issue notice or in the vent of other disputes, the applicant can within ninety days of the occurrence of the cause or the application, apply in triplicate in Form L to the Controlling Authority for a direction under Section 7 (4) of the Act.

The Rules comprehensively provide for the procedure for dealing with application. Adequate powers have been given to the Controlling Authority for dealing with the matters under the Act. An appeal against the orders of Controlling lies with the Appellate Authority.

The concerned Statutory Authorities under the Payment of Gratuity Act have already been notified by the State Government. The powers of the Appellate Authority under the Act are to be exercised by the Secretary,

¹³³ Rule 8 (1)

¹³⁴ Rule 8 (2)

Department of Labour and Employment, Government of Sikkim. Deputy Directors in the Department of Labour and Employment will exercise the powers and functions of Controlling Authority while the Labour Inspectors will be deemed to be the Labour Enforcement Officers under the Act.¹³⁵

The Sikkim Payment of Wages Rules, 1992:

The Sikkim Payment of Wages Rules has been made by the State Government of Sikkim in exercise of the powers conferred by Sub Section (2) of Section 26 of the Payment of Wages Act, 1936, in the year 1992.¹³⁶ For the implementation of the Payment of Wages Act, 1936 comprehensive rules have been made covering various areas under the Act

The Rules require the maintenance of following registers by the employer:¹³⁷

1. Register of deduction for damage or loss;
2. Register of wages including *inter alia* the following-
 - a. the rate of wages of each person employed,
 - b. the gross wages earned by each person for each period,

¹³⁵ Supra note 55

¹³⁶ Vide Notification No. 3/ DL dated 29.04.1992; Extraordinary Gazette No. 33 dated 15. 05. 1992

¹³⁷ Rule 4 & 5

- c. wages actually paid to each person for each period, and
- d. date of payment.

The registers are required to be maintained either in English or Nepali language.¹³⁸

The employer is required under the Rules to display in a conspicuous place in or at the main entrance of the establishment, wage periods and dates on which wages are to be paid.¹³⁹

Rule 9 prescribes the Secretary of the Department of labour as the Authority competent to approve acts and omissions in relation to which fines may be imposed under Section 8 of the parent Act. Therefore every employer requiring the power to impose fines in relation to any acts and omissions on the part of employed persons should send to the Labour Secretary a list, clearly defining such acts or omissions.¹⁴⁰

The Secretary, Department of Labour and Employment, Government of Sikkim has powers to enquire on such lists and pass orders either:¹⁴¹

1. disapproving the list, or

¹³⁸ Rule 6

¹³⁹ Rule 8

¹⁴⁰ Rule 10

¹⁴¹ Rule 11

2. approving the list either in the original form or with necessary amendments in which case the employer should be given an opportunity of showing cause only in writing as to why the list submitted should be approved without any amendments.

The list so approved has to be displayed in the main entrance of the workplace in English language and in the language understood by the majority of the employees in the workplace.¹⁴² No person except the employer or the person authorized by the Labour Secretary in this behalf is empowered to impose fine.¹⁴³

Any person desiring to impose fine on an employed person or to make a deduction for damage or loss has to explain personally to the said person the act or omission or damage or loss in respect of which the fine or deduction is being imposed and the amount of such fine or deduction. If such employed person has any explanation to offer, he should be heard in the presence of at least one person.¹⁴⁴

Deduction of wages for breach of contract by an employed person who is under the age of fifteen years or is a woman has been specifically prohibited by the Act.¹⁴⁵ Further, no deduction for breach of contract can be made from

¹⁴² Rule 12

¹⁴³ Rule 13

¹⁴⁴ Rule 14

¹⁴⁵ Rule 16 (1)

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¹⁴² Rule 12

¹⁴³ Rule 13

¹⁴⁴ Rule 14

¹⁴⁵ Rule 16 (1)

the wages of any employed person unless there is a provision in writing forming part of the terms of the contract of employment requiring him to give notice of the termination of his employment or unless the rule has been displayed in the main entrance in English language and in a language understood by the majority of the employed persons for not less than one month from the commencement of absence for which the deduction is made or unless a notice is displayed at or near the main entrance giving the names of the employees from whose wages such deduction is proposed to be made and details of the such deduction.¹⁴⁶

Deduction for breach of contract should not exceed the wages of the person employed for the period by which notice of termination of service given falls short of the period of such notice required by the contract of employment.¹⁴⁷

Form VII forming part of the Sikkim Payment of Wages Rules, 1992 contains abstract of the Payment of Wages Act, 1936 and the Rules. The same has to be made available for the employers to display at the workplace.

