

CONGRATULATIONS TO ALL THE AIRS OF CS FROM MEPL



SHRUTI NAGAR
AIR 1



CHIRAAG AGARWAL
TWO TIMES
AIR 1



ESHAN LOIYA
AIR 1

CS EXECUTIVE & CS PROFESSIONAL



KAMODINEE BHARTIA
AIR 2



RAVALI MULAGADA
AIR 2



ANKIT AGARWAL
AIR 3



HARAS DEV CHOWHURI
AIR 3



RIYA BHAGCHANDANI
AIR 3



PULAK BANSAL
AIR 3



ANCHAL SAUMYA
AIR 4



DIVYA BHARDWAJ
AIR 4



SARIKA SINGH
AIR 4



CHANDNI DALMIA
AIR 4



CHANCHAL NAWLANI
AIR 5



SONU SANJAYKUMAR
GOTHI
AIR 5



AKASH SINHA
AIR 5



AMAN NEGI
AIR 6



NIDHI SURANA
AIR 6



PRIYANKA JAISWAL
AIR 08



SANCHARI MUKHERJEE
AIR 8



SARIKA SINGH
AIR 10



SMRITI ARORA
AIR 10



ABHISHEK SARAF
AIR 10



MAHAK AGARWAL
AIR 10



SAUMYA IPSA
AIR 10



ELIZA BAHRAINWALA
AIR 10



SAKSHI PORWAL
AIR 10



HARISH KR CHOUDHARY
AIR 10



CHANDNI DALMIA
AIR 11



EKTA MOTWANI
AIR 11



SHRAVYA SRIVASTAVA
AIR 12



PALLAVI SINGH
AIR 12



SANJEEV RATHI
AIR 12



BISHAL AGARWAL
AIR 13



MANYA PANDEY
AIR 14



NANADINI CHAURASIA
AIR 15



SANYA AGARWAL
AIR 15



SWAPNIL DUBEY
AIR 17



RAMA SHARMA
AIR 17



MONIKA SINGH
AIR 17



VIDISHA SINGH
AIR 18

FACTORIES ACT, 1948

- # An Act to consolidate and amend the law regulating labour in factories.
- # It extends to the whole of India w.e.f. the 1st day of April, 1949.
- # It has been amended from time to time, especially after the Bhopal Gas Disaster. The factories (Amendment) Act came into force on 1st Dec, 1987. A special chapter on occupational health & safety to safe-guard workers employed in hazardous industries was added.

② Objective of the Act

TO PROTECT & PROMOTE THE **HEALTH, SAFETY & WELFARE** OF WORKERS.

(Held in the case of Ravi Shankar Sharma V. State of Rajasthan).

③ The Act is applicable on workers/labour in factories.

All employees are not workers: ~

CONTRACT OF SERVICE

↓
worker

- Master - Servant Relationship
- Employer will supervise the work & how it will be done for employee

CONTRACT FOR SERVICE

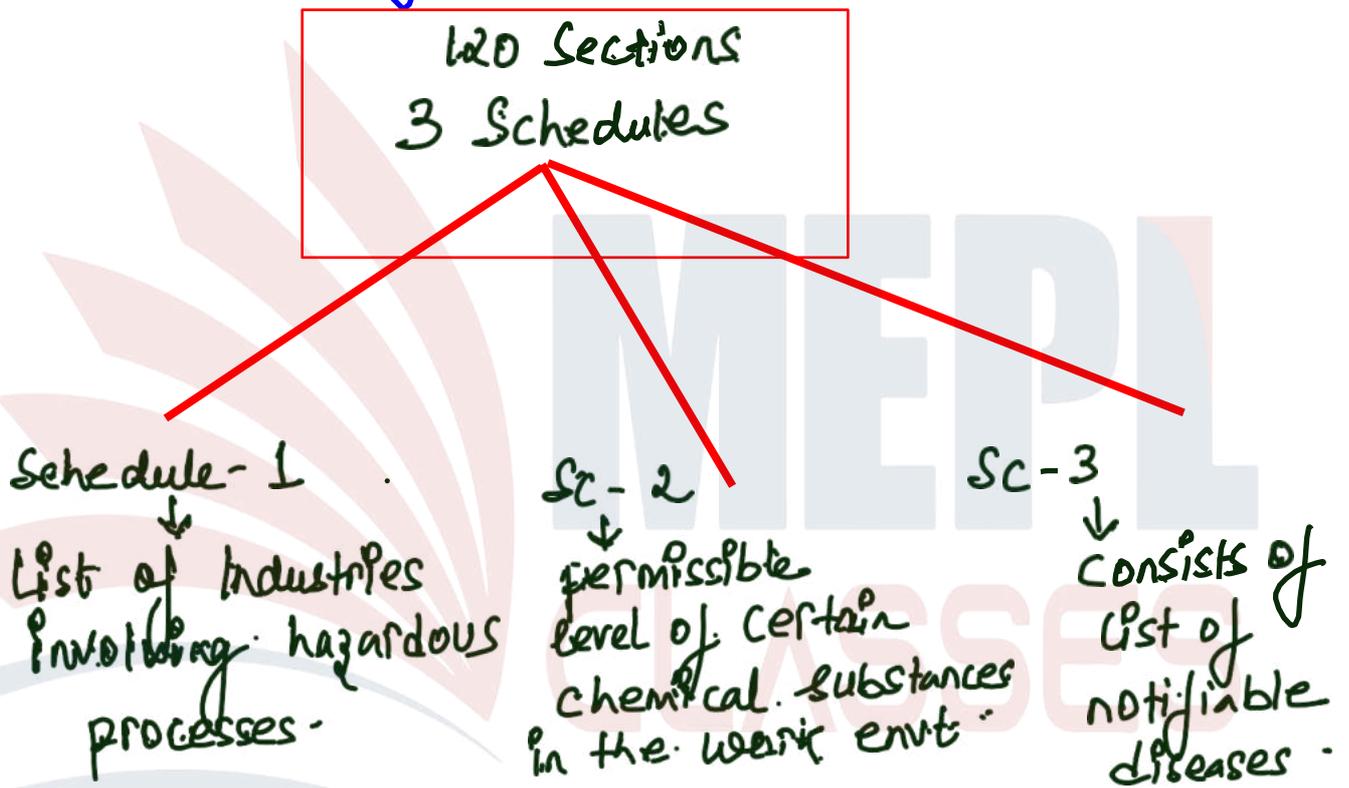
↓
Not worker

- No Master - Servant Relationship
- Employee works independantly. [Auditor, Designer]

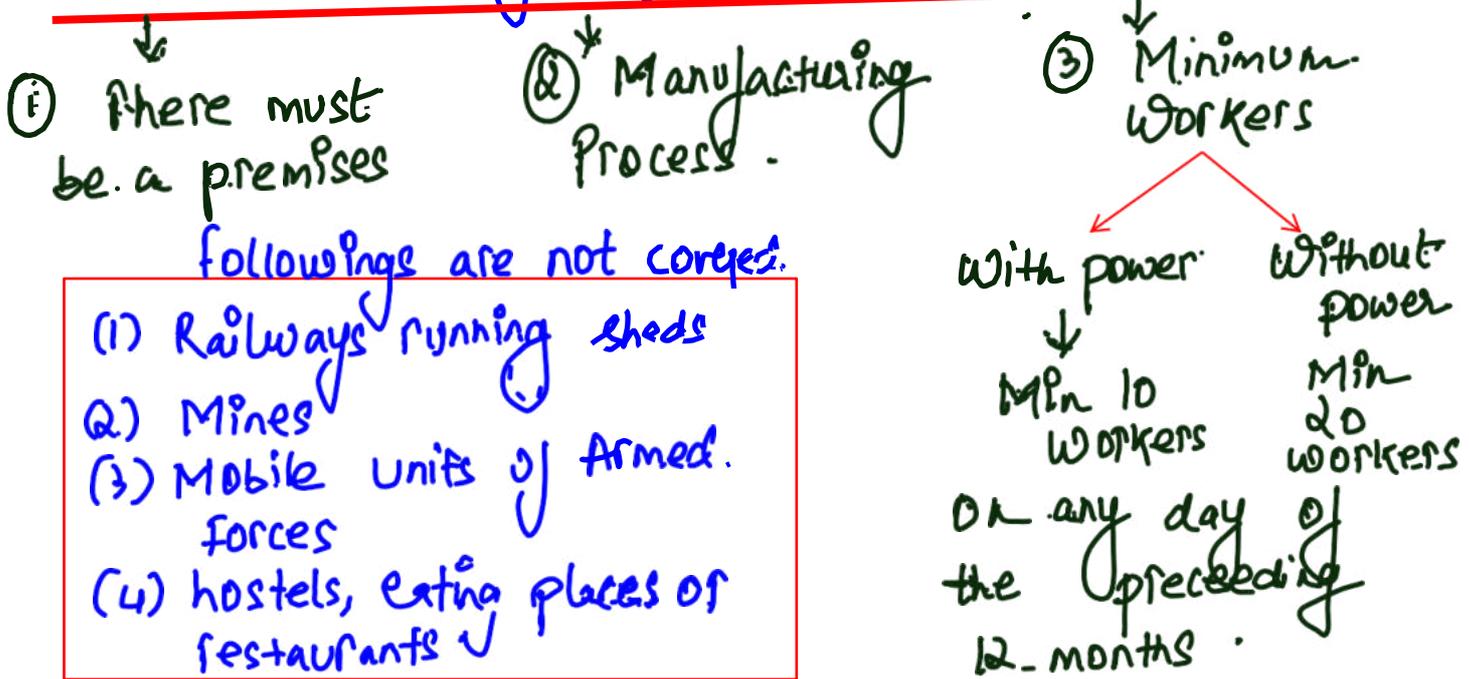
④ Remuneration doesn't matter.

To be a worker it is im-material whether a person is employed for wages or without wages. [Contract of Agency].

⑤ Scheme of the Act.



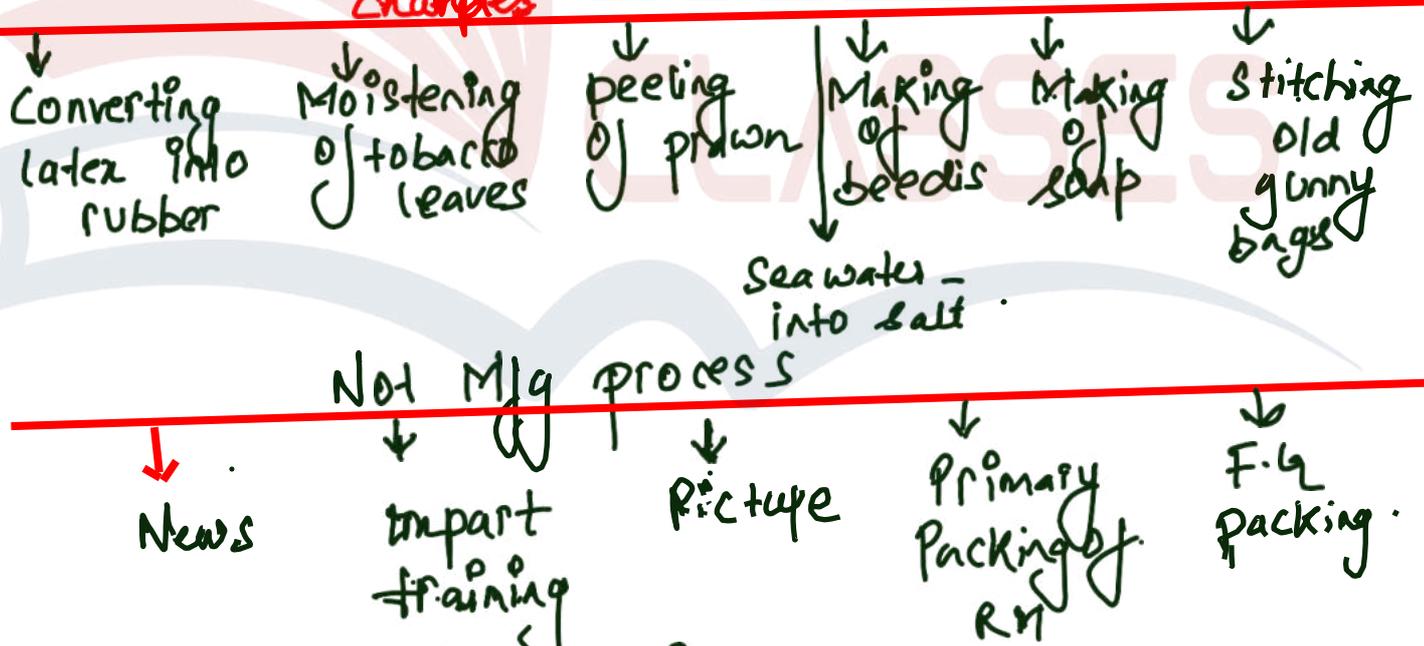
⑥ What is a factory?



