

Bill No. 101 of 2021

THE ESSENTIAL DEFENCE SERVICES BILL, 2021

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BILL

to provide for the maintenance of essential defence services so as to secure the security of nation and the life and property of public at large and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Essential Defence Services Act, 2021.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 30th day of June, 2021.

Short title,
extent and
commencement.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "essential defence services" means—

(i) any service in any establishment or undertaking dealing with production of goods or equipment required for any purpose connected with defence; 5

(ii) any service in any establishment of, or connected with, the armed forces of the Union or in any other establishment or installation connected with defence;

(iii) any service in any section of any establishment connected with defence, on the working of which the safety of such establishment or employee employed therein depends; 10

(iv) any other service, as the Central Government may, by notification in the Official Gazette, declare to be essential defence services, the cessation of work of which would prejudicially affect the—

(I) production of defence equipment or goods; or 15

(II) operation or maintenance of any industrial establishment or unit engaged in production of goods or equipment required for any purpose connected with defence; or

(III) repair or maintenance of products connected with defence;

(b) "strike" means the cessation of work, go-slow, sit down, stay-in, token strike, sympathetic strike or mass casual leave, by a body of persons engaged in the essential defence services, acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so engaged to continue to work or to accept employment, and includes— 20

(i) refusal to work overtime, where such work is necessary for the maintenance of the essential defence services; 25

(ii) any other conduct which is likely to result in, or results in, cessation or retardation or disruption of work in the essential defence services.

(2) Words and expressions used herein and not defined but defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act. 30 14 of 1947.

Power to prohibit strikes in essential defence services.

3. (1) If the Central Government is satisfied that in the—

(a) public interest; or

(b) interest of the sovereignty and integrity of India; or

(c) security of any State; or

(d) public order; or 35

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in the essential defence services.

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by such order. 40

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do. 45

(4) Upon the issue of an order made under sub-section (1)—

(a) no person engaged in the essential defence services shall go or remain on strike;

5 (b) any strike declared or commenced, whether before or after the issue of such order, by persons engaged or employed in such services shall be illegal.

4. Where any order has been issued under sub-section (1) of section 3, any police officer may take all such measures as such officer may deem fit including the use of police force, if he considers necessary, to remove any person, whose presence in any area connected with the—

Removal of persons.

10 (a) defence equipment production services; or

(b) operation or maintenance of any industrial establishment or unit engaged in production or manufacturing of goods or equipment required for any purpose connected with defence; or

(c) repair or maintenance of products connected with defence,

15 would be prejudicial to the functioning, safety or maintenance of the essential defence services.

5. (1) Any person—

(a) who commences a strike which is illegal under this Act or goes or remains on, otherwise takes part in, any such strike; or

20 (b) who instigates or incites other persons to commence, or go or remain on, or otherwise take part in, any such strike,

shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.

Dismissal of employees participating in illegal strikes.

(2) Notwithstanding anything contained in any other law for the time being in force or under the terms and conditions of service applicable to any person employed in the essential defence services, before dismissing any person under sub-section (1), no inquiry shall be necessary if the authority empowered to dismiss or remove such person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

30 6. Any person, who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both.

Penalty for illegal strikes.

7. Any person, who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifteen thousand rupees, or with both.

Penalty for instigation, etc.

40 8. Any person, who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifteen thousand rupees, or with both.

Penalty for giving financial aid to illegal strikes.

9. (1) If the Central Government is satisfied that in the—

45 (a) public interest; or

(b) interest of the sovereignty and integrity of India; or

(c) security of any State; or

Power to prohibit lock-outs in any industrial establishment or unit engaged in essential defence services.

(d) public order; or

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may by general or special order, prohibit lock-outs in the industrial establishments or units engaged in the essential defence services. 5

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by such order.

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary so to do. 10

(4) Upon the issue of an order under sub-section (1),—

(a) no employer engaged in the essential defence services shall commence any lock-out; and

(b) any lock-out declared or commenced, whether before or after the issue of such order, by any employer engaged in the essential defence services shall be illegal. 15

(5) Any employer of an industrial establishment or unit engaged in the essential defence services, who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this section, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both. 20

Power to prohibit lay-off in any industrial establishment or unit engaged in essential defence services.

10. (1) If the Central Government is satisfied that in the—

(a) public interest; or

(b) interest of the sovereignty and integrity of India; or 25

(c) security of any State; or

(d) public order; or

(e) decency; or

(f) morality,

it is necessary or expedient so to do, it may, by general or special order, prohibit lay-off, on any ground other than shortage of power or natural calamity, of any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any industrial establishment or unit engaged in the essential defence services. 30

(2) An order made under sub-section (1) shall be published in such manner as the Central Government may deem fit to bring it to the notice of the persons affected by the order. 35

(3) An order made under sub-section (1) shall be in force for six months, but the Central Government may, by a like order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order under sub-section (1),— 40

(a) no employer in relation to an establishment to which such order applies shall lay-off or continue the lay-off any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any industrial establishment or unit engaged in the essential defence services, unless such lay-off is

due to shortage of power or natural calamity, and any laying-off or continuation of laying-off shall, unless such laying-off or continuation of laying-off is due to shortage of power or natural calamity, be illegal;

(b) a workman whose laying-off is illegal under clause (a) shall be entitled to all the benefits under any law for the time being in force as if he had not been laid-off.

(5) Any employer, of an industrial establishment or unit engaged in the essential defence services, who lays-off or continues the laying-off of any workman shall, if such laying-off or continuation of laying-off is illegal under this section, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both.