The Authorities under the Payment of Wages Act, 1936 have been notified by the State Government of Sikkim. The Appellate Authority under the Act would be the Secretary, Department of Labour and Employment,

¹⁴⁶ Rule 16 (2)

¹⁴⁷ Rule 16 (3)

Government of Sikkim and the Deputy Directors would be the Controlling Authority. Labour Enforcement Officers and labour Inspectors of the Department would be deemed to be Inspectors under the Act.¹⁴⁸

Sikkim Minimum Wages Rules, 2005:

The Minimum wages Act, 1948 has been implemented in the State of Sikkim since the year 2005 through the Sikkim Minimum Wages Rules, 2005¹⁴⁹ made by the State Government in exercise of its powers under Section 30 (1) of the Act.

Chapter IV of the Rules provides for the computation and payment of wages. In computing the wages under the Act, the average retail prices in the district or sub division where the place of employment is situated should be taken into consideration while computing the value of wages paid in kind and of essential commodities supplied in concessional rates.¹⁵⁰ The wage period with respect to any scheduled employment should not exceed one month and wages of a worker in such employment should be paid on a working day, before the expiry of seventh day where less than one thousand persons are employed and before tenth day, after the last day of the wage period in other cases.¹⁵¹ Where the employment of any person is terminated by or on behalf of

¹⁴⁸ Supra note 55

¹⁴⁹ Vide Notification No. 1/DL dated 21.05.2005, Extraordinary Gazette No. 221 dated 01.06.2005

¹⁵⁰ Rule 21

¹⁵¹ Rule 22 (1)

employer, the wage earned by him should be paid before the expiry of second day after the day on which his employment is terminated.¹⁵²

The Rules specifically state that the wages of an employed person should be paid to him without deductions of any kind except those authorized under the Rules.¹⁵³ Every payment made by the employed person to the employer or his agent would be deemed to be deduction from wages. The permissible deduction under the Rules may be any one of the following:

1. fines for acts or omissions on the part of employed persons as specified by the State Government;
2. deductions for absence from duty;
3. deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
4. deductions for house accommodations supplied by employer or by the State Government for providing housing accommodation and for land for cultivation supplied by the employer;

¹⁵² Rule 22 (2)

¹⁵³ Rule 22 (3)

5. deductions for such amenities and services excluding tools and protective clothing etc. supplied by the employer as the State Government may authorize;
6. deduction for recovery of advances or for adjustment of over payment of wages provided that such advances do not exceed an amount equal to wages for two calendar months of the employed person and, in no case, should the installment of deduction exceed one fourth of the wages earned in that month;
7. deductions of income tax payable by the employed person;
8. deductions required to be made by order of a court or other competent authority;
9. deduction for subscriptions to, and for repayment of advances from any Provident Fund to which the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 applies or any other recognized Provident Fund or any Provident Fund approved by the State Government in this behalf;
10. deductions for payment to co-operative societies or deductions made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Act, 1956;

11. deductions for recovery or adjustment of amount other than wages paid to the employed person in error or in excess of what is due to him.

Where any fine or deduction for damage or loss caused by the workman is being made such damage or loss and the amount of deduction with other necessary details has to be communicated to him in writing. All such deductions and realizations are also required under the Act to be recorded in register.¹⁵⁴

The Rules require the publicity of the minimum wages fixed under the Act, the extracts of the Act and Rules made thereunder and the name and address of the Inspector having jurisdiction, in English language and in a language understood by the majority of workers in the establishment.¹⁵⁵

For the protection of the wages of the workers and to prevent any exploitation and to facilitate inspection the Rules require the following registers to be maintained:¹⁵⁶

1. a Register of Wages with particulars, namely,
 - a. the minimum rates of wages payable to each person,

¹⁵⁴ Rule 22 (6) & (7)

¹⁵⁵ Rule 23

¹⁵⁶ Rule 24

- b. number of days for which each employed person worked,
 - c. overtime for each wage period,
 - d. the gross wages of each person employed for each wage period,
 - e. all deductions made from wages with an indication in each case of the kinds of deductions mentioned in Rule 22 (5),
 - f. the wages actually paid to each person for each wage period and the date of payment;
2. an overtime register in Form IV;
 3. a Muster Roll in Form V;
 4. a Register of Employees in Form XIV.

The employer has to get the signature or thumb impression of every person employed on the Register of Wages. Entries in the Register should be authenticated by the employer or any person authorized by him in this behalf.

The Rules also provides for the procedures to be followed in hearing claims under the Act and also the scale of costs in proceedings under the Act. The Rules comprehensively deals with members and staff of the Board and Committee stipulated under the Act, their qualifications and disqualifications etc.