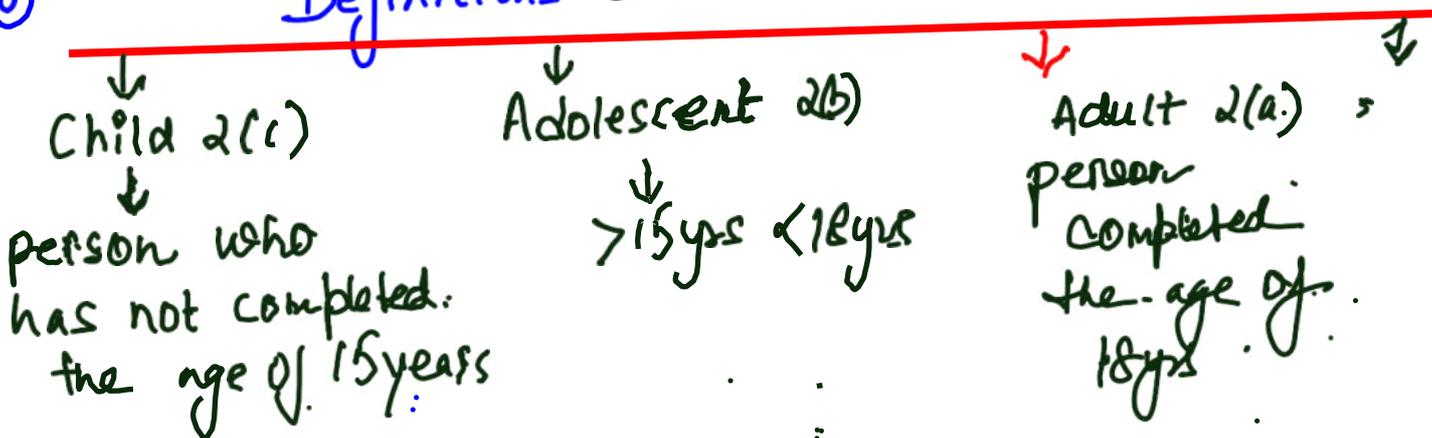
⑦ Manufacturing Process: ~ 2(K)

- ① Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article.
- ② Pumping oil, water, sewage or any other substance.
- ③ Power (generating, transforming/transmitting).
- ④ Printing
- ⑤ preserving or storing any article in cold storage.
- ⑥ Construction of ships/vessels.

Examples



⑧ Definitions Sec 2



Young → either child or Adolescent
2(d)

Hazardous process → which can cause injury to worker & the list is mentioned in Schedule I
2(cb)

Occupier 2(c) ⇒ The person who has ultimate control over the affairs of the company.

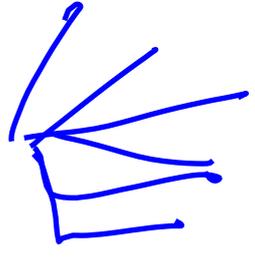
- (a) firm → Partners/members deemed to be the occupier.
- (b) company → any 1 of the directors.
- (c) factory owned by C.G → person apptd to manage by C.G.

Exemption of Occupier or Manager from Liability in certain cases (Sec 101)

(a) he has used due-diligence to enforce the execution of this Act

(b) offence was committed without his knowledge, consent

(10) HEALTH



- ① Cleanliness (sec 11)
- ② Disposal of wastes (sec 12)
- ③ Ventilation & temperature (sec 13)
- ④ Dust & fume (sec 14)
- ⑤ Artificial humidification (sec 15)

- ⑥ Over-crowding (Sec 16)
- ⑦ Lightening (Sec 17)
- ⑧ Drinking & water (Sec 18)
- ⑨ Latrines & Urinals (Sec 19)

⑪

SAFETY

- ① fencing of Machinery (Sec 21)
- ② Work on or near machinery in motion. (Sec 22)
- ③ Employment of young persons on dangerous machines.
- ④ Striking gear & devices for cutting off power.
- ⑤ Self-acting machines. / casing of New Mach.
- ⑥ Pits, sumps, opening in floors
- ⑦ Excessive weights.
- ⑧ Protection of Eyes
- ⑨ Precautions against dangerous fumes, gases etc.
- ⑩ Precautions regarding the use of portable electric light.
- ⑪ Revolving machinery.
- ⑫ Floors - stair cases.

(12)

WELFARE

- ① Washing facility (Sec. 42)
- ② Drying & storing clothes (43)
- ③ Sitting facility (44)
- ④ first Aid Appliance (45) > 500 workers
- ⑤ Canteens (46) > 250 workers
- ⑥ Shelter Room (47) > 150 workers
- ⑦ Creches (48) > 30 women-workers for child < 6 yrs.

GROUP/ RELAY/ SHIFT (SECTION 2(r))

where work of same kind is carried out by 2 or more sets of workers working during different periods of the day, each of such sets is called a "group" or "relay".
Period = shift.

STATUTORY AGENCIES AND THEIR POWERS FOR ENFORCEMENT OF THIS ACT. (SEC 3-6)

- (1) Reference to Time of Day (Sec 3) → S.4 to make rules for references to time of days where IST (5 1/2 hrs ahead of Greenwich M-T) not observed.

(2) Power to declare diff. departments to be separate factories or 2 or more factories to be a single factory (Sec 4).

S.G on its own or on an application made in this behalf by occupier direct by an order in writing.

(3) Power to exempt during public emergency (Sec 5)
 S.G by notification in O.G, exempt any factory or class of factories from all or any of the provisions of this Act except sec 67. [Security threatened, war...]
 [Prohibiting child & working in factory] [Max time (3 months at a time)].

(4) Power of S.G to make rules with reference to approval, licensing & registration of factories.

[wrt. to construction or extension of any factory; renewal of licenses] [sec 6(1) Notice (7 must be given)]
 Application sent to S.G Chief Inspector by registered post, No order communicated → within 3 months from the date sent → Deemed Approval.

AGENCIES OF THE S.G TO CARRY OUT ADMINISTRATION OF THE ACT

Inspecting Staff (Sec 8-9)

Certifying Surgeons (Sec 10)

Welfare Officers (Sec 49)

Safety Officers (Sec 40B)

(i) Inspectors :-

Appointment (Sec 8) → S.G to appt. Inspectors, Additional Inspectors & chief Inspectors. To assist - Additional, Joint or Deputy chief Inspector.

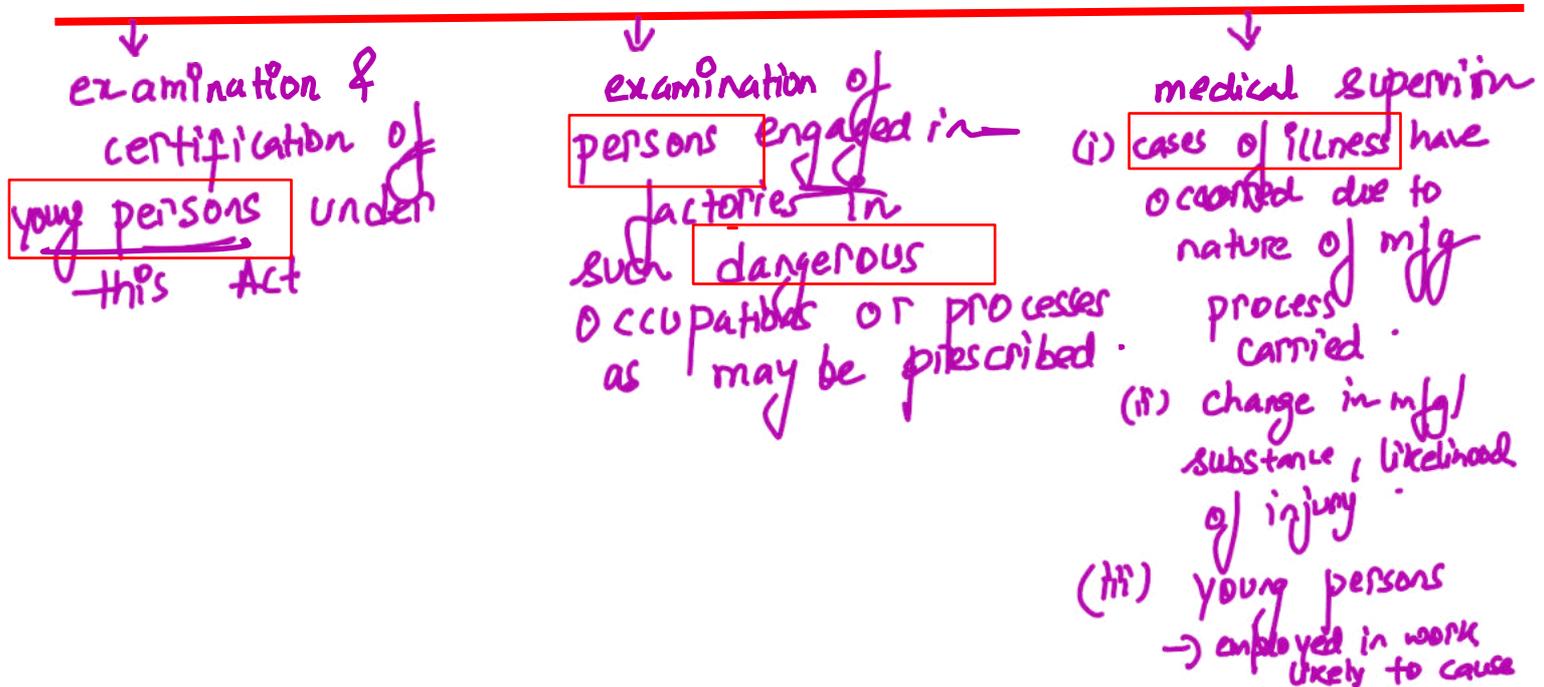
- Every District Magistrate shall be an Inspector for his district
- A chief Inspector is apptd. for whole State.

Powers of Inspector (Sec 9)

- (a) enter any place which is used, or which he has reason to believe is used as a factory
- (b) make examination of premises, plant, mach, article.
- (c) inquire into any accident or dangerous occurrence.
- (d) approach of any prescribed register/document relating to factory.
- (e) seize, or take copies of any register in respect of any offence under this Act.
- (f) take measurement & photographs for examination.
- (g) take possession of any article or substance.
- (h) exercise such other powers as prescribed.

(ii) Certifying Surgeons (CS)

- S.G appts qualified medical practitioners to be CS
- Occupor / Vested Interest therein → Not allowed.
- Duties



injury to health

(iii) Welfare Officer

> 500 workers, w/o apptd by occupier

(iv) Safety Officer

> 1000 workers

mfg OR process involves risk of bodily injury, poisoning or disease or any other health hazard.

Duties of Occupier/Manufacturer (sect 7)

NOTICE BY OCCUPIER (sect 7)

15 days prior to occupying any factory or premise given by occupier => Chief Inspector
Name & Add of factory
" " of occupier
" " of org or
Name of major workers

GENERAL DUTIES

- (a) provision & maintenance of pl. & system of work in the factory that are safe.
- (b) safety in use, handling, storage or transport of articles & substances
- (c) maintenance of material of all places of work in factory in a safe condition
- (d) monitoring of safe working envt. in factory for workers

except in such cases as prescribed, occupier shall prepare & revise a general written policy wrt to health & safety of workers.

PROVISIONS RELATING TO HAZARDOUS PROCESSES

- FACTORIES (AMENDMENT) ACT, 1987 has inserted this new chapter in the Act after Chapter IV.
- The new chapter lays down provisions relating to hazardous process (Sec 41A to 41H).

Sec 41A

Constitution of Site Appraisal Committees

- ① S.G. to appoint site Appraisal committee for advising it to consider applications for grant of permission for the initial location of a factory involving hazardous process / expansion.
- ② For factory owned by C.G. → S.G. co-opt in the site App. committee a representative nominated by C.G. as a member of that committee.
- ③ When S.G. granted approval - No further Approval reqd. under Water (Prevention & Control of Pollution) Act, Air...

Sec 41B

Compulsory disclosure of Info By Occupier

- Disclosure by Occupier
- Info. regarding dangers including health hazards & measures to overcome such hazards.
- To workers in factory, Chief Inspector, local authority, general public in vicinity.
- Accural info
 - ↳ specifications
 - ↳ Other characteristics of wastes & disposal manner.
- On-site Emergency Plan & detailed disaster

- control measures for his factory - make known to workers, pubac.
- Inform Chief Inspector about hazardous process
- (a) within 30 days of such commencement. (before com. of Act)
- (b) within 30 days before commencement of such process [After com. of Act]

Specific Responsibility of Occupier in relation to hazardous process.

- Occupier to maintain accurate & upto date health records.
- Occupier shall provide for medical examination of every worker:
 - before such worker is assigned to job.
 - continuing job & after he has ceased to work in such job at intervals \leq 12 months.

Sec 41D → Power of C.G. to appoint Inquiry Committee → (Chairman & other members)

Event of an Extra-ordinary situation
 C.G. → Inq. Comm → to inquire into the Standards of health & safety of workers employed in factory.