2 of 1974. **11.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer may arrest without warrant any person who is reasonably suspected to have committed any offence under this Act. Power to arrest without warrant.

2 of 1974. **12.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be tried in a summary way by any Metropolitan Magistrate or any Judicial Magistrate of the first class, specially empowered in this behalf by the State Government and the provisions of sections 262 to 265 (inclusive) of the said Code shall, as far as may be, apply to such trial: Offences to be tried summarily.

20 Provided that in a case of conviction for any offence in a summary trial under this section, it shall be lawful for such Magistrate to pass a sentence of imprisonment for any term for which such offence is punishable under this Act.

2 of 1974. **13.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act shall be cognizable and non-bailable. Cognizance of offences.

25 **14.** Any reference in this Act to any law which is not in force in any area and to any authority under such law shall, in relation to that area, be construed as a reference to the corresponding law in force in that area and to the corresponding authority under such corresponding law. Reference of other laws in certain areas.

30 **15.** No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer for anything which is in good faith done or intended to be done under this Act. Protection of action taken in good faith.

14 of 1947. **16.** The provisions of this Act and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force. Act to override other laws.

35 **17.** In the Industrial Disputes Act, 1947, in section 2, in clause (n), in sub-clause (ia), for the words "or dock", the words "or dock or any industrial establishment or unit engaged in essential defence services" shall be substituted. Amendment of Act 14 of 1947.

40 **18.** Every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in such notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything 45 previously done under that notification. Laying of notifications before Parliament.

Ord. 7 of 2021. **19.** (1) The Essential Defence Services Ordinance, 2021 is hereby repealed. Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Indian Ordnance Factories is the oldest and largest industrial setup which functions under the Department of Defence Production of the Ministry of Defence. The ordnance factories form an integrated base for indigenous production of defence hardware and equipment, with the primary objective of self reliance in equipping the armed forces with state of the art battlefield equipments. In order to improve autonomy, accountability and efficiency in ordnance supplies, the Government decided to convert the Ordnance Factory Board into one or more one hundred per cent. Government owned corporate entity or entities to be registered under the provisions of the Companies Act, 2013.

2. Against the said decision, the recognised federations of the employees gave a notice for an indefinite strike. The conciliation proceedings initiated by the Government at the level of Chief Labour Commissioner failed in the meeting held on the 15th June, 2021. On the 16th June, 2021, the Government decided to convert the Ordnance Factory Board into seven Defence Public Sector Undertakings.

3. In spite of the Government's assurance to take care of the conditions of service of the employees of the Ordnance Factory Board, the recognised federations of the employees have reiterated their intention to go on indefinite strike from 26th July, 2021.

4. Since, it is essential that an uninterrupted supply of ordnance items to the armed forces be maintained for the defence preparedness of the country and the ordnance factories continue to function without any disruptions, especially in view of the prevailing situation on the northern front of the country, it was felt necessary that the Government should have power to meet the emergency created by such attempts and ensure the maintenance of essential defence services in all establishments connected with defence, in public interest or interest of the sovereignty and integrity of India or security of any State or decency or morality.

5. As Parliament was not in session and urgent legislation was required to be made, the President promulgated the Essential Defence Services Ordinance, 2021 on the 30th June, 2021, which, *inter alia*, provides for the following, namely:—

(a) to define the expressions "essential defence services" and "strike";

(b) to empower the Central Government to prohibit strike in essential defence services;

(c) to provide for disciplinary action, including dismissal, against employees participating in strike;

(d) to provide for penalties for illegal strikes, instigation thereof and providing for financial aid to such illegal strikes;

(e) confer power on any police officer to arrest without warrant any person who is reasonably suspected to have committed any offence under the proposed legislation.

6. The Essential Defence Services Bill, 2021 seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 13th July, 2021.

RAJNATH SINGH.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 2 of the Bill empowers the Central Government to declare, by notification in the Official Gazette, any other service other than those specified in the said sub-clause to be essential defence services, the cessation of work of which would prejudicially affect the production of defence equipment or goods; or the operation or maintenance of any industrial establishment or unit engaged in production of goods or equipment required for any purpose connected with defence; or repair or maintenance of products connected with defence.

2. Sub-clause (1) of clause 3 of the Bill empowers the Central Government to prohibit strikes in the essential defence services by general or special order, if it is satisfied that in the public interest; or interest of the sovereignty and integrity of India; or security of any State; or public order; or decency; or morality, it is necessary or expedient so to do.

3. Sub-clause (1) of clause 9 of the Bill empowers the Central Government to prohibit lock-outs in any industrial establishment or unit engaged in essential defence services by general or special order, if it is satisfied that in the public interest; or interest of the sovereignty and integrity of India; or security of any State; or public order; or decency; or morality, it is necessary or expedient so to do.

4. Sub-clause (1) of clause 10 of the Bill empowers the Central Government to prohibit lay-off on any ground other than shortage of power or natural calamity, of any workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of any industrial establishment or unit engaged in the essential defence services, by general or special order, if it is satisfied that in the public interest; or interest of the sovereignty and integrity of India; or security of any State; or public order; or decency; or morality, it is necessary or expedient so to do.

5. The matters in respect of which the aforementioned notification or orders may be issued are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE INDUSTRIAL DISPUTES ACT, 1947
(14 OF 1947)

Definitions. * * * * *

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

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(n) "public utility service" means—

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 (ia) any service in, or in connection with the working of, any major
port or dock;

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to provide for the maintenance of essential defence services so as to secure the security of nation and the life and property of public at large and for matters connected therewith or incidental thereto.

(Shri Rajnath Singh, Minister of Defence)