- b. number of days for which each employed person worked,
 - c. overtime for each wage period,
 - d. the gross wages of each person employed for each wage period,
 - e. all deductions made from wages with an indication in each case of the kinds of deductions mentioned in Rule 22 (5),
 - f. the wages actually paid to each person for each wage period and the date of payment;
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The Rules also provides for the procedures to be followed in hearing claims under the Act and also the scale of costs in proceedings under the Act. The Rules comprehensively deals with members and staff of the Board and Committee stipulated under the Act, their qualifications and disqualifications etc.

The Minimum Wages Act, 1948 was extended to the State of Sikkim on 31st October 2003 and enforced on 1st October 2004. As required under the provisions of the Act, the Advisory Committee has been constituted and the Sikkim Minimum Wages Rules, 2005 have been framed and the State Govt. has fixed the minimum rates of wages at the rate of Rs. 85/- per day to the unskilled workers in 26 Scheduled Employments effective from 01.09.2005. Further, the authorities also have been appointed. The Secretary, Labour has been appointed as Hearing and Deciding Authority and the Joint Secretary, Deputy Directors, Labour Enforcement Officers and Labour Inspectors will be deemed to be Inspectors under the Act.¹⁵⁷

Labour Clearance Certificate

Of late, there have been, rise in number of complaints from the labourers about non-payment of wages by the contractors and as such keeping in view the interest of labourers, the Government of Sikkim vide Notification No. 188 (Home) 78, dated 9.11.1978 empowered the Labour Department to issue Labour Clearance Certificate to contractors for the settlement of their Bills only after confirming full payment of wages to the labourers. Further, since the Financial Year 2005-06, all the Works Departments are also required to obtain the Labour Clearance Certificates for release of bills of the Departmental

¹⁵⁷ Supra note 55

Works. In other words, the Labour Clearance Certificate became a check-point in the process of payment of wages.

This has helped the Department to generate some revenue by way of levying fees while issuing such Labour Clearance Certificates.

Committees on Sexual Harassment

In pursuance of the order of the Supreme Court of India dated 17.01.2006 in the matter of Writ Petition (Crl. No. 173-177) of 1999, the Labour Department has issued notification for constitution of Committees in the Factories, Shops and Commercial Establishments having 50 or more workers to look into the matter of sexual harassment to the women workers.

The Annual Report of the Department of Labour (2005-2006) states that the Labour Department has also been successful in settling the disputes amicably between the employers, management and the workers. The Labour Department had in the Financial Year 2005-06 amicably settled 19 cases of non-payment of wages. The Labour Department has proposed to conduct seminars at major industrial units and construction sites to educate the workers regarding their rights and their duties. Basically the seminars are on workers education, workers awareness, welfare, safety, hygiene, awareness towards the provisions of Labour Law and the duties of workers towards the management

and their establishments. However, due to limited departmental budget, the task of conducting such seminars and workshops are yet to be started.

The Department of Labour in Sikkim works with a very low strength in the enforcement section. The Department has one Labour Commissioner, four Labour Enforcement Officers, three Labour Inspectors and nine Sub-Inspectors catering to the need of the whole State. Until recently the Department used to work centrally from its head office at Gangtok but now it has set up two more District Offices. These offices along with the Head Office at Gangtok cater the need of four districts in the State.

Newer Initiatives

Recently the Government of Sikkim has taken initiatives through a notification¹⁵⁸ to classify the workers engaged in the Scheduled Employments under the Minimum Wages Act, 1948 (11 of 1948) and Rules thereunder into four categories. Category-wise daily minimum rate of wages have been provided. Table I of the said notification provides rates of wages which are as under:

Category

Daily Rate of Wages

¹⁵⁸ Notification No. 01/DL dated 15.04.2008 Extraordinary Gazette No. 128 dated 15.04.2008

1.	Unskilled	Rs. 100/-
2.	Semi Skilled	Rs. 115/-
3.	Skilled	Rs. 130/-
4.	Highly Skilled	Rs. 150/-

The unskilled workers include workers engaged in various sub sectors of tourism as Sweeper (*Safai Karmachari*), Waiter (*Bera*), Cleaner, ordinary worker, Helpers, *Mali*, *Khalasi*, Shop Assistant, Cook, Horse Attendant, Yak Attendant, Room Attendant, Driver (Donkey, Mule, Horse, Yak, Ponies etc.) and any other tourism worker by whatever name called performing work which is of an unskilled nature. Workers such as sales man, cooking Assistant, and any other categories of workers performing works of semi skilled nature fall under Semi Skilled Workers. Skilled workers include Electricians, Head Cook, Head *Bera*, Blender, Dancer, singer, musician, light vehicle driver or any other category of workers performing worker of skilled nature. Heavy Vehicle Driver falls under the category of Highly Skilled worker.