Emergency Standards (Sec 41E)

where C.G. is satisfied that no standards of safety have been prescribed for hazardous processes) or they are inadequate
 ↓ direct

Director General of factory Advice Service & labour Institutes or any Inst. specialised.
 ↓
 TO LAY EMERGENCY STANDARDS

PERMISSIBLE LIMITS OF EXPOSURE OF CHEMICAL & TOXIC SUBSTANCES =

↓
Indicated in the Second Schedule.

↓
C.G can make changes in said Schedule when required.

Workers Participation in Safety Management [Sec 41G]

- Appt of safety Committee.
- consists of Equal No. of Representative of workers & mgmt
- Set up by Occupier
- to promote co-operation between workers & mgmt in maintaining safety & health at work.

Right of workers to warn about imminent danger (Sec 41H)

- workers has reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident
- They may bring to the notice of occupier, agent, manager of factory
- to safety committee & simultaneously to Inspector.
- Immediate Remedial Actions to be taken if exists & report to nearest Inspector.
- Inspectors decision shall be final in case of any question.

10

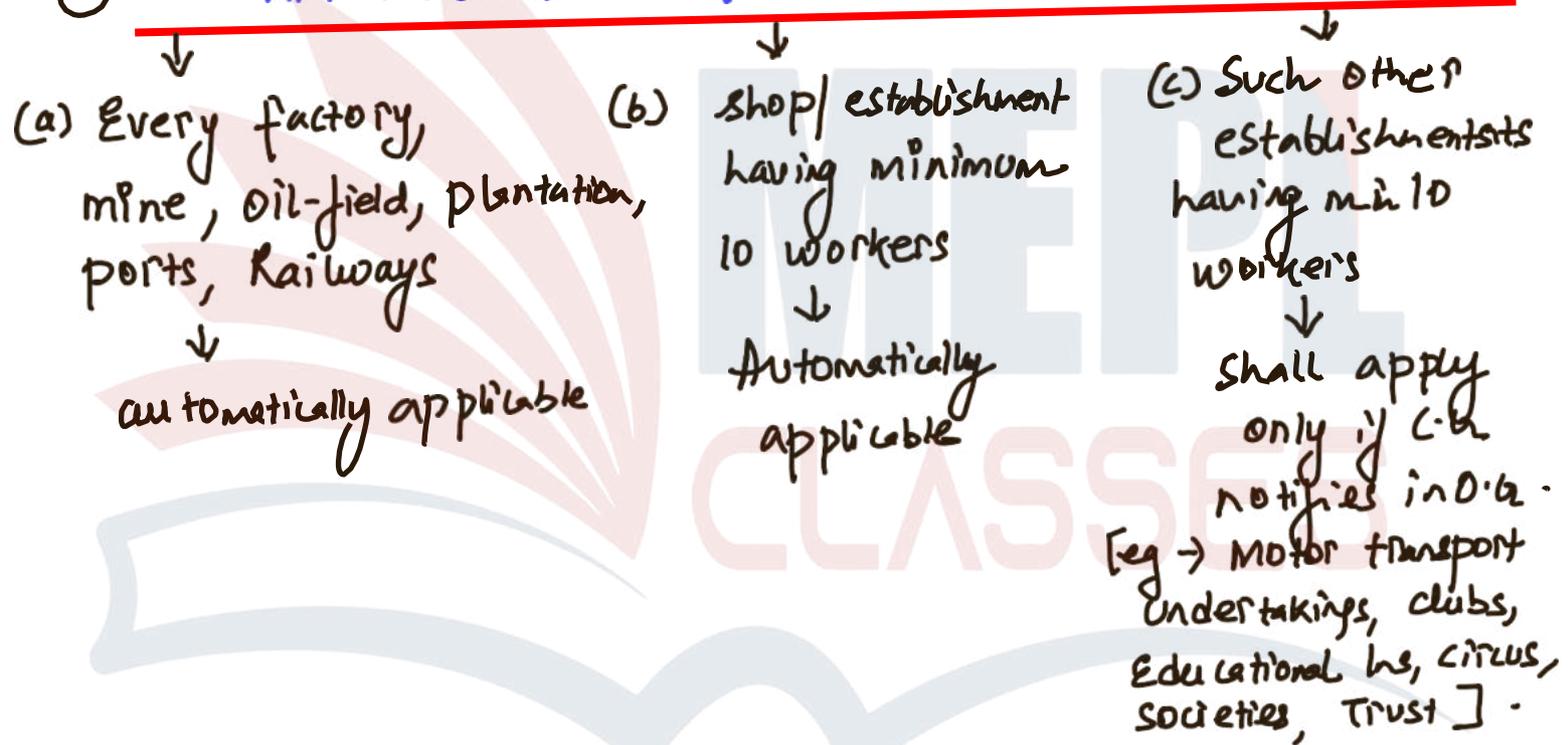
Sec 49

Sec 40B

PAYMENT OF GRATUITY ACT, 1972

- ① This Act is influenced & inspired by WB Employees Payment of Gratuity Act, 1971.
- ② Gratuity is a lump-sum payment made by the employer as a mark of recognition of the service rendered by the employee when he leaves/or retires from service.

③ APPLICABILITY OF THE ACT [Sec 1(3)]



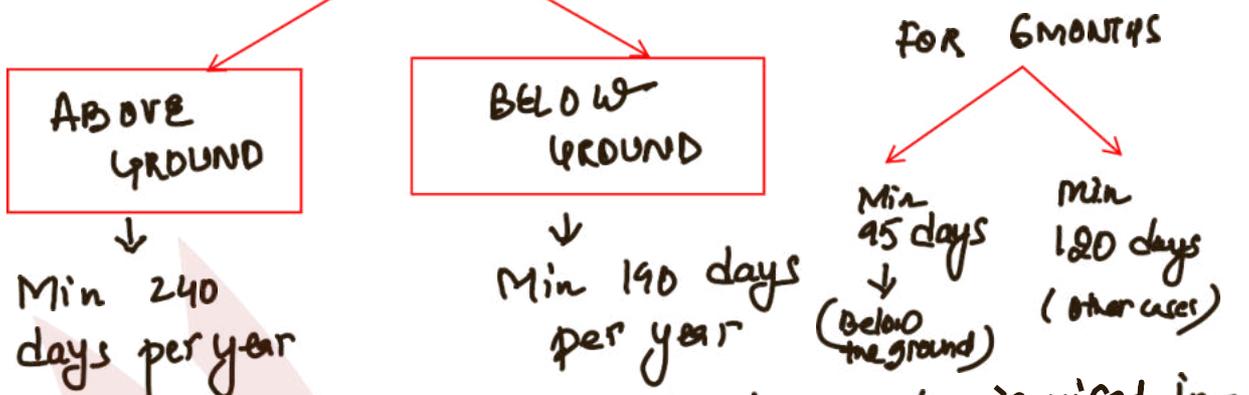
Act once applicable - becomes life time applicable, even if the no of persons employed fall below ten at any time after its applicability.

- ④ An Employee is entitled to Gratuity by the Employer at the time of ~
 - ① Retirement
 - ② Resignation
 - ③ Super-Annuation

④ Death

⑤ Dis-ability

provided that he has worked for atleast 5 years of continuous service calculated as below



However, 5 yrs. of continuous service not required in following cases

① Death

② Disablement due to accident or disease.

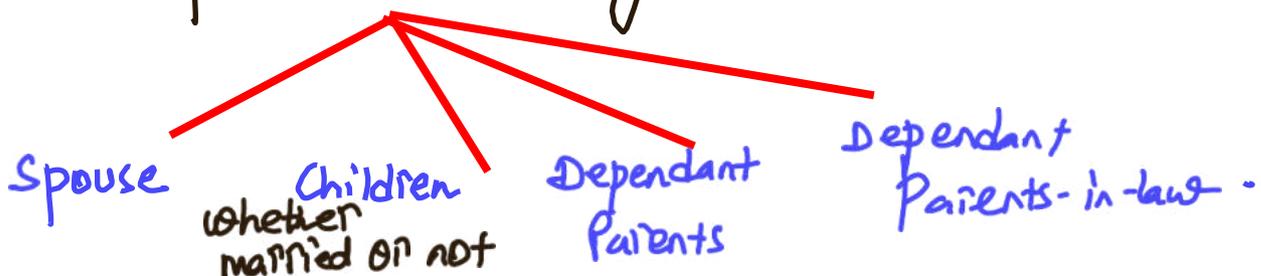
③ Seasonal employees/workers → if he has worked for atleast 75% of the total no. of days that his establishment operated during his tenure.

⑤ who will apply for gratuity & when?

when?	who?	Time limit?	form No?
1) Retirement/ Resignation/ Super-Annuation	Employee	Within 30 days	I
2) Death/Dis-able- -ment	Nominee	30 days	J
3) Death/Dis-ablement without nominee	Legal Heir	1 year	K

As per the Gratuity Act, Nominee has to be a family member. If No family member then outsider can be appointed as a family member.

#. As per G. Act family includes



⑥ **EMPLOYER**

If Accepts the form
↓
Issues new form
↳ Gratuity payable within 30 days

If Rejects the claim [on grounds of wrong calculation].
↓
Issues form M
↓
& case to be settled in the court.

#7 (If subsequently in future a person has a family then automatically Outsider's nomination get revoked -) this means once employee acquires the family the Outsider nomination becomes invalid & fresh nomination of family has to be done.

⑧ **AMOUNT OF GRATUITY**

$15/26 * \text{Last drawn salary} * \text{No. of Completed Years of Service}$
OR
In excess of 6 months Rounding off.

20 LACS

whichever is lower ↓

Initially 10 lacs ceiling by amending the Act.

9) Mode of Payment



10) Meaning of Salary



11) Super Annuation

It is an age which may be fixed in a contract between the Employer & Employee & whenever employee attains such age he will vacate the office.

12) Who is an Employee

- Any person [other than apprentice] employed for wages
- terms of employment $\left\{ \begin{array}{l} \text{Express} \\ \text{Implied} \end{array} \right.$
- In any work, manual or other
- In connection with work of factory, mine, oil-field, plantation, port, railways, shop, other est to which Act applies,
- does not include any person who holds post under 1.4/5.4 & is governed by Act other than this

providing for pay of gratuity.

- It includes teachers in educational inst. [Act amended in 2009]

13. Employer can forfeit gratuity either partly or wholly only if because of employees mis-conduct, employer's property has been damaged or destroyed.

14. Travancore Plywood Industries :-

It was held that even if employee refuses to surrender the land it is not a sufficient ground to forfeit his gratuity because property has not been damaged or destroyed.

15. Held in the case of Wazir Chand that if employee has not paid outstanding rent to employer then, employee can deduct it from gratuity because it is not a forfeiture rather it is a setoff.

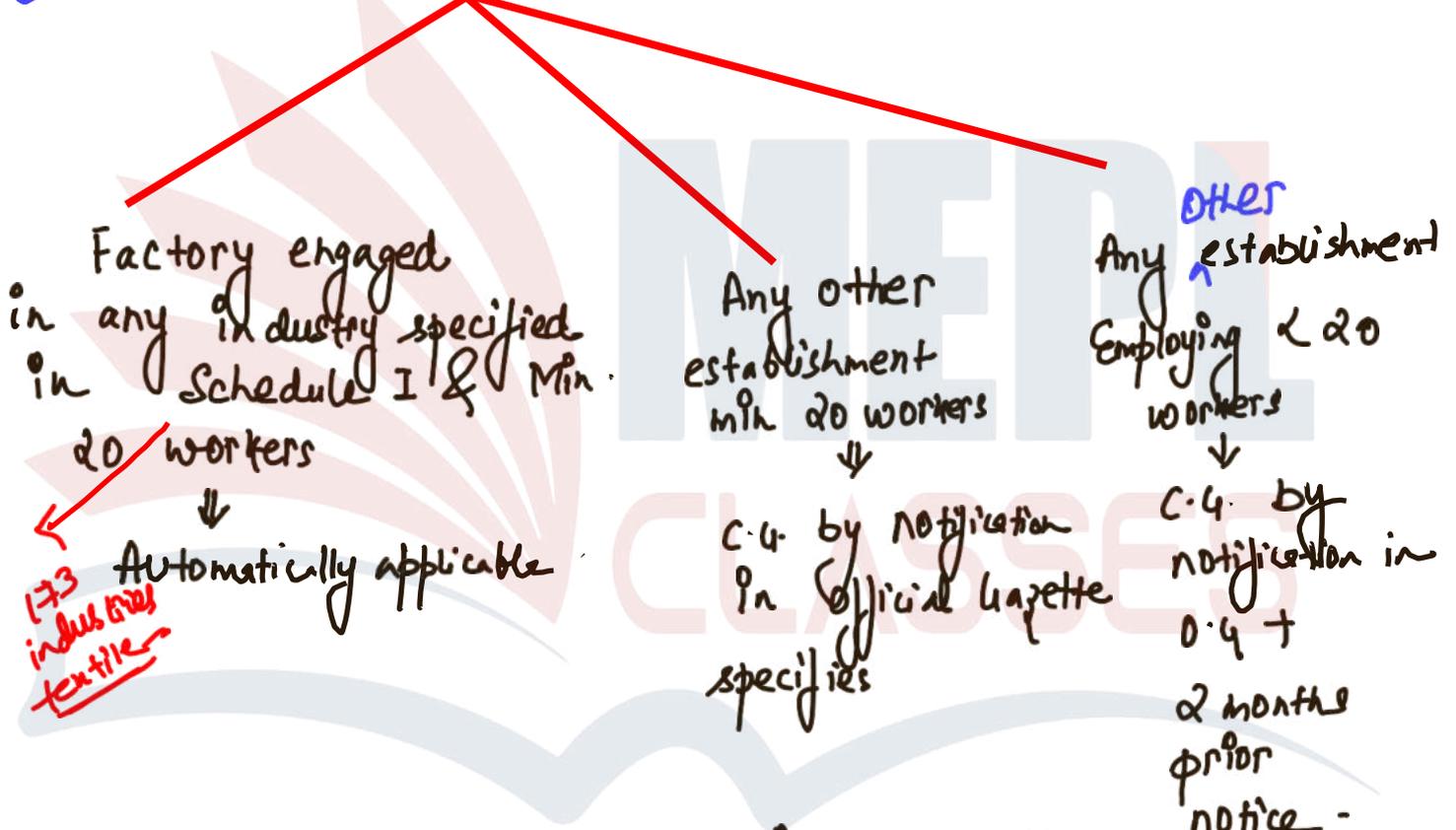
16. Recovery of gratuity → Sec 8 if not paid by the employer within the prescribed time, Controlling Authority on an application made to it in this behalf by aggrieved person, issue a certificate for that amt. to the Collector, who shall recover the same together with the C.I. at such rate as C.G. specify.

Int. Payable shall not exceed the amt. of gratuity payable under this Act.

EMPLOYEES PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS

- ① The Act provides for the institution of ACT, 1952 (Retirement Benefit)
- Provident funds
 - Pension funds
 - Deposit linked Insurance fund for employees in factories & other establishments.

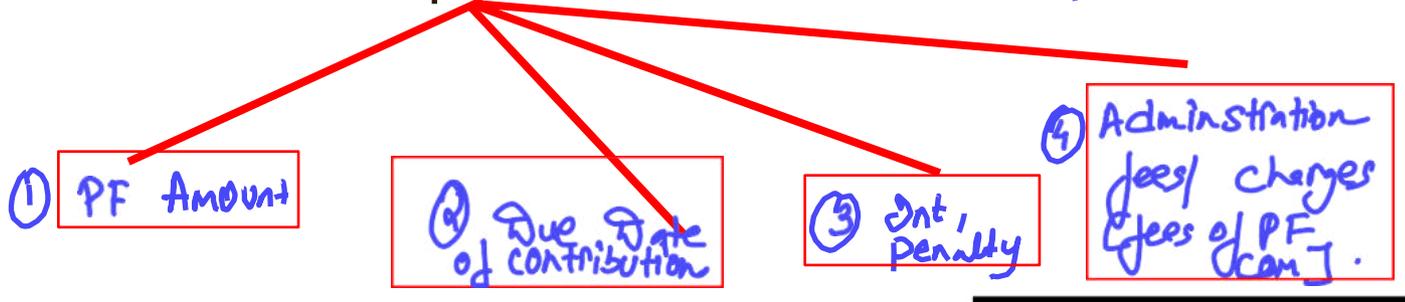
② APPLICATION OF THE ACT:-



Act once applicable, life time applicable.

③ Determination of Money Dues U/s 7A.

Whenever there is a dispute between Employer & Employee, case will be settled by PF Commissioner who can pass 4 orders / what are the orders that can be passed?



④ Either Employer/Employee aggrieved by order passed

U/s 7A

Review U/s 7B

Appeal to Higher Authority/
Employees PF Appellate Tribunal/
COURTS

Condition! → Appeal Not made

Once Appeal made Review cant be done.

Can be applied to the same PF Commissioner who has passed order U/s 7A on 2 grounds

error apparent on the face of the order
clerical error

New Material Evidences has been found

New Order U/s 7B.

If still aggrieved, Review can be done Again.

① However No Appeal can be filed against an order rejecting an application for review.

② Also PF-Commissioner on suo-motto can review himself on his own motion. However if appeal already filed, can't review.

U/s 7C → Time limit for suo-motto = 5 years.
PF Commissioner can re-open the case & re-determine the PF liability.

⑤ PROTECTION AGAINST ATTACHMENT U/s 10(1).

- If an Employee becomes insolvent, his PF cannot be attached. i.e. can't be paid to liability holders.
- Any amt. standing to the credit of any member in the fund shall not in any way, be capable of being assigned or charged & shall not be liable to attachment under any decree or order or any court in respect of any liability/debt incurred by the member.
- Also 10(2) provides for statutory vesting of the fund on dependants after the death of the subscriber which becomes absolute property of dependant & shall be free from any liability.
- Once withdrawn from the EPF can be attached.

⑥ Sec 11 → Insolvency of Employer

If limited cash available, first pay Provident fund (because it's a preferential liability).

⑦ Sec 12 → Employer Not to Reduce Wages

prohibits an employer not to reduce directly or indirectly the wages of an employee to whom the Act applied. PF is an additional benefit & not a part of salary.

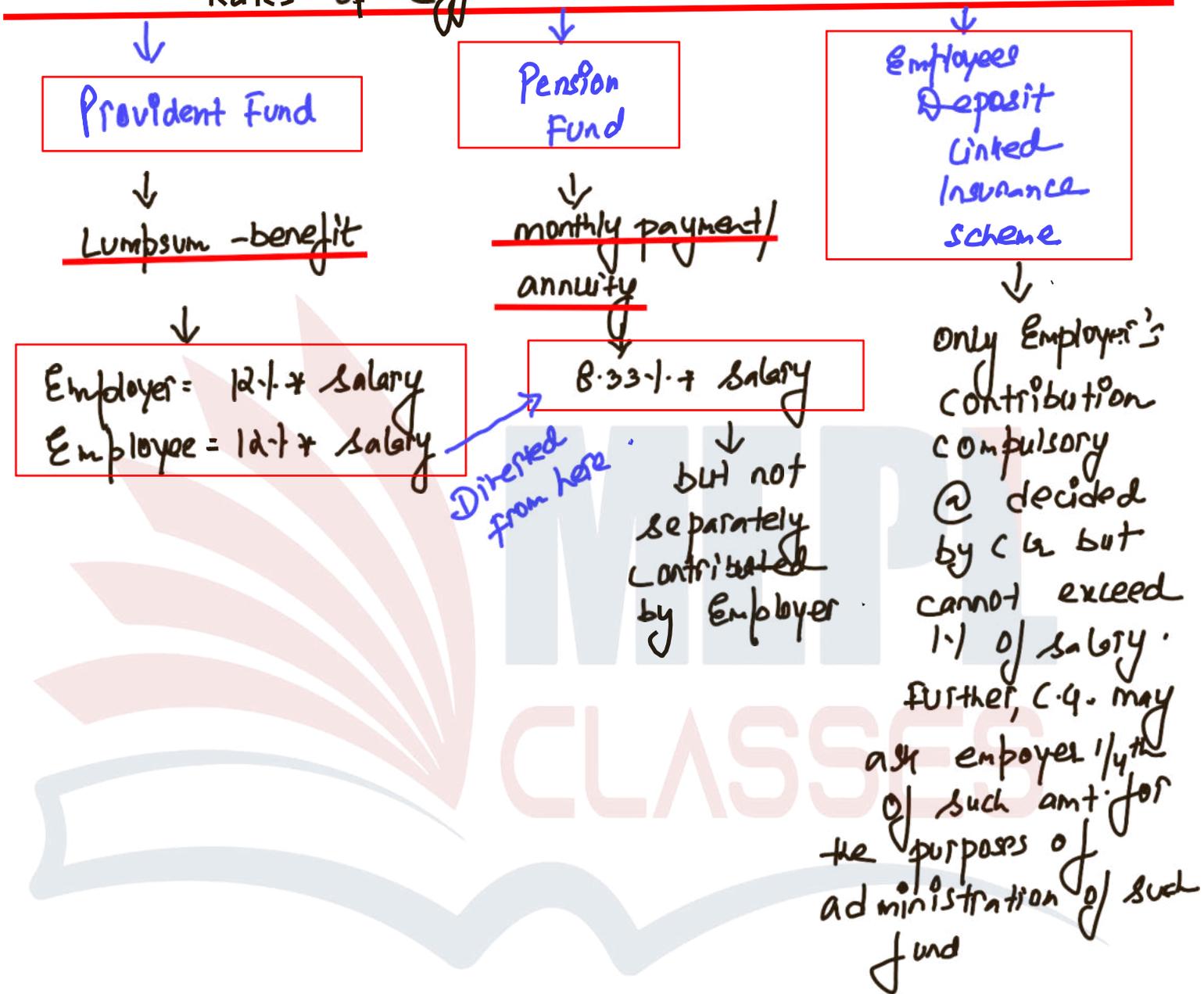
Eg. in

Employer's cont.	= 12% of salary [eg 10k]	= 1200	} SAL Payable
Employees cont.	= 12% of salary [10k]	1200	
		<u>2400</u>	10,000
			<u>1200</u>
			8800.

(provided ee did not pay 1200)

⑧ PF Authority Govt invests this to get return
contribution \Rightarrow

Rates of different fund under P.F. Act 1952



Note:- If Employees Salary exceeds 15000/month then all the above rates are computed only on 15000.

⑨ Discuss exemption U/s 16

P.F. Act will not apply on:-

- a) Co-operative Society working without power & < 50 workers.
- b) Employees of C.G. & S.G. (no machine)
- c) Employees of an establishment created under

- (i) Central Act (ex → UG, RBI)
- (ii) State Act (ex → State Consumer Forum)
- (iii) Provincial Act (ex → Kolkata Municipal Corp.)

10) Sec 16 A [Summary]

Employer of an establishment having min 100 workers will apply along with majority of workers if they want to follow their own P.F. Rules rather than P.F. Act

(b) ↑ to whom → to C.G.

(c) What are the conditions that C.G. will check.

(q) C.G. must consider P.F. rules made by employer to be more beneficial than P.F. Act.

(p) Track records of org. should have been good for last 3 yrs.

iii) Employer should agree that he will allow C.G.'s representative to inspect from time to time whether the said P.F. rules are being followed by employer or not.

Q. What if it is discovered later on that employer is not following P.F. rules or employer has not co-operated with C.G.'s representative?

Ans. C.G. shall again apply the P.F. Act along with interest & penalty.

Transfer of employee from an establishment on which P.F. Act was applicable to new establishment. Sec 17 A.

- ① Either employee can withdraw his P.F. from old establishment OR
- ② He may get it transferred to new establishment, if P.F. Act is applicable on new establishment also.
- ③ However if P.F. Act is not applicable on new establishment then, employee has to compulsorily withdraw P.F. from old establishment.

Transfer of Establishment - PF Liability of Employers U/s 17B.

- ① P.F. liability till date of transfer will be borne by old employer personally & by new employer only upto the value of business assets received.
- ② However, any P.F. liability after the date of transfer will be borne only by the new employer & that too personally.

Employees Pension Scheme

- ① Min 10yrs contributory service is required for entitlement to pension
- ② Normal super-annuation pension is payable on attaining the age of 58yrs.
- ③ Pension at discounted rate is also payable on attaining the age of 50yrs.

Pension payable under following contingencies.

- | | | | | |
|--|----------------|----------------------------------|--------------------------|----------------------------|
| ↓ | ↓ | ↓ | ↓ | ↓ |
| (a) super-annuation on attaining 58 yrs of age | (b) Retirement | (c) Permanent Total Dis-ablement | (d) Death during service | (e) Death after retirement |

(f) children pension (g) Orphan pension -
 Amt. of monthly pension will vary from member to member.

Employees P.F. Scheme Administration

- ① Sec 5A provides for admin. of fund.
- ② C.G by notification in O.G. constitute with effect from such date as may be specified a Board of Trustees.

Excluded Employee

↓
 an employee who has been a member of fund, withdraws the full amt. of his accumulations

↓
 Employee sal > 15,000 p.m.

↓
 An apprentice.

Advances/Withdrawals from PF

- ① Non-refundable advance for payment of premia towards LIC of member.
- ② Non-refundable advance to members due to temporary closure of any factory or establishment for more than 15 days for reasons other than strike or due to non-receipt of wages for 2m. or more. (2 months)
- ③ Non-refundable advance for daughter/sons marriage, self marriage, brother/sister marriage.
- ④ Non Refundable advance to members affected by cut in the supply of electricity
- ⑤ Non-refundable advances in case of property damaged by calamity of exceptional nature such

as flood, earthquake, riots

⑥ Withdrawals for repayment of loans in special cases.