The Notification also defines “Unskilled work”, “Semi Skilled work”, “Skilled work” and” Highly Skilled work”. “Unskilled work” is defined as work which involves simple operation requiring little or no skill or experience in the job. “Semi Skilled work” is defines as work which involve some degree of skill or competence, acquired through experience on the job and which is capable of being performed under the supervision or guidance of skilled

employee and includes unskilled supervisory work. "Skilled work" according to the Notification means work which involves skill or competence acquired through experience on the job or through training as an apprentice in a technical or vocational institute and the performance of which calls for initiative and judgment. Finally, "Highly Skilled work" means work which calls for degree of perfection and competence in the performance of certain jobs including clerical work acquired through intensive technical or professional training or adequate work experience for certain reasonable period and also require an employee to assume full responsibility of his judgement/decision involved in the execution of his job.

A Notification dated 17.04.2008¹⁵⁹ restates different welfare measures to be adopted by different industries/Factories/ establishments/ enterprises etc. engaging workers which includes the following:

1. That the workers/labourers needing accommodation should be provided with accommodation and the same should have bare minimum regular supply of drinking water, toilet facilities and also it should be hygienic. The quarters whatsoever should be maintained by the employer organization.

¹⁵⁹ Notification No. 2/DL dated 17.04.2008 Extraordinary Gazette No. 137 dated 17.04.2008

2. that whenever any worker/ labourer is forced to retire from service on medical ground or some unavoidable reason, some amount in the form, like golden han shake should be given to such person.
3. That worker/ labourers should be granted medical leave especially during maternity at least for two (2) months.
4. That the workers who have been provided with accommodation should be given 2 points free power supply.
5. That the employer/organization should ensure that the labourers get ration in subsidized rate on regular basis.
6. That the Doctor should be made available for check up regularly at least once a week and whenever the number is quite large a medical practitioner should be engaged in such organizations.
7. That if the numbers of workers/labourers in the Factories/ industries are more than 200 numbers, then a Medical Practitioner should be posted on regular basis.
8. that the Minimum Rate of Wages as prescribed should be paid duly granting one paid holiday for six (6) days of continuous work in a week.

The above requirements were communicated by the Government¹⁶⁰ as part of State Government policy for ensuring welfare of the workers. It is therefore, obligatory on the part of all the concerned state institutions or other organizations to ensure their implementation.

¹⁶⁰ Vide Communication No. GOS/ DL/97/03-04/601 to 636 dated 10.08.2007

Sikkim has tremendous boon of nature. It has rarest varieties of flora, fauna, beautiful landscapes, rare tribal people, rich traditions and hospitable people, all conducive for the growth of tourism. The Government has declared tourism is one of the topmost priorities in the over all developmental scenario of the State. Tourism is the single largest industry in the state and is being seen as a major revenue generator by the State. But, since tourism is a labour intensive industry the State has the responsibility to ensure sound labour relations. Sound labour relations would in turn ensure increased productivity and would ensure increased revenue generation.

There certainly have been a lot of reforms in the different legal and administrative matters having a bearing with the labourers in the past few years like the extension of thirteen national labour legislations, introduction of Labour Clearance Certificate, Minimum Wage of a handsome Rs. 85/- for the unskilled workers¹⁶¹ (which is further increased to Rs 100/-)¹⁶² and Committees on Sexual Harassment at workplaces. However, comparing the scenario in Sikkim with the rest of the country would let one to conclude that a little has been achieved and much has to be done. Many of the central labour legislations though extended in the State are not being implemented. The Department falls short of adequate budget, lacks proper expertise on the field, lacks adequate workforce, works centrally from its headquarter in

¹⁶¹ Notification No. 3/DL dated 26.08.2005 Extraordinary Gazette No. 330 dated 07.09.2005

¹⁶² Vide Notification No. 01/DL dated 15.04.2008 Extraordinary Gazette No. 128 dated 15.04.2008

the Capital, lacks proper data on the conditions of work and workers in the State. Meeting proper requirements for ensuring sound labour relations is the most important concern for the State. Implementing laws and accelerating enforcement machinery would improve the overall scenario.

The proper implementation of trade union laws is primary requirement. This would give the workers a platform for placing their demands. Apart from ensuring protection to the workers it would facilitate the departments concerned to prepare data, conduct studies and communicate with the workers. It may also be emphasized that there is an urgent need for enunciating and articulating policy perspectives on skill development and for undertaking comprehensive skill deficit mapping in Sikkim. Increase in investment in infrastructure such as power, road and railways etc. may also be suggested.

The fundamental rule of development is that it is only the work that generates development. For obtaining maximum output the workers need to be facilitated. This certainly would involve spending. But spending on workers is equal to spending on work.