⑦ Non refundable in case of
 (a) hospitalisation lasting one month or more or
 (b) major surgical operation in a hospital
 (c) suffering from T.B., leprosy, Paralysis, Cancer.

Final Withdrawal → On event of death, perm. disability, super-ann, retrenchment, migration, voluntary retirement

Superannuation → 58 yrs. age attainment, Employee who is a member of Pension scheme -

~~Suo-motto~~ ~~5% K₀~~
~~ULS 7C~~

~~Sec 10~~
~~Insolvency of the Employee~~
~~EPF Board~~
~~Sec 11~~
~~Preferential creditors~~
~~Emp PF~~

The Code On Wages, 2019

① Applicable ALL OVER INDIA from 8/8/2019.

Code	Act
means combination of Acts ↓ It repeals the 4 Acts as it never existed in the statute/obliterated the old 4 Acts	The Payment of Wages Act, 1936 ✓
	Min Wages Act, 1948 ✓
	Payment of Bonus Act 1965 ✓
	Equal Rem Act 1976 ✓

② 9 chapters under this code containing 69 sections.

CHAPTER NO	NAME	SECTIONS
I	Preliminary	1-4
II	Min. Wage.	5-14 ✓
III	Pynt of Wages	15-25 ✓
IV	Pynt of Bonus	26-41 ✓
V	Advisory Board	42 ✓
VI	Pynt of Dues, claim & Audit	43-50 ✓
VII	Inspectors	51 ✓
VIII	Offences & Penalties	52-56 ✓
IX	Miscellaneous	57-69 ✓

④ CHAPTER IV OF THE CODE

PAYMENT OF BONUS ACT, 1965

① It is applicable on all establishments having minimum 20 workers employed on any day of the A/c year. It shall continue to apply even if in subsequent A/c years if it gets reduced below 20 ^{Factory &}

② Eligibility to get Bonus as per sec 26, all the following conditions must be satisfied.

① Employee should have worked in an establishment on which Pay. of Bonus is applicable.

② He should have worked for min. 30 days in A/c year.

③ His Salary p.m. should not exceed 21000 p.m.

③ Min. Bonus → has to be paid whether or not there exists any allocable surplus @ 8.33% of salary or ₹ 100 p.a. whichever is higher.

④ Maximum Bonus shall have to be paid if Allocable Surplus > Min. Bonus

& Rate shall be 20% of salary but subject to the amt. of allocable surplus.

⑤ If an Employee's salary is more than ₹ 1000 p.m. Min. Bonus Rate & Max. Bonus Rate shall be calculated only on ₹ 1000 p.m.

⑥ Eg. Compute Min. Bonus to be paid
Employee's Salary 3000 12000 30,000
Min. Bonus (WN-1)

⑦ Computation of 30 working days

① Lay-offs are included i.e. (employee was not given work because of shortage of RM,

power cut, machine break-down. However strikes & lock-outs are not included.

- ② Holiday leave with salary included.
- ③ Maternity leave with salary included.
- ④ Temporary Dis-ablement during the course of Employment included.

Employee $\left\{ \begin{array}{l} \text{Apprentice } \times \\ \text{Intern } \times \\ \text{Probationers } \checkmark \end{array} \right.$

All surplus = 5000
 Min Bonus = 2000
 Max Bonus = 4800

$\left. \begin{array}{l} \text{Min Bonus} \\ \text{Max Bonus} \end{array} \right\} \begin{array}{l} - 8.33\% \\ \text{Sale} \\ \frac{24,000}{\times 20} \end{array}$

Comment whether Min Bonus payable or Max Bonus? & what amt?

Ans Pay Max Bonus $\left\{ \begin{array}{l} \text{All Surplus} \\ \text{If } > \text{ All surplus} \end{array} \right\} \text{Min Bonus}$

⑨ Adjustment of Interim / Customary / Puja Bonus

They shall be deductible from the total Bonus paid by Employer to Employee.

① Eg \rightarrow If Mr. X total Bonus is ₹ 1000 but was paid only ₹ 200 then final amt. of Bonus Payable to him shall be ₹ 800.

② If [B'day Bonus] = 500; Net Bonus Payable = 1000 - 500 = 500

⑩ Mis-conduct of Employee causing financial loss to Employer.

Such amt. of financial loss can be deducted from the Bonus but only to the extent of such loss.

only from that year's bonus in which loss took place.

⑪ Dis. Qualification from Bonus

Entire Outstanding Bonus of an Employee shall be deducted if such employee is dismissed by Employer on any of the following 4 grounds:-

- ① FRAUD
- ② Rptous/Violent Behaviour
- ③ Theft/ Mis-appropriation of Assets
- ④ Convicted for sexual harassment.

⑫ Mr. X's mis-conduct/violence caused ₹ 400 loss to Employer. His O/S Bonus is ₹ 1000. Advice.

Employer can deduct the financial loss of ₹ 400 from Bonus of ₹ 1000.

Alternatively Employer can ~~dismiss~~ ^{terminate} such employee on grounds of violent behaviour & deduct entire ₹ 1000.

⑬ what if above employee after being dis-missed is again reinstated with back wages?

Ans Then he shall be entitled to full bonus of ₹ 1000 without any deduction (SC Judgement → ONGC Vs Shyam kr Sahegal)

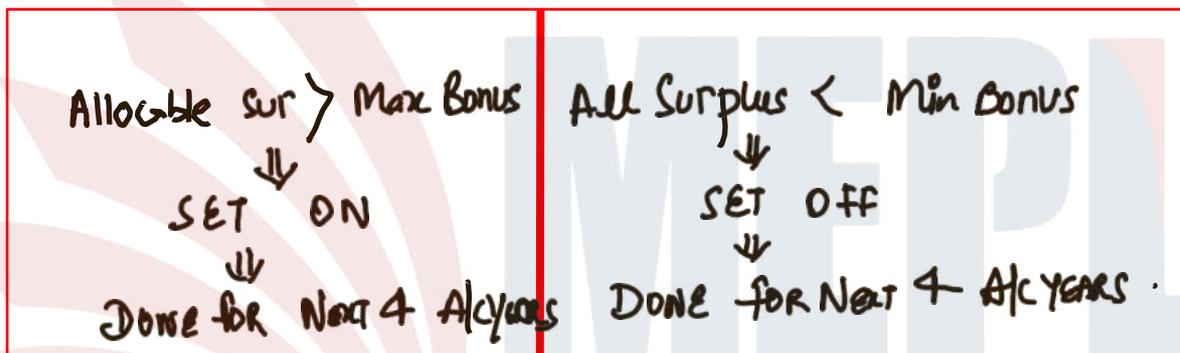
⑭ Bonus linked with Productivity

Even if there is a contract/agreement in which employee has relinquished/waived off to receive

min. Bonus or **there** is a contract/agreement as per which the **employer** has agreed to pay more than 20% of salary as Bonus these contracts are null & void because NO contract can over-ride the law

Hence an employee cannot waive off his right to receive Min. Bonus & Employer cannot be forced to pay more than max. Bonus.

(15) Set on & Set off \approx 4 A/c years



(16) There is no concept on set on & set off in first 5 A/c years

(17) **Eg.**

<u>Yr. 6</u>	<u>Yr. 7</u>
Min Bonus 2000	2000
Max Bonus 4800	4800
Allowable Surplus 5000	1900 + 200 = 2100

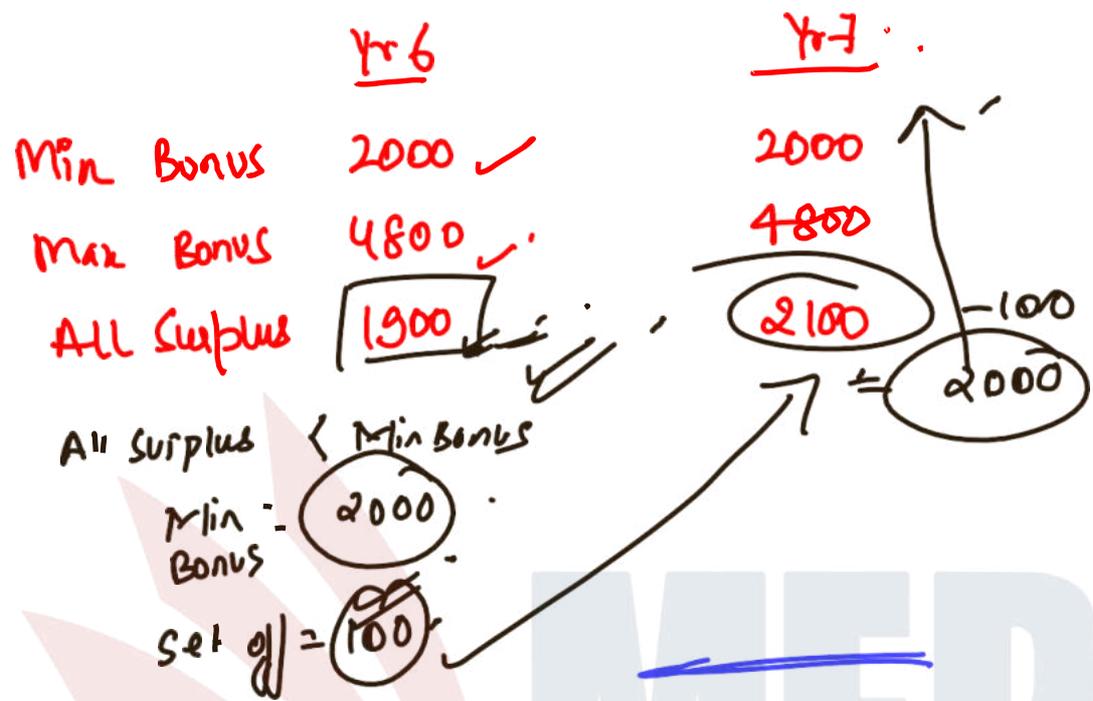
Complete Bonus to be paid & set on/set off to be done.

Ans: In yr 6 Bonus to be paid = ₹ 4800
 We had allowable surplus of ₹ 5000 which exceeds Max. Bonus of 4800 by ₹ 200 & so set on amt will be ₹ 200.

In yr. 7. Allowable surplus = 1900 + 200 = 2100
 \therefore Bonus Amt payable = ₹ 2100

We had allowable surplus of 2100 & we paid bonus also 2100, now no set on & set off.

(1e)



~~All Surplus = 2000~~
 Max Bm = 4000
 Min Bonus = 2800

3-7

8.33 x 7000 = 58310
 20 x 7000 = 140000

	<u>Salary:</u> 3000 pm.	<u>Salary:</u> 5000 pm.	<u>Salary:</u> 12000 pm.	<u>Salary:</u> 25000 pm.
Min Bonus	8.33 x 3000	8.33 x 5000	8.33 x 7000	↓ NO
	= 2499 x 12	= 416 x 12	= 5831 x 12	Bonus
	= 3000	= 4998	= 6997.2	Payable
	OR 2100	OR 100	OR 100	Salik
	whichever is higher	whichever is higher	OR 100	
	<u>3000</u>	<u>4998</u>	<u>6997.2</u>	

30 days → 28 days → 30 days
 ① 2 day

19

Meaning of Allocable Surplus

67% of Available Surplus when dividend not paid

60% of Available Surplus when Dividend paid

20

Meaning of Available Surplus

GROSS PROFIT ✓

[sums deductible from I/P under sec 6]

(-) Dep U/s 32(i) of IT Act ✓

(-) Provision for Tax ✓

(-) Such other sums as may be prescribed in respect of Employer in the Third Schedule ✓

(-) Any Amt. by way of Development Rebate, Inv. Allowance, Dev Allowance ✓

21

Certain Establishments on whom Payment of Bonus chapter shall not apply ~

- (i) Employees employed by any insurer carrying on general insurance business/ LIC
- (ii) Employees employed by RBI
- (iii) Seamen as defined in clause (42) of sec 3 of the Merchant Shipping Act, 1958
- (iv) Dock workers under Dock Workers (Regulation of Employment) Act 1948 & employed by registered or listed employers.
- (v) Govt Employees

- (vi) Public Sector Units
- (vii) Employees employed by charitable institutions like
 - (a) Indian Red Cross Society
 - (b) Non-profit seeking establishments like hospitals,
 - (c) chambers of commerce & social welfare establishments
 - (d) universities & other educational institutions
- (viii) Employees employed by inland water transport establishments
- (ix) Employees employed by
 - (a) IFCI
 - (b) Any financial corp established U/s 3
 - (c) the Deposit Insurance Corp
 - (d) NABARD
 - (e) UTI (f) IDBI (g) SIDBI, (h) National Housing Bk

22) Situation when Payment of Bonus Chapter shall Apply on Public Sector Units.

If an establishment in Public Sector sells a product/ service in competition with private sectors & that product/ service fetches atleast 20% of its total Revenue, then payment of Bonus Chapter shall apply to that establishment in public sectors.

for eg - A Govt co sell 2 products

PRODUCTS	X	Y
REVENUE	30 lacs	70 lacs

X is sold by Govt to compete with priv. sector. Comment

Ans: TR = 100 lacs, whose min. 20% is being generated by product X which competes with priv. sector & so Pay of Bonus Chapter shall apply to this Govt Co.

23) whether following persons entitled to Bonus (Assuming they have worked for 30 working

days at a salary not exceeding ₹1000 p.m.)
EMPLOYEE TYPE **APPLICABLE?**

- ① Part time Employees
Like Sweeper
- ② Piece Rated workers
- ③ Seasonal workers
- ④ Apprentice [Articledship/
Academic training]
- ⑤ Probationer / Employee
under bus training
- ⑥ Employees dismissed due
to Mis-conduct
- ⑦ Reinstated with back
wages
- ⑧ Employees Retrenched
[Employees dismissed
without any fault]

PENALTIES

Imprisonment upto 6 months
 OR
 fine < 1000 OR BOTH

Award means an interim / final determination of any industrial dispute or of any question relating thereto by any labour court, Industrial Tribunal or National Tribunal constituted under the Industrial Dispute Act, 1947

If any dispute arises betw Employer and Employee wrt bonus payable under the Act, such dispute shall deemed to be an Industrial Dispute within the meaning of Industrial Dispute Act, 1947.

Salary or wage means all remuneration capable of being expressed in terms of money whether terms of employment express or implied are fulfilled & includes Dearness Allowance but doesn't include ~

- (i) any other allowance which employee is for time - being entitled to
- (ii) value of house accommodation
- (iii) any travelling concession
- (iv) any bonus
- (v) any retrenchment compensation or any gratuity
- (vi) any commission payable
- (vii) any contribution payable by employer to any pension fund /

H Alc yr ^{corp} year ending on the day on which Books and Alcs are closed & balanced.

^{company} period in respect of which any P&L Alc of the Company laid before it in ALM

Other case yr commencing on 1st day of April.

19

Meaning of Allocable Surplus

67% of Available Surplus when dividend not paid

60% of Available Surplus when Dividend paid

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Meaning of Available Surplus

GROSS PROFIT ✓

↳ [sums deductible from GIP under sec 6]

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(-) Provision for Tax ✓

(-) Such other sums as may be prescribed in respect of Employer in the Third Schedule ✓

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✓

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- (v) Govt Employees ✓

- (vi) Public Sector Units ✓
- (vii) Employees employed by Charitable Institutions like
 - (a) Indian Red Cross Society ✓
 - (b) Non-profit seeking establishments like hospitals,
 - (c) chambers of commerce & social welfare establishments
 - (d) Universities & other educational institutions ✓
- (viii) Employees employed by Inland Water transport establishments
- (ix) Employees employed by
 - (a) IFCI ✓
 - (b) Any financial corp established U/s 3
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② Piece Rated workers	Yes
③ Seasonal workers	Yes
④ Apprentice [Articledship/ Academic training]	No
⑤ Probationer / Employee under bus training	Yes
⑥ Employees dismissed due to Mis-conduct	No
⑦ Reinstated with back wages	Yes
⑧ Employees Retrenched [Employees dismissed without any fault]	Yes

PENALTIES

Imprisonment upto 6 months
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- (iii) any travelling concession
- (iv) any bonus
- (v) any retrenchment compensation or any gratuity
- (vi) any commission payable
- (vii) any contribution payable by employer to any pension fund /

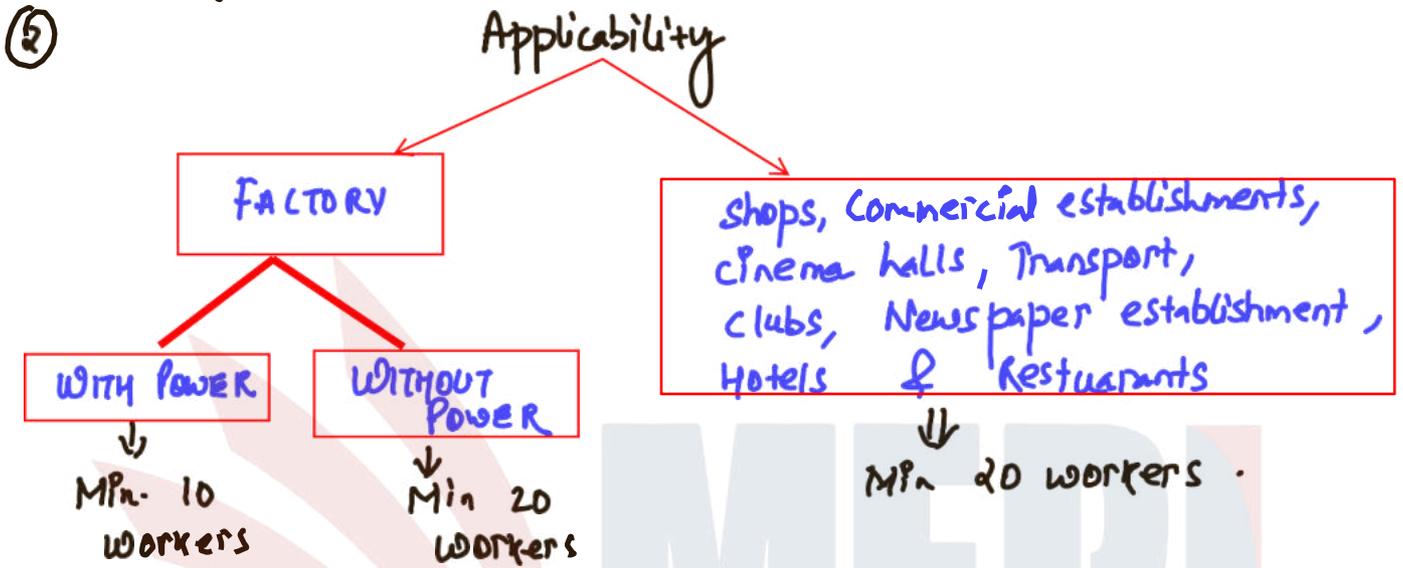
H Alc yr ^{corp} year ending on the day on which Books and Alcs are closed & balanced.

~~company~~ period in respect of which any P&L Alc of the company laid before it in AGM

other case yr commencing on 1st day of April.

Employees State Insurance Act, 1948

① It is a social security scheme which provides insurance benefits to employees & their dependant family members.



③ It is a central Act but establishments on which this Act shall apply must register them with respective S.G.

④ Establishments on whom this Act is applicable shall procure a unique Reg Code from Regional officers of S.G. by filing form No. 1.

⑤ Amt. of Contribution to ESIC fund

Employer's Cont = 4.75% of salary
 Employee's Cont = 1.75% of salary

⑥ Time limit of Cont = Within disc of the next month.

⑦ For Employer's Contribution salary cannot be deducted but for Employees Contribution Employer can deduct from salary.

⑧ Employee's salary 10,000/mth.
then Cont. to ESC fund

$$\text{Employer} = 4.75\% \text{ of } 10,000 = 475$$

$$\text{Employee} = 1.75\% \text{ of } 10,000 = \frac{175}{650/\text{month}}$$

$$\text{Salary to be paid} = 10,000 - 175 = ₹ 9825/\text{month}$$

(9) Only Employees having salary upto ₹ 21,000 per month shall be eligible for ESI facility.

(10) ADMINISTRATION OF ESI SCHEME

Employees State Insurance Corporation

Standing Committee

- Administer the affairs of the Corporation
- Acts as an executive body for administration of ESI Corporation

Medical Benefit Council

- C-4 to constitute a MBC
- advice the corp & the S.C on matters relating to administration of medical benefit, grant of benefit -
- have powers & duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment.

ESI CORPORATION

Composition

- 1 C-4 appoints a Chairman
- 2 A Vice-Chairman
- 3 Other members representing the interest of employers, employees, S.G./ U.T & medical profession.

Power & Duties

- 1 Promote measures for improvement of health & welfare of insured person & re-habilitation & re-employment of insured persons who have disabled or injured & incur in respect of such

- ④ 3 members of Parliament & Director General of the Corp are its ex-officio members.
- measures -
- ② can acquire & hold property (movable/immovable)
 - ③ raise loans/discharge loans
 - ④ can invest/re-invest money.

ESI FUND

- administered by Corporation
- Bank A/c in the name of ESI fund shall be opened with RBI/Any other bank approved by C.G.

Purpose for which fund may be Expended

- ① payment of benefits & provisions of medical treatment & attendance to insured persons & where medical benefits is extended to their families.
- ② Pay of fees & allowances to members of Corp, St. Con & MBC, Regional Boards.
- ③ pay of salaries, leave, gratuity, pensions, of officers & servants of the Corp.
- ④ establishment & maintenance of hospitals, dispensaries, & other inst.
- ⑤ defraying the cost of auditing the A/c of Corp
- ⑥ " " " " ESI counts set up under this Act.

Benefits to insured persons, their dependants.

- (a) periodical payments in case of sickness certified by medical practitioner.
- (b) periodical payment to an insured workman in case of confinement or mis-carriage or sickness arising out of pregnancy.
- (c) periodical payment to the dependants of insured persons.

- (d) medical treatment & attendance of insured person
- (e) periodical payment to an insured person suffering from dis-ablement as a result of employment injury.
- (f) Payment of funeral expenses on death of insured person.

ESI COURT

- s.4 by notification in O.G constitute an ESI Court for such local area as may be specified in the notification.
- Any person who is or has been judicial officer or a legal practitioner of 5 years standing shall be qualified to be a judge of E-I. Court.
- To Adjudicate disputes relating to employee, employer, any other person to whom benefit accrues under this Act.
- E-I COURT also has jurisdiction to decide claims for recovery of contribution from principal employer or immediate employer, action for failure or negligence to pay contribution, claim for recovery of any benefit admissible under the Act.

No Civil Court has power to decide the matters falling within the purview of E-I court.

The ESI Act, 1948 provides an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical dis-ablement, death due to employment injury resulting in loss of wages or earning capacity. The Act also guarantee reasonably good medical care to workers & their immediate dependants.

Minimum Wages Act



MINIMUM WAGES ACT, 1948

OBJECT OF THE ACT

The object of this Act is to provide for fixing minimum rates of wages in certain employments.

APPLICABILITY

This Act extends to whole of India. The Act provides the list of employments for which this Act applicable in the schedule to this Act.

IMPORTANT DEFINITIONS

ADOLESCENT

Section 2(a) defines the term 'adolescent' as a person who has completed his fourteenth year of age but has not completed his eighteenth year.

ADULT

Section 2(aa) defines the term 'adult' as a person who has completed his eighteenth year of age.

APPROPRIATE GOVERNMENT

Section 2(b) defines the term 'appropriate Government' as-

- *in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine oilfield or major port or any corporation established by a Central Act - the Central Government; and*
- *in relation to any other scheduled employment the State Government;*

CHILD

Section 2(bb) defines the term 'child' as in relation to any other scheduled employment of the State Government.

COST OF LIVING INDEX

Section 2(d) defines the expression 'cost of living index number' in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed as the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.

EMPLOYER

Section 2(e) defines the term 'employer' as any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act and includes except in sub-section (3) of section 26 –

- (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948) as manager of the factory;***
- (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;***
- (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the persons appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;***
- (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act any person responsible to the owner for the supervision and control of the employees or for the payment of wages;***



WAGES

Section 2(h) defines the term 'wages' as all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include –

- ***the value of –***
 - ***any house accommodation, supply of light, water, medical attendance; or***
 - ***any other amenity or any service excluded by general or special order of the appropriate government;***
- ***any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;***
- ***any traveling allowance or the value of any traveling concession;***
- ***any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or***
- ***any gratuity payable on discharge;***



EMPLOYEE

Section 2(i) defines the term 'employee' as any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.

SCHEDULED EMPLOYMENT

Section 2(g) of the Act defines the terms ‘scheduled employment’ as an employment specified in the Schedule, or any process or branch of working forming part of such employment.

- The Schedule is divided into two parts – Part I and Part II. Part I of the schedule has 18 entries. It was realized that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result the State Government and Central Government have made several additions to the Schedule and it differs from State to State.*

SCHEDULED EMPLOYMENT

- Part II relates to employment in agriculture. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry and any practice performed by a farmer on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market from produce).***

FIXING OF MINIMUM RATES OF WAGES

Section 3 provides that the appropriate Government shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Party by notification under section 27. The appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof.

FIXING OF MINIMUM RATES OF WAGES

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment but if at any time the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding.

The appropriate Government may fix minimum rate of wages for-

- ✓ *time work, known as a Minimum Time Rate;*
- ✓ *piece work, known as a Minimum Piece Rate;*
- ✓ *a guaranteed time rate;*
- ✓ *overtime rate.*

DIFFERENT MINIMUM WAGES

Section 3(3) (a) provides that different minimum rates of wages may be fixed for

- ✓ *different scheduled employments;*
- ✓ *different classes of work in the same scheduled employment;*
- ✓ *adults, adolescents, children and apprentices;*
- ✓ *different localities;*

MINIMUM WAGES ON WAGE PERIOD

Section 3(3) (b) provides that minimum of wages may be fixed by any one or more of the following wage periods-

- ✓ *by the hour;*
- ✓ *by the day;*
- ✓ *by the month or*
- ✓ *by such other larger wage-period as may be prescribed*

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day as the case may be may be indicated.

Where any wage-periods have been fixed under section 4 of the Payment of Wages Act 1936, minimum wages shall be fixed in accordance therewith.

REVIEW OF MINIMUM WAGES

Section 3(1)(b) provides that the appropriate Government may review at such intervals, as it may think fit, such intervals not exceeding five years and revise the minimum rate of wages, if necessary. Where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect or any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

MINIMUM WAGES WHEN A DISPUTE IS PENDING

Section 3(2A) provides that where in respect of an industrial dispute relating to the rate of wages payable to any employees employed in a schedule employed is pending before-

- ✓ *A Tribunal or National Tribunal under the Industrial Disputes Act, 1947; or*
- ✓ *Before any like authority under any other law for the time being force; or*
- ✓ *An award made by any Tribunal, National Tribunal or such authority is in operation*

and a notification is issued by the appropriate Government for fixing the minimum wages or revision of minimum wages, during the pendency of the above proceedings, no minimum wage cannot be fixed by the appropriate Government during the said period.

MINIMUM RATE OF WAGES

Section 4(1) provides that any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments may consist of –

- *a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers; or*
- *a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorized; or*
- *an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.*

Section 4(2) provides that the cost of living allowance and the cash value of the concessions in respect of supplied of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES

Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either –

- ✓ *appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or*
- ✓ *by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.*

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES

Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

In 'Bijay Unchana Paul V. State of Assam' – 1969 (19) FLR 11 it was held that it is necessary that the appropriate Government in issuing notifications for prescribing the rates of minimum wages under the Minimum Wages Act, 1948, punctiliously follows the letter of law and strictly complies with all the procedures laid down in the Act.

In 'T.G. Lakshmaiah Setty & Sons, Adoni V. State of Andhra Pradesh' – 1981 Lab IC 690 it was held that what is contemplated by the Act to be notified under Section 5(1)(b) is no doubt draft proposals. The objection to draft proposals can be made both by employers and employees as well. Thus, if the employees had exercised their privilege to represent and ask for higher wages and if eventually the State authorities had adopted higher rates of minimum wages.

CORRECTION OF ERRORS

Section 10 of the Act provides that if there is any clerical or arithmetical mistake in any order fixing or revising minimum rates of wages or errors arising therein from any accidental slip or omission, the appropriate Government may, at any time, by notification correct the same. Every such Notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.

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ADVISORY BOARD

Section 7 of the Act provides that the purpose of co-coordinating work of committees and subcommittees appointed under section 5 and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages the appropriate government shall appoint an Advisory Board.

The Advisory body has no functioning of quasi judicial nature. Their recommendation/decision is not binding on the State Government but the same remains only a recommendation and nothing more than that. Merely because one member of the Board was extra, the recommendation of the Advisory Board would not be vitiated as held in 'Charadharpur Bidi and Tobacco Merchants Association V. State of Bihar' – 1997 (77) FLR 339.

CENTRAL ADVISORY BOARD

Section 8 of the Act provides that for the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-coordinating the work of the Advisory Board, the Central Government shall appoint a Central Advisory Board.

The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

COMPOSITION OF COMMITTEE

Section 9 of the Act provides that each of the committees sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.

WAGES IN KIND

Section 11(1) of the Act provides that Minimum wages payable under this Act shall be paid in cash. Section 11(2) provides that where it has been the custom to pay wages wholly or partly in kind, the appropriate government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

Section 11(3) of the Act provides that if appropriate government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate government may, by notification in the Official Gazette, authorize the provision of such supplies at concessional rates. Section 11(4) of the Act provides that the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates shall be estimated in the prescribed manner.

PAYMENT OF MINIMUM RATE OF WAGES

Section 12 of the Act provides that where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed. This provision will not affect the provisions of the Payment of Wages Act, 1936.

FORCED LABOR

In 'Union for Democratic Rights V. Union of India' – 1982 Lab IC 1646 it was held that where a person provides labor or service to another for remuneration which is less than the minimum wages, such labor is 'forced labor' within the meaning of Article 23 of the Constitution.

FIXING HOURS FOR A NORMAL WORKING DAY

Section 13(1) of the Act provides that in regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act the appropriate government may –

- ✓ fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals. Rule 24 provides that the number of hours which shall constitute a normal working day shall be-*
- ✓ in the case of an adult – 9 hours; the working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, shall not spread over more than 12 hours on any day;*
- ✓ in case of a child – 4.5 hours. No child shall be permitted to work for more than 4.5 hours on any day.*
- ✓ provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; provide for payment for work on a day of rest at a rate not less than the overtime rate.*

FIXING HOURS FOR A NORMAL WORKING DAY

Section 13(2) provides that the provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed :-

- ✓ employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;*
- ✓ employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;*
- ✓ employees whose employment is essentially intermittent;*
- ✓ employees engaged in any work which for technical reasons has to be completed before the duty is over;*
- ✓ employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.*

FIXING HOURS FOR A NORMAL WORKING DAY

Section 13(3) provides that for the purposes of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.



MEPL
CLASSES

O V E R
T I M E

OVERTIME

Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

OVERTIME

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

- ✓ in case of employment in agriculture - one and a half times the ordinary rate of wages;***
- ✓ in case of any other scheduled employment – double the ordinary rate of wages.***

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In ‘Municipal Council, Hatta V. Bhagat Singh’ – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

WAGES OF WORKER WHO WORKS LESS THAN NORMAL WORKING DAY

Section 15 of the Act provides that if an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day. However that he shall not be entitled to receive wages for a full normal working day –

- ✓ *in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and*
- ✓ *in such other cases and circumstances as may be prescribed.*

WAGES FOR TWO OR MORE CLASSES OF WORK

Section 16 of the Act provides that where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

MINIMUM TIME RATE WAGES FOR PIECE WORK

Section 17 of the Act provides that where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act the employer shall pay to such employee wages at not less than the minimum time rate.



CASH VALUE OF WAGES

Rule 20 provides that the retail prices at the nearest market shall be taken into account in computing cash value of wages paid in kind and of essential commodities supplied at concessional rates. The computation shall be made in accordance with such directions as may be issued by the Central Government from time to time.

TIME OF PAYMENT OF WAGES

Rule 21(1) provides that the wages of a worker in any scheduled employment shall be paid on a working day-

- ✓ ***in the establishment for which less than 1000 persons are employed – before the expiry of 7th day;***
- ✓ ***in other establishments – before the expiry of 10th day***

after the last 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 him shall be paid before the expiry of the second working day after the day on which his employment is terminated.

CONDITION FOR PAYMENT OF WAGES

The wages of an employed person shall be paid to him without deduction of any kind except those authorized by or under the rules.

DEDUCTIONS

Every payment made by the employed person to the employer or his agent shall be deemed to be a deduction of wages. Deductions from the wages shall be one of or more of the following-

✓ fines;

✓ absence from duty;

damage or loss of goods entrusted to the employed person for custody where the damage is directly attributable to his neglect or default;

loss of money for which he is required to account where such loss is directly attributable to his neglect or default;

DEDUCTIONS

- *house accommodation supplied by the employer;*
- *such amenities and services supplied by the employer;*
- *advances or for adjustment of over payment of wages;*
- *income tax payable by the employed person;*
- *by order of a Court or other competent authority;*
- *repayment of advances from any provident fund;*
- *payment to co-operative societies;*
- *loans advanced by the employer;*
- *payment of insurance premium;*
- *adjustment of amounts, other than wages paid in error in excess of what is due to him;*
- *with the written authorization of the employed person;*
- *with the written authorization for contributions to National Defence Fund or the Prime Minister's National Relief Fund or to any Defence Savings Scheme approved by the Central Government;*
- *loans granted for house building.*

DEDUCTIONS

The prior approval of the Inspector or any other officer authorized is obtained in writing before making such deductions, unless the employee given his consent in writing to such deductions.

The total amount of deductions from the wages shall not exceed-

- ✓ 75% of such wages where such deductions are wholly or partly made for payments to Consumer Co-operative Stores run by any Co-operative Society; and***
- ✓ 50% of such wages in any other case.***

If the total amount of deductions that have to be made in wage period from the wages exceeds the limit, the excess shall be carried forward and recovered from the wages of succeeding wage period or wager periods in such number of installments as may be necessary.



FINES

Fine may be imposed on an employed person for damage or loss caused by him. The act or omission or the damage or loss in respect of which the find is proposed, the employed persons shall be explained personally and also in writing about the same. The employed person shall be given an opportunity to offer any explanation in the presence of another person. The amount of fine that is imposed on him shall also be intimated to him. The fine imposed shall be subject to such limits imposed by the Central Government. All fines imposed and deductions made shall be recorded in the register.

WEEKLY DAY OF REST

Rule 23 provides that an employee to whom this Act is applicable shall be allowed a day of rest every week which shall ordinarily be Sunday, but the employer may fix any other day of the week as the rest day for any employee in his employment. The employee should be informed about his weekly day of rest. To get the weekly day of rest the employee has to work for a continuous period of not less than six days in a week.

NIGHT SHIFT

Rule 24A provides that where a worker in a scheduled employment works on shift which extends beyond midnight-

- ✓ *a holiday for the whole day for the purposes of week day rest shall, in his case mean a period of 24 consecutive hours beginning from the time when his shift ends; and*
- ✓ *the following day in such a case shall be deemed to be the period of 24 hours beginning from the time when such shift ends and the hours after midnight during which such worker was engaged in work shall be counted towards the previous day.*

CLAIMS

If there is any short payment of wages or wages at the over time etc., may be claimed by the employee himself or through any legal practitioner or any official of a registered trade union authorized by him or any Inspection or any person acting with the permission of the Authority by applying to the concerned authority. For this purpose the appropriate Government may appoint-

- ✓ *any Commissioner for Workmen's Compensation; or*
- ✓ *any Officer of the Central Government exercising functions as a Labor Commissioner for any region; or*
- ✓ *any Officer of the State Government not below the rank of Labor Commissioner; or*
- ✓ *any other Officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate*

to be the authority to hear and decide for any specified area all claims.

CLAIMS

The claim shall be presented to the authority by the employee within six months from the date on which the minimum wages or other amount became payable. The Authority may accept a claim beyond the six months if he is satisfied that the applicant had sufficient cause for not making the application within the prescribed period. Rule 27 provides that a single application in respect of a number of employees may be filed before the authority. The application shall be made in duplicate in Forms VI, VIA or VII, one copy of which shall bear the prescribed court fee. The authorization shall be given in Form VIII.

The Authority shall serve the copy of the application to the employer by registered post a notice in Form IX to appear before him on a specified date. He shall hear the applicant and the employer and after such further inquiry, if any, as it may consider necessary may, without prejudice of any other penalty to the employer, direct-

- ✓ *the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with compensation as the authority may think fit, not exceeding 10 times the amount of such excess;*
- ✓ *in any other case, the payment of the amount together with the payment of such compensation as the Authority may think fit, not exceeding 10.*

CLAIMS

If the employer fails to appear on the specified date the Authority may hear and determine the application ex-parte. If the applicant fails to appear on the specified date the application will be dismissed. Any such order may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order and the application shall be re-heard.

If the Authority finds the application is a vexatious one he may impose penalty on the employees not exceeding ₹50/- to the employer.

The amount due may be recovered as if it were a fine imposed by the Authority as a Magistrate. Every direction of the Authority shall be final.

In 'Awadh Lal Sah V. State of Bihar' – 1984 Lab IC 169 (Pat HC) it was held that the minimum wages becoming payable can be claimed by an application presented within six months from the date on which it became payable and if presented after the expiry of the period of limitation, the applicant has to satisfy the authority that he had sufficient cause for not making the application within such period.

CLAIMS

In 'B. Ramdas V. The Authority under the Minimum Wages Act, Guntur Region, Guntur' – 1987 Lab IC 1493 it was held that while making the enquiry into the claim petition under Section 20 of the Act, the authority acts in quasi judicial capacity and ipso facto should ensure that no prejudice is caused to the employer by failure to follow the rules of natural justice.

In 'Premier Tobacco Packers (P) Limited V. Assistant Labor Officer' – 1988 Lab IC 283 it was held that an order imposing a monetary liability caused by violation of provisions of a statute cannot be upheld except in the presence of strict proof.

In 'Executive Engineer, Rural Works Division, Mayurbhanj V. Additional District Magistrate' – 2005 LLR 121 it was held that the claim of arrears of differential wages made by employee. There was delay in filing application beyond limitation period. Claimant submitted that they were pursuing their grievance before Labor Officer. Only when they failed, they approached the authority. It was held that delay has been rightly condoned.

EXEMPTION TO EMPLOYER

Section 23 provides that where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved the employer proves to the satisfaction of the Court-

- ✓ that he has used due diligence to enforce the execution of this Act; and*
- ✓ that the said other person committed the offence in question without his knowledge, consent or connivance,*

that the other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged. For this purpose the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

OBLIGATION OF EMPLOYER

Section 18 imposes some obligations on the employer in keeping and maintenance of registers and records. Section 18(1) provides that every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such Form as may be prescribed.

Section 18(2) provides that every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of outworkers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing the prescribed particulars.

OBLIGATION OF EMPLOYER

Section 18(3) provides that the appropriate Government may, by rules made under the Act, provide for issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which the entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

Maintaining such registers and records are mandatory. There is no exemption to this mandatory obligation of the employer including any contractor. Therefore every employer, including a contractor who engaged laborers for others who owns the establishment/factory etc., is bound by the provisions of this Act, to comply with the requirements of maintaining registers etc.,

OBLIGATION OF EMPLOYER

The following are the forms prescribed for registers and records-

- ✓ *Form – I : Register of Fines;*
- ✓ *Form – II : Register of deductions for damage or loss caused to the employer,*

By the neglect or default of the employed persons;

- ✓ *Form III : Unified Annual Return;*
- ✓ *Form IV : Overtime Register for workers;*
- ✓ *Form V : Muster Roll;*
- ✓ *Form IX-A : Notice*
- ✓ *Form X : Register of Wages;*
- ✓ *Form XI : Wage slip.*



ANNUAL RETURN FILING

ANNUAL RETURN

Rule 21 (4A) provides for filing of annual returns by employer. The Annual Return shall be filed by the employer on or before 1st of February in each year by uploading the same in Form III on the web portal of the Ministry of Labor and Employment and also filed with the Inspector.

PUBLICITY OF NOTICE

Rule 22 provides that notices in Form IXA containing the minimum rates of wages fixed together with the extracts of the Act, the rules made there under and the name and address of the Inspector shall be displayed in English and in a language understood by the majority of the workers in the employment at the main entrances to the establishment and at its office and shall be maintained in a clean and eligible condition. Such notices shall also be displayed on the notice boards of all sub divisional and district officers.

UNPAID AMOUNT

Section 22D provides that if the employer could not able to pay the amount due to the employee on account of his death before payment or on account of his whereabouts is not known, the same should be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

CONTRACTING OUT

Section 25 of the Act provides that any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

The right of minimum wages under this Act is a definite one. In 'Yadav Stores, Nagpur V. Presiding Officer, Labor Court – III' – 1984 Lab IC 756 it was held that in a compromise or a settlement between the employer and employee resulting in the employee relinquishing or reducing his claim with regard to wages under the Minimum wages act is shall be null and void.

A 3D-rendered wooden gavel with a yellow band around its head is positioned diagonally across the frame. It rests on a large, circular wooden block. The word "PENALTY" is written in large, white, 3D block letters across the front of the circular block. The background is a light, neutral color with a faint watermark of the "MEPL CLASSES" logo.

PENALTY

PENALTIES

Section 22 provides punishment for certain offences. The section provides that any employer who-

- ✓ ***pays to an employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act; or***
- ✓ ***contravenes any rule or order made under Section 13 (fixing hours for normal working days etc.,)***

shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to ₹500/- or with both. In imposing any fine for an offence the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings under Section 20.

Section 22A provides general provision for punishment of other offences. This section provides that any employer who contravenes any provision of this Act or of any rule or order made there under shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to ₹500.

OFFENCES OF BY COMPANIES

Section 22C provides that if the person committing any offence is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

If the concerned person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. If it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be proceeded against and punished accordingly.

COGNIZANCE OF OFFENCES

Section 22B provides that no court shall take cognizance of a complaint against any person for an offence-

- ✓ ***under Section 22(a) unless an application in respect of the facts constituting such offence has been presented under Section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorized by it in this behalf has sanctioned the making of the complaint;***
- ✓ ***under Section 22(b) or under Section 22A, except on a complaint made by, or with the sanction of an Inspector.***

No Court shall take cognizance of an offence under Section 22, unless a complaint is made within one month of the grant of sanction and under Section 22A, unless a complaint is made within six months of the date on which the offence is alleged to have been committed.

BAR OF SUITS

Section 24 provides that no Court shall entertain any suit for the recovery of wages for the sum claimed-

- ✓ forms the subject of an application under Section 20 which has been presented by or on behalf of the plaintiff; or***
- ✓ has formed the subject of a direction under that section in favor of the plaintiff; or***
- ✓ has been adjudged in any proceeding under that shall not be due to the plaintiff; or***
- ✓ could have been recovered by an application under that that Act.***

POWERS OF APPROPRIATE GOVERNMENT

The following are the powers of the appropriate Government-

- *Section 26 provides that the appropriate Government may, subject to such conditions, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees or all or any class of employees employed in the scheduled employment;*
- *Section 27 gives power to State Government to add any employment in either part of the schedule;*
- *Section 28 gives power to the Central Government to directions to a State Government as to carrying into execution of this Act in the State;*
- *Section 29 gives power to the Central Government to make rules;*
- *Section 30 gives power to appropriate Government to make Rules.*

CS EXECUTIVE

LABOUR LAWS – PAST YEAR QUESTIONS.

MEPL CLASSES

FACTORIES ACT, 1948

- **Answer the question:** (d) (i) Employees of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed under Factories Act, 1948.
- **Solution :**
- As per Section 2(k) of the Factories Act, 1948, manufacturing process means any process for: (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

- (ii) Pumping oil, water, sewage or any other substance; or;
- (iii) Generating, transforming or transmitting power; or
- (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- (vi) Preserving or storing any article in cold storage;
- Process undertaken at electricity generating station, Sub-station is transferring and transmitting electricity is not a manufacturing process and are not thus factory- [Delhi Electricity Supply Undertaking vs. Management of DESU, AIR(1973)SCC 365]

- **What are the responsibilities of an occupier in a factory?**
- Answer:
- Responsibility of the occupier
- The occupier has to follow the procedure:
 - to lay down a detailed policy with respect to the health and safety of the workers;
 - to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
 - to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
 - to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

- **Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory**

Critically examine the duties of certified surgeon under the Factories Act, 1948

- Section 10 under the Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-
 - the examination and certification of young persons;
 - the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
 - the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where –

- cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
- by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

PAYMENT OF GRATUITY ACT, 1972

Under what circumstances the gratuity payable to an employee be forfeited?

- **Forfeiture of Gratuity:** The legal provisions relating to the forfeiture of gratuity are contained in Section 4 (6) of the Payment of Gratuity Act, 1972 and may be summed up as under:
- 1. The gratuity payable to an employee shall be forfeited where the services of an employee have been terminated due to any act, willful omission or negligence on the part of the employee and employee's such act etc. has caused: (a) damage or loss to the property belonging to the employer, or (b) destruction of the property belonging to the employer.
- In this case, the gratuity payable to the employee shall be forfeited to the extent of the damage or loss caused to employer's property due to employees act, omission or negligence [Section 4(6)(a)]

- **2. The gratuity payable to an employee may be forfeited:**
- **(a) If the services of such employee have been terminated for his riotous or disorderly conduct or any other Act of violence on his part, or**
- **(b) If the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. In the above stated cases, the gratuity payable to an employee may be forfeited wholly or partially. [Section 4(6)(b)]**

- Following judicial decisions are important to note in connection with the forfeiture of gratuity by the employer:
- (i) The right of the employer to forfeit the amount of gratuity of an employee whose services were terminated due to any Act, willful omission or negligence causing any damage to the employer's property is limited to the extent of damage and the proof of such damage. [Permal Wallance Ltd. Vs. State of M.P. (1996) IILLJ 515 (MP)].
- (ii) The right of the employer to forfeit the gratuity is available only in the circumstances enumerated in Section 4(6), as stated in points (1) and (2) above, and is not available in any other circumstances as employee's right to gratuity is the statutory right. [K.C.Mathew Vs. Plantation Corpn. of Kerala Ltd. (2001) LLR 123 (ker.)].
- (iii) The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity. [Travancore Plywood Industries Ltd. Vs. Regional Joint Labour Commissioner, (1996) II LLJ 85 (ker.)]

Explain the manner in which the gratuity payable to employees in a seasonal establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act.

- **Answer:**
- **Seasonal Establishments:** In the case of seasonal establishment the employees can be classified into 2 groups.
- (a) Those who work throughout the year and
- (b) Those who work only during the season. The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months.
- The latter are entitled to receive gratuity at the rate of 7 days for each season. Under Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed ₹ 10 lakhs

Discuss the procedure for determination of the amount of gratuity as per Section 7 of the Payment of Gratuity Act, 1972

- **Answer:**
- **Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.**
- **The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum.**

- If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.
- If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

- **Answer:**
- The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.
- The gratuity payable to an employee may be wholly or partially forfeited:
- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or

- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.
- It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

- Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court
Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- **Answer :**
- Protection against attachment:
- Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the fund or any exempted employee in a provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed

- under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.
- The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

Employees provident funds and Miscellaneous Provisions Act, 1952 is not applicable to certain establishments. List out those establishments

- The Employees Provident Fund and Miscellaneous Provisions Act, 1952 does not apply to certain establishments as specified under Section 16 of the said Act.
- They are as follows: (a) Any establishment registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any state relating to co-operative societies employing less than 50 persons and working without the aid of power or
- (b) To any establishment belonging to or under the Control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension. Or

- (c) Any other establishment set up under any Central Provincial or State Act and whose employees are entitled to any Contributory provident fund or old age pension.
- (d) Any newly setup establishment (less than 3 years).
- Central Government having regard to the financial position of any class of establishment or other circumstances of the case may exempt that class of establishment from the operation of this Act for such period as specified in the notification Issued for this purpose.

When can a member withdraw from his National Pension Funds account?

- Answer :
- Withdrawal from the National Pension Fund Account is allowed for the following purposes-
 - For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
 - For repayment of loans in special cases;
 - Withdrawal within one year before the retirement;
- Such withdrawals are not required to be repaid.

Enumerate the Central Record Keeping Agency under Pension Fund Regulatory and Development Act 2013?

- Answer: Section 21 of the Pension Fund Regulatory and Development Act, 2013 deals with Central Record keeping Agency: (1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central record keeping agency: Provided that the Authority may, in public interest, appoint more than one central record keeping agency.
- (2) The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations

- (3) All the assets and properties owned, leased or developed by the central record keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:
- Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations: Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

EMPLOYEES' STATE INSURANCE ACT, 1948

What are the different purposes for which employees' state insurance fund may be utilized by the central government?

- Answer :
- Purposes for which the fund may be expended
- Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:
 - • payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
 - • payment of fees and allowances to members of the corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

- **payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act**
- **establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;**
- **defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;**
- **defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;**

- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
- payment of any sums under any decree, order or award of any Court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured; and
- such other purposes as may be authorized by the corporation with the previous approval of the Central Government

PAYMENT OF BONUS ACT, 1965

- **What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act, 1965?**
- **Recovery of bonus due from an employer:**
- **In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in Section 21 of the Act.**
- **It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the Act.**

- The provisions relating to the recovery of bonus, as contained in Section 21, are as under:
 - 1. The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.
 - 2. The application may be made by the employee himself or by any person authorized by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.
 - 3. On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.
 - 4. The application to the Appropriate Government should be made within one year from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

- Explain the 'time limit for payment of bonus' to the employees in different circumstances under the provisions of the Payment of Bonus Act, 1965.
- **Time limit for payment of bonus:**
- Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:
- (1) Under Section 19 (1) (a) of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- (2) Under Section 19 (1) (b) of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.

- **Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment ?**
- **Answer:**
- **All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.**
- **Employees of the unit which is incurring losses:**
- **• are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;**

- are entitled to minimum bonus as per the provisions of Sections 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together

MINIMUM WAGES ACT, 1948

- The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment.
- Answer :
- 1. Minimum wages payable under this Act shall be paid in cash.
- 2. Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorize the payment of minimum wages either wholly or partly in kind.
- 3. If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorize the provision of such supplies at concessional rates.
- 4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

PAYMENT OF WAGES ACT, 1936

- Write short note on the following:
- Limit of deductions from wages

- Answer:
- Limit of Deductions from Wages Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees.
- Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed:
 - in cases where such deductions are wholly or partly made for payments to co-operative societies – 75% of such wages and
 - in any other case – 50% of such wages. Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

CONGRATULATIONS TO ALL THE AIRS OF CS FROM MEPL



SHRUTI NAGAR
AIR 1



CHIRAAG AGARWAL
TWO TIMES
AIR 1



ESHAN LOIYA
AIR 1

CS EXECUTIVE & CS PROFESSIONAL



KAMODINEE BHARTIA
AIR 2



RAVALI MULAGADA
AIR 2



ANKIT AGARWAL
AIR 3



HARAS DEV CHOWHURI
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RIYA BHAGCHANDANI
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NANADINI CHAURASIA
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AIR